

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)	
)	
Petitioner,)	
)	PCB No: <u>2023-107</u>
v.)	(Pollution Control Facility Siting Appeal)
)	
CITY OF WEST CHICAGO, WEST)	
CHICAGO CITY COUNCIL, and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
Respondents)	
_____)	
PEOPLE OPPOSING DUPAGE)	
ENVIRONMENTAL RACISM,)	
)	
Petitioner,)	
)	
v.)	PCB No: <u>2023-109</u>
)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,)	
)	
Respondents.)	

NOTICE OF FILING

To: **See Attached Service List**

PLEASE TAKE NOTICE that on May 24, 2023, Protect West Chicago electronically filed with the Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, IL 60605, an original of the attached: **Protect West Chicago’s Response to Lakeshore and the City of West Chicago’s Objections to Written Discovery (First Set of Interrogatories and First Request For Production of Documents)**, copies of which are attached and served upon you.

Dated: May 24, 2023

Respectfully Submitted,



Ricardo Meza
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CERTIFICATE OF SERVICE

I, Ricardo Meza, an attorney, certify that I have served the attached: **Protect West Chicago's Response to Lakeshore and the City of West Chicago's Objections to Written Discovery (First Set of Interrogatories and First Request For Production of Documents)**, on the below-named parties (Service List) by delivering the document to them via electronic mail on May 24, 2023 and via the PCB's Clerk's Office electronic filing system.



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PROTECT WEST CHICAGO’S COMBINED RESPONSE TO LAKESHORE RECYCLING SYSTEMS, LLC AND CITY OF WEST CHICAGO’S OBJECTIONS TO PROTECT WEST CHICAGO’S WRITTEN DISCOVERY (FIRST SET OF INTERROGATORIES AND FIRST REQUEST TO PRODUCE)

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorney, Meza Law, and for its Combined Response to Lakeshore Recycling Systems, LLC’s (“Lakeshore”) and the City of West Chicago’s (“City”) Objections to Protect West Chicago’s Written Discovery (First Set of Interrogatories and First Request For Production of Documents), states as follows:

I. PWC’S AMENDED PETITION ALLEGATIONS

On March 28, 2023, PWC filed its Petition for Hearing and Review of a Local Siting Approval for a New Pollution Control Facility. On April 14, 2023, PWC filed its Amended

Petition. (“Amended Petition”).¹ In its Amended Petition, PWC alleged that there was pre-adjudication in favor of approving Lakeshore’s Application in multiple ways, some of which were not currently known, rendering the entire local siting review process fundamentally unfair, including, among other things:

- The actions of West Chicago officials as revealed in documents, emails, and draft siting applications obtained under the FOIA litigation which documents reveal biased and preferential communications by and between various West Chicago officials, and Applicant Lakeshore *prior to the submission of Lakeshore’s Application*, which attempted to blunt and significantly minimize serious concerns which had been raised by the City’s own consultant (Aptim), and shield them from public scrutiny; (emphasis added)
- The action(s) of West Chicago officials *prior to submission of Lakeshore’s Application*, including action of Mayor Ruben Pineda, discovered as a result of the FOIA litigation, which revealed a pre-adjudication bias in favor of Lakeshore’s Application even before any application was submitted, as reflected by a November 2020 text message Mayor Pineda sent to a local member of the clergy (Father Josh) with a large Latino congregation who had expressed opposition to the proposed facility on social media, wherein Mayor Pineda wrote: “We need to talk next week. *You’re pushing propaganda*. Please get all information prior to posting on social media. Thanks in advance.” []. (Emphasis added).
- Actions of West Chicago officials in submitting letters in support of the Lakeshore’s Application on West Chicago letterhead and then editing the letter to make it more favorable to the Applicant, all at the express request (and direction) of Lakeshore’s expert John Hock. **See Exhibit A** (PCB Record C003581- October 15, 2019 letter) and *compare with Exhibit B* (PCB Record C000466 – August 14, 2022 letter).

In their Amended Petition, PWC also alleged that:

- Upon information and belief, the actions and/or statements made by one or more third-parties in closed session reflecting or revealing that City Council members’ deliberation may not have been based on Hearing Evidence, but, rather, on attorney recommendations revealed by at least one West Chicago official, namely Alderman Lori Chassee, who stated in open session on February 28, 2023 that the decision to approve was based on and prompted by comments from two attorneys for the City that a vote against Applicant may place the City and City officials at risk of being sued.

¹ On April 14, 2023, Lakeshore filed a Motion to Strike PWC’s initial Petition. However, on May 18, 2023, the Pollution Control Board (“PCB”) issued an Order in which it *inter alia*, denied Lakeshore’s Motion to Strike. In its May 18, 2023 Order, the PCB granted PWC’s motion to Amend its Petition.

- Upon information and belief, the actions of West Chicago officials further reflect the decision to approve Lakeshore's Application may have been made on February 27, 2023 (day before the official vote of February 28, 2023) as West Chicago officials [].

Finally, PWC's Amended Petition advanced additional grounds in support of their appeal.²

II. PROTECT WEST CHICAGO'S WRITTEN DISCOVERY

On May 5, 2023, PWC served Lakeshore and the City written discovery. The City was served with thirteen (13) interrogatories and six (6) Requests to Produce Documents. Lakeshore was only served four (4) Requests to Produce Documents.

On May 11, 2023, in response to PWC's written discovery, the City objected to PWC interrogatories #10, 11 and 12, which were as follows:

PWC Interrogatory #10: State whether Lakeshore Recycling, LLC reimbursed the City of West Chicago \$9,109.00 in attorney fees and \$352.91 in costs for the City of West Chicago's failure to comply with the Freedom of Information Act request in cause number 2021 MR 449 and as set forth in the attached exhibit PWC-31.

PWC Interrogatory #11: State what if any action the City of West Chicago took to obtain Spanish-Language interpreters either prior to the start of the public Siting Hearings in January 2023 or after Mr. Steve De La Rosa publicly informed the City of West Chicago, during the siting hearing that there was "no Spanish language translation here for people from the community in a minority-majority community that have an interest in this along with the rest of the people of West Chicago." *See* Siting Hearing Transcript at p. 939.

PWC Interrogatory #12: State what if any action the City of West Chicago took to translate Lakeshore Recycling LLC's September 16, 2022 Siting Application materials from English to Spanish.

The City also objected to PWC Requests to Produce Documents #1, 2, 4 and 5, which were as follows:

PWC Request to Produce #1

A copy of the audio recording of the City of West Chicago City Council closed executive session held on February 27, 2023.

² PWC's Amended Petition alleged various grounds for appeal including: 1) that Lakeshore's Application failed to comply with the Pre-Filing Notice requirements set forth in 415 ILCS §5/39.2(b) and 2) that the City's decision to grant siting approval did not comply with the site location standard included at 415 ILCS §5/22.14(a).

PWC Request to Produce #2

For the time period **from January 1, 2019 to September 16, 2022**, a copy of any and all documents relating to the proposed West DuPage Recycling and Transfer Station, located at 1655 Powis Road, West Chicago, IL, by and between any of the following:

- a. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any employee or consultant of Lakeshore Recycling, LLC.
- b. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any other City Council members, City staff, City Department personnel and/or consultants retained by the City.
- c. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any member of the public or third party, including but not limited to Pastor Josh Ebener.

PWC Request to Produce #4

A copy of all documents relating to Interrogatory No. 11 in which PWC asks the City of West Chicago to:

“State whether Lakeshore Recycling, LLC reimbursed the City of West Chicago \$9,109.00 in attorney fees and \$352.91 in costs for the City of West Chicago’s failure to comply with the Freedom of Information Act request in cause number 2021 MR 449 and as set forth in the attached exhibit PWC-31.”

PWC Request to Produce #5

A copy of all documents relating to Interrogatory No. 12 in which PWC asks the City of West Chicago to:

State what if any action the City of West Chicago took to obtain Spanish-Language interpreters either prior to the start of the public Siting Hearings in January 2023 or after Mr. Steve De La Rosa publicly informed the City of West Chicago, during the siting hearing that there was “no Spanish language translation here for people from the community in a minority-majority community that have an interest in this along with the rest of the people of West Chicago.” *See* Siting Hearing Transcript at p. 939.

On May 10, 2023, in response to PWC’s written discovery, Lakeshore objected to all four

(4) of PWC’s Requests to Produce Documents, which were as follows:

PWC Request to Produce #1:

For the time period **from January 1, 2019 to September 16, 2022**, a copy of any and all documents relating to the proposed West DuPage Recycling and Transfer Station, located at 1655 Powis Road, West Chicago, IL, by and between any of the following:

- a. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any employee or consultant of Lakeshore Recycling, LLC.
- b. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any member of the public or third party, including but not limited to Pastor Josh Ebener.

PWC Request to Produce #2:

For the time period **from September 16, 2022 to March 1, 2023**, a copy of any and all documents relating to the proposed West DuPage Recycling and Transfer Station, located at 1655 Powis Road, West Chicago, IL, by and between any of the following:

- c. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any employee or consultant of Lakeshore Recycling, LLC.
- d. Any City Council members, City staff, City Department personnel and/or consultants retained by the City and/or any member of the public or third party, including but not limited to Colin Hale.

PWC Request to Produce #3:

A copy of all documents relating to Lakeshore Recycling, LLC's reimbursement to the City of West Chicago of \$9,109.00 in attorney fees and \$352.91 in costs for the City of West Chicago's failure to comply with the Freedom of Information Act request in cause number 2021 MR 449 and as set forth in the attached exhibit PWC-31.

PWC Request to Produce #4:

A copy of all documents relating to Lakeshore Recycling, LLC's communication(s) with Tom Dabareiner in relation to the two letters he prepared dated October 15, 2019 and August 24, 2022 identified at Exhibits PWC-13A and PWC-34 and attached hereto.

In light of the fact that a majority of the City and Lakeshore's objections are identical and in fact, verbatim,³ PWC submits its Combined Response.

³ For example, although filed on separate days (May 10 & 11, 2023) the language in a majority of the paragraphs in both sets of objections are verbatim. And, while there is nothing improper about "cutting and pasting" objections, the verbatim language reveals nothing other than a continued and concerted coordination between Lakeshore and the City of West Chicago in their joint effort to push through a second waste transfer station. Below are two of the multitude of examples of verbatim paragraphs contained in the objections of the two parties:

- "Discovery before the Illinois Pollution Control Board is governed by []. . . ." See Lakeshore Objections at ¶3 and compare with City of West Chicago's Objections at ¶2.
- "Supreme Court Rule 201 provides that a "party may obtain by discovery full disclosure regarding any matter *relevant* to the subject matter involved in the pending action..." See Lakeshore Objections at ¶4 and compare with City of West Chicago's Objections at ¶7.

See also, Lakeshore Objections at ¶5 and compare with City of West Chicago's Objections at ¶8; Lakeshore Objections at ¶6 and compare with City of West Chicago's Objections at ¶9; Lakeshore Objections at ¶8 and compare with City of West Chicago's Objections at ¶11; Lakeshore Objections at ¶9 and compare with City of West Chicago's Objections at ¶12; Lakeshore Objections at ¶10 and compare with City of West Chicago's Objections at ¶13; Lakeshore Objections at ¶11 and compare with City of West Chicago's Objections at ¶14; and, Lakeshore Objections at ¶12 and compare with City of West Chicago's Objections at ¶15.

III. LAKESHORE AND WEST CHICAGO'S OBJECTIONS TO DISCOVERY

As the Illinois Pollution Control Board ("Board") is well aware, discovery in proceedings before the Board are governed by the Illinois Administrative Code and, in particular, 35 Ill. Admin. Code 101.616. As set forth in Subsection (a):

"All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State under statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130."

Except as provided in the Administrative Code rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. Ill. Sup. Ct. R. 201. In addition, "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ill. R. Evid 401.

A) City of West Chicago's Objections to the Closed Session Meeting Minutes

In their objections, the City objects to the production of the recordings of its closed executive session arguing that PWC is barred from obtaining these items by section 2.06(e) of the Open Meetings Act. The City's objections should be denied for reasons set forth below.

First, where the government is a party to an action, "it is unjust to afford the government the benefit of withholding relevant evidence while requiring its opponent to adhere to the established rules of open discovery." *Birkett v. City of Chicago*, 184 Ill.2d 521, 235 Ill. Dec. 435, 705 N.E.2d 48, 52 (Ill.1998). *See also Kodish v. Oakbrook Terrace Fire Prot. Dist.*, 235 F.R.D.

447 (N.D. Ill. 2006) (“The interests served by the open meeting privilege are overcome by the need for probative evidence and are adequately protected by the attorney-client privilege.”).

Here, it is clear that the closed meeting related to Lakeshore’s siting application approval which is being appealed by PWC. And, it is also clear that the City is and has been intent on keeping its so-called deliberations private because after they met in closed session the day before (Monday, February 27, 2023), the West Chicago City Council emerged in open session the following day and, in no more than a five-minute open meeting, the Council proceeded to promptly approve a “*a 13-page single-spaced* (previously-prepared) Ordinance, together with a 20-page Recommendation by the Hearing Officer.” (Emphasis Added). Accordingly, for PWC to prove its allegations of inherent bias and lack of fundamental fairness, it must have access to the audio recordings of the closed session in order to determine the extent to which actual deliberations did or did not occur or whether the closed session was nothing other than a continued rubber-stamp of the entire application and approval process.

Second, at this time, it is unclear who attended the closed session. Thus, PWC is entitled to receive information as to who attended the closed session as there is nothing improper about obtaining this information and in order to determine whether the closed-session information is still protected by attorney-client privilege. In other words, without knowing the identity of the parties present, any claim of attorney-client privilege is premature. For example, if Hearing Officer Derke Price was at the closed session, then any claim of attorney-client privilege would have been waived because Mr. Price did not serve as counsel for the City. Rather, he was retained to serve as an objective and neutral Hearing Officer, which, as alleged in PWC’s Amended Petition, he was not.

Third, even if there were no other third-party in the closed session, PWC has alleged that in an open City Council meeting, a West Chicago City council person stated that “the decision to

approve was based on and prompted by comments from two attorneys for the City that a vote against Applicant may place the City and City officials at risk of being sued.” *See* PWC Amended Petition at p. 7 (¶19). Thus, the City, through its City Council person who discussed matters that occurred in closed session, and waived any privilege to such information.

Illinois courts have already found the attorney-client privilege to have been waived under similar circumstances. *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, 960 N.E.2d 1144. In *Fox Moraine*, the City of Yorkville attempted to assert the attorney-client privilege over information that its attorney prepared to advise it on a siting decision. *Id.* at ¶ 63. The court found that the city council’s having discussed the information provided by the attorney during open deliberations established that the city council did not consider the information to be confidential and treated it as part of the record. *Id.* at ¶ 64-67. Significantly, the court also noted that city council members had stated that the information provided by the attorney was considered in making a final decision, which further established waiver of attorney-client privilege. *Id.* at 69. Finally, the court determined that the fact the information was outside of the record also leaned toward waiver of privilege. *Id.*

Here, West Chicago Alderman Lori Chassee stated in open session that the decision to approve Lakeshore’s application was based on and prompted by comments made by City of West Chicago attorneys. *See* PWC Amended Petition at p. 7 (¶19). Just like in *Fox Moraine* the discussion of their attorney’s comments in open session means (and shows) that the City of West Chicago did not consider the information as confidential. Likewise, in *Fox Moraine*, at least one city council member stated that the decision was made based on their attorney’s comments. Hence, in both *Fox Moraine* and the instant matter, the reference to and reliance upon information received from the attorney creates the inference that the decision maker considered information outside of

the record in making its decision. Thus, the City waived any possible the attorney-client privilege related to their closed session discussions.

Against this backdrop, it is clear that the only way to create a full and fair record is to allow PWC to obtain the closes session audio recordings to determine whether the considerations made by the City Council were proper.

B) Objections to Evidence Pre-dating Lakeshore's Siting Application Filing Date of September 16, 2022

The City and Lakeshore have also objected to PWC's efforts to obtain information (written interrogatories) and documents pertaining to activity pre-dating Lakeshore's Siting Application filing (which occurred on September 16, 2022). As an initial matter, great latitude is allowed in the scope of discovery, and the concept of relevance for purposes of discovery is broader than the concept of relevance for purposes of admissibility at trial and it includes not only that which is admissible at trial, but also that which leads to admissible evidence. *Zagorski v. Allstate Ins. Co.*, 2016 IL App (5th) 140056, ¶ 22, 54 N.E.3d 296, 303; *Maxwell v. Hobart Corp.*, 216 Ill. App. 3d 108, 110-11, 159 Ill. Dec. 599, 576 N.E.2d 268 (1991). For this reason and the reasons set forth below, the objections of both parties are meritless.

First, the PCB has stated a broad rule that “the manner in which the hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness.” *Hediger v. D & L Landfill, Inc.*, (December 20, 1990), PCB 90-163, WL 276146 at *3. The PCB will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence lies outside the record, including pre-filing contacts. *Timber Creek Homes, Inc., Petitioner v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., Respondents*, PCB 14-99, 2014 WL 904837, at *2. *See also American Bottom Conservancy*

(ABC) v. *Village of Fairmont City*, PCB 00-200, slip op. at 6 (Oct. 19, 2000) (“Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation”); *E & E Hauling v. PCB*, 116 I11. App. 3d 586, 596, 451 N.E.2d 555, 564 (2d Dist. 1983), aff'd 107 I11. 2d 33, 481 N.E.2d 664 (1985) (“Further, the courts have indicated that fundamental fairness refers to the principles of adjudicative due process and a conflict of interest itself could be a disqualifying factor in a local siting proceeding if the bias violates standards of adjudicative due process”); *Cnty. of Kankakee v. the City of Kankakee, Illinois*, 2003 WL 137451, at *4 (“Although the evidence of pre-filing contacts may lack weight in the Board's ultimate determination, *the cases Town & Country cites do not create a general prohibition against the admission of pre-filing contacts into evidence*”). (Emphasis Added).

In this case, both the City and Lakeshore argue that all of PWC’s Requests to Produce, except for Request #2, pre-date their filing of application for siting and are therefore not relevant. In support of their objections, the two parties cite Illinois Pollution Control Board decisions: *Stop the Mega-Dump v. County Board of DeKalb County*, PCB 10-103 (March 17, 2011) and *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139, slip op. at 7 (June 19, 1997). However, neither case supports Respondents’ position in this matter.

The City and Lakeshore mischaracterize PCB’s decision in *Stop the Mega-Dump*. In their filings, the City and Lakeshore cite *Stop the Mega-Dump* for the proposition that, “pre-filing contacts are not relevant to a fundamental fairness calculation.” See Lakeshore Objections at ¶ 9 and City’s Objections at ¶ 12. However, the full quote from that PCB decision states as follows: “the Board clarified that, **absent any evidence of pre-filing collusion** between the applicant and the decision maker, pre-filing contacts are not relevant to the fundamental fairness calculus.” *Stop the Mega-dump, Petitioner v. County Board of Dekalb County, Illinois and Waste Management of*

Illinois, Inc., Respondents, 2011 WL 986687, at *38. (Emphasis added). Thus, even in that case, the PCB contemplated that pre-filing contacts could be relevant if they evidence pre-filing collusion of the type that PWC is alleging. *Stop the Mega-Dump* is further distinguishable because the PCB therein made note of the existence of a county ordinance that expressly authorized and addressed the type of pre-filing contacts that had occurred. *Id.* at *40. In this matter, no such ordinance has been cited by Respondents or found by PWC that addresses the type of pre-filing contacts PWC seeks to discover.

Furthermore, *Stop the Mega-Dump* is inapplicable because in this matter, there *is* evidence of collusion. Perhaps the most blatant example of pre-filing collusion, as alleged in PWC's amended petition,⁴ involves Lakeshore's collusion with the City regarding language contained in an October 19, 2019 official City of West Chicago letter (**Exhibit A**) relating to the 1,000 foot residential set-back, which of course was later changed in order to support Lakeshore's application and interpretation. **See Exhibit B.** Here, PWC was able to uncover documents and Siting Hearing testimony, which not only revealed the existence of two versions of this City of West Chicago letter allegedly authored by West Chicago public official Mr. Tom Dabareiner, but which also revealed that the language in the official letter from the City was changed (to benefit Lakeshore) at the request of Lakeshore's expert.⁵

⁴ In its Amended Petition, PWC alleges that the Actions of West Chicago officials in submitting letters in support of the Lakeshore's Application on West Chicago letterhead and then editing the letter to make it more favorable to the Applicant, all at the express request (and direction) of Lakeshore's expert John Hock. *See* Amended Petition at p. 6.

⁵ Below is the colloquy elicited at the Siting Hearing involving the two letters:

BY MR. MEZA:

Q. Mr. Hock, maybe just take a look at Exhibit 200 on the screen?

HEARING OFFICER PRICE: What page in 200? (PWC Exhibit No. 200 marked for identification.)

BY THE WITNESS:

A. I think I found it. It's the October 15th, 2019 letter.

Q. So that letter was drafted a couple of years earlier than the one in the final application; is that correct?

A. Yes.

The City and Lakeshore also cite *Residents v. Lasalle* to state that pre-filing contacts are not relevant to a fundamental fairness calculation. See Lakeshore Objections at ¶ 9 and City's

Q. It's drafted by the exact same person who wrote the first -- the second letter, right?

A. Yes.

Q. But this letter doesn't include the words "physically impossible," does it?

A. No.

Q. In fact, it doesn't even include the word "concludes." It says, The city believes Section 22.14(a) is inapplicable, doesn't it?

A. Are you referring to the last sentence?

Q. Yes.

A. It says, "As such, the city believes Section 22.14(a), 1,000-foot setback requirement, is not applicable."

Q. So isn't this the official position of the City of West Chicago?

MR. MUELLER: Calls for him to read the mind of the city.

HEARING OFFICER PRICE: He's testified about this. Go ahead. I'll overrule it.

BY THE WITNESS:

A. I'm sorry. Can you repeat the question?

Q. Yes. Isn't the first letter the position -- true position of the City of West Chicago?

A. I don't believe so. We took the most recent letter and that's what we put in the application.

Q. Where did you get the most recent letter from?

A. I always mispronounce his name. So, Tom, if you're out there, I apologize. Tom Dabareiner.

Q. Do you know who asked Tom to change that letter?

A. ***I asked Tom to change the letter.*** (Emphasis added).

Q. You asked him to change it from "believes" to "concludes"?

A. Well, if you'd like a little more insight, I'd be happy to give it to you.

Q. I just want to know if you asked him?

A. If you look at the first letter, it talks about the Union Pacific.

Q. I'm not asking about the Union Pacific, sir. I'm asking you about the words that got changed from "believes" to "concludes." Did you ask him to change that?

A. I'm trying to be as clear as I can to answer your question.

MR. MUELLER: It calls for a yes or no, John.

BY THE WITNESS:

A. ***I asked him to change it.*** (emphasis added).

Q. You asked him to change, and he changed it for you?

A. We asked him to update the letter, and he updated the letter.

Q. You asked him to change "I believe" to "I conclude," didn't you?

A. When we asked them to change the letter to include both railroads, instead of just the one, which we did because we had updated information, we did suggest language to include in the letter and this is what we have as a result.

Q. So since you're changing the railroad to add Canadian National to show that they own it, not EJ&E, go ahead and change believes to concludes, right?

A. Well, you just mischaracterized what I said again. The reason we asked him to change the letter is that the original information we had when we put the draft together back in 2019 suggested that the Canadian National Railway was part of -- well -- I'm sorry. I want to make sure I get it straight. One of the railroads was actually in unincorporated DuPage County and was zoned light industrial. As we moved forward to finalize the application, we saw an updated zoning map from DuPage County, and it showed that both were, in fact, in West Chicago. So, as such, we wanted to update the letter.

Q. Which included changing "believes" to "concludes," right?

A. It does include that change.

Q. Thank you.

See PCB Record at C002468 through C002473.

Objections at ¶ 12. Likewise, that decision is clearly distinguishable. The rule regarding pre-filing contacts was specific to the content of that case regarding the existence of a host agreement and exclusive vendor relationship. In fact, this case was cited in *County of Kankakee v. the City of Kankakee* by an applicant, and the PCB refused to apply *Residents v. Lasalle* to pre-filing contacts when it not only allowed the admission of those contacts but actually considered the evidence of those contacts. *Cnty. of Kankakee v. the City of Kankakee, Illinois*, 2003 WL 137451, at *4. (“The Board admits as evidence the County’s offer of proof of pre-filing contacts between the City and Town & Country as the evidence applies to the issue of fundamental fairness”).

Moreover, PWC has also uncovered other relevant information that pre-dates Lakeshore’s filing through numerous FOIA requests to the City. These requests include evidence showing that the City squarely rejected their own independent consultant’s opinions that certain siting criteria had not been met by Lakeshore (**See PCB Record at C003389 through C003613**), and text messages sent by the City of West Chicago Mayor Ruben Pineda to Father Josh which evidences a bias in favor of Lakeshore.⁶ Accordingly, whether or not evidence related to fundamental fairness is relevant or discoverable is not determined solely by the date of which the evidence is sought.

Second, both parties argue that the information requested is barred because *ex parte* communications and pre-filing contacts are not *per se* violations that evidence bias or that support a fundamental fairness allegation and that such contacts are considered permissible. *See* Lakeshore Objections at ¶ 9-10 and City’s Objections at ¶ 12, 13, and 15. However, just because *ex parte* contacts are not a *per se* violation does not mean they are not discoverable. Here, the parties again willfully miss the mark. While it is true that these types of communications may not be *per se*

⁶ In a text message, Mayor Ruben Pineda wrote to Father Josh: “We need to talk next week. *You’re pushing propaganda*. Please get all information prior to posting on social media. Thanks in advance.”

violations, the caselaw does not suggest that there are no circumstances in which *ex parte* communications or pre-filing contacts could not be used as evidence to show bias or lack of fundamental fairness. In short, it is not up to either the City or Lakeshore to determine whether or not these communications were permissible. Depending on the nature of the communications, they may have been improper and may support a violation of fundamental fairness. Therefore, PWC should be allowed to seek to uncover this evidence, to the extent it exists. Ultimately, it will be the PCB that will hear and determine whether the evidence supports PWC's fundamental fairness claims. Accordingly, PWC's requests regarding pre-filing and *ex parte* contacts should be allowed because the caselaw supports discovery of such information.

C) Objections to Interrogatory Requests Regarding Payment of Certain Attorney's Fees

The City's also objects to PWC Interrogatory #10. That objection must also be overruled. According to language in 415 ILCS 5/39.2(k): "A county board or governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process." However, nothing in 39.2(k) prohibits disclosure of this information, and just because the City is allowed to charge applicants reasonable attorney's fees does not mean PWC cannot discover this information. PWC is entitled to discover whether Lakeshore paid the City's court-ordered attorneys' fees caused by the City's failure to provide certain pre-filing draft application submittals made by Lakeshore to the City which the Court determined should have been turned over; and if they did, that may be further evidence of collusion between the two entities. Further, Illinois Courts have already contemplated that payment of attorneys' fees can be related to fundamental fairness. *See Sw. Energy Corp. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d 84, 96, 655 N.E.2d 304, 312 (4th Dist. 1995) (Where the court held that direct payment by applicant

of certain attorney's fees inherently biased siting proceedings). Thus, if Lakeshore paid attorneys' fees the City was ordered to pay for violating the Freedom of Information Act request, this could be another step in showing an inherent bias on behalf of the City in favor of Applicant Lakeshore.

D) Objections to Interrogatory Requests Regarding Translation into Spanish Language

The City also objects to PWC Interrogatories #11 and 12 regarding the actions they took after they were told that Spanish language translation was necessary. As alleged in its Amended Petition, PWC's claim of denial of fundamental fairness involves the City's clear and deliberate disregard for their interest of its Spanish-language West Chicago residents. In other words, despite knowing that a majority of its population is Latino and that many of the residents' primary language is Spanish and the City of West Chicago was informed of the need for a Spanish language interpreter at the hearing by one of the participants (PODER), the City did nothing to make necessary accommodations for (or even try to accommodate) those Spanish-speaking members of the interested public who attended the hearing residents.

PWC reiterates that great latitude is allowed in the scope of discovery, and the concept of relevance for purposes of discovery is broader than the concept of relevance for purposes of admissibility at trial and it includes not only that which is admissible at trial, but also that which leads to admissible evidence. *Zagorski v. Allstate Ins. Co.*, 2016 IL App (5th) 140056, ¶ 22, 54 N.E.3d 296, 303. The discovery requests are relevant because they may lead to information that would prove the City was biased in its decision making and that the Siting Hearing lacked fundamental fairness. Again, this is evidenced by the Mayor of West Chicago's texts to a local pastor with a large Latino congregation stating "***We need to talk next week. You're pushing propaganda. Please get all information prior to posting on social media.***" (Emphasis added). Clearly, the City wanted a certain message regarding the project to be sent out to the large West

Chicago Latino community and if there is further evidence that the City did not attempt to accommodate the language needs of its residents, this information should be disclosed.

IV. CONCLUSION

Accordingly, all of the requests on the part of PWC are relevant at this stage because PWC alleges that the City had an inherent bias towards granting LRS application and that there was a lack of fundamental fairness in the process to grant the approval. Therefore, discovery related to their communications is necessary.

WHEREFORE, PWC, requests the PCB enter an Order:

- a) Denying Lakeshore Recycling Systems' LLC objections to PWC's four Requests to Produce Documents;
- b) Denying the City of West Chicago's objections to PWC Interrogatories #10, 11 and 12, as well as their objections to PWCs Requests to Produce Documents #1, 2, 4 and 5; and
- c) Granting PWC any other appropriate relief.

Dated: May 24, 2023

Respectfully Submitted,



Ricardo Meza
Attorney for Protect West Chicago

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Chicago, IL 60605
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Exhibit A

CITY OF
WEST CHICAGO

WHERE HISTORY & PROGRESS MEET

October 15, 2019

RE: Residential-zoned property located east of 1655 Powis Road, West Chicago, Illinois

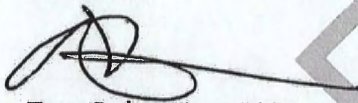
To Whom It May Concern:

The Union Pacific Railroad line runs east of the subject property within Union Pacific Right of Way (ROW). While the ROW is zoned ER, Estate Residential, as an active rail line there can be no residential development within this corridor. Furthermore, there is insufficient room for a legally-sized series of Estate Residential lots including access to those lots. Finally, the ER zoning designation for the corridor is a remnant classification from the time it was annexed to the City of West Chicago.

As such, the City believes Section 22.14(a) 1,000 foot setback requirement is not applicable.

Please contact me if you have any questions.

Sincerely,



Tom Dabareiner AICP

Community Development Director/Zoning Administrator

475 Main Street
West Chicago, Illinois
60185

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Ruben Pineda
MAYOR
Nancy M. Smith
CITY CLERK

Michael L. Guttman
CITY ADMINISTRATOR

Exhibit B

WEST CHICAGO

WHERE HISTORY & PROGRESS MEET

August 24, 2022

RE: Residential-zoned property located east of 1655 Powis Road, West Chicago, Illinois

To Whom It May Concern:

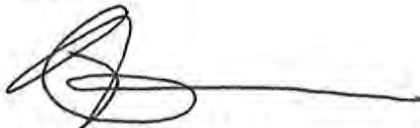
Both the Union Pacific Railroad and the Canadian National Railroad operate parallel tracks on land running northwest to southeast, east of and adjacent to the subject property. The right-of-way for these rail lines carries a remnant zoning classification of Estate Residential, which is the classification assigned upon annexation. No effort was made to reclassify the property.

As an active rail corridor, there can be no residential development. Furthermore, there is insufficient room to construct homes on one-acre minimum lots and no convenient way to access what would be a narrow string of properties. Residential development on this property is physically impossible.

As such, the City concludes that the 1,000-foot setback requirement in 415 ILCS 5/22.14(a) is not applicable.

Please contact me if you have any questions.

Sincerely,



Tom Dabareiner AICP
Community Development Director and Zoning Administrator