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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO, Petitioner, v. CITY OF WEST CHICAGO, WEST CHICAGO CITY COUNCIL and LAKESHORE RECYCLING SYSTEMS, LLC, Respondents.	)	PCB 23-107 (Third-Party Pollution Control Facility Siting Appeal)
PEOPLE OPPOSING DUPAGE ENVIRONMENTAL RACISM, Petitioner, v. CITY OF WEST CHICAGO and LAKESHORE RECYCLING SYSTEMS, LLC, Respondents.	)	PCB 23-109 (Third-Party Pollution Control Facility Siting Appeal) (Consolidated)

RESPONDENTS CITY OF WEST CHICAGO'S AND THE WEST CHICAGO CITY COUNCIL'S INITIAL POST-HEARING BRIEF

Now Come the Respondents, the City of West Chicago and the West Chicago City Council ("City Council") (collectively the "City of West Chicago"), by and through their attorneys, Dennis G. Walsh and Daniel Bourgault of Klein, Thorpe and Jenkins, Ltd., and hereby submit their post-hearing brief in support of the decision on February 28, 2023 to grant local siting approval on the Application of Lakeshore Recycling Systems, LLC ("LRS" or "Applicant") of a proposed solid waste transfer station ("Application") to be located in the City of West Chicago, DuPage County, Illinois, and as its initial post hearing brief states as follows:

INTRODUCTION

This matter is before the Illinois Pollution Control Board ("PCB" or "Board") on an appeal of a decision by the City of West Chicago granting site location suitability approval for a new pollution control facility to Lakeshore Recycling Systems, LLC. This appeal is filed pursuant to Section 40.1(b) of the Environmental Protection Act ("Act") (415 ILCS 5/1 et seq. (1992)). The Board's scope of review in this case encompasses three principal areas: (1) jurisdiction, (2) fundamental fairness of the City Council's site approval procedures, and (3) statutory criteria for site location suitability. In an appeal to the Pollution Control Board regarding a local siting decision, a Petitioner bears the burden of proof. 415 ILCS 5/40.1; 35 Ill.Adm.Code 107.504.

The City of West Chicago and the City Council hereby adopt, and incorporate herein by this reference, the legal and factual analysis set forth in City Ordinance No. 23-O-00006 "An Ordinance Conditionally Approving the Application for Local Siting Approval of Lakeshore Recycling Systems, LLC for the West DuPage Recycling and Transfer Station" and in addition, adopt and incorporate herein by this reference, the post hearing brief filed by LRS and the arguments presented therein as to whether the City of West Chicago has jurisdiction to consider the siting Application, whether the Application fails to comply with the 1,000 foot set-back requirement of 415 ILCS 5/22.14(a), whether the procedures used by the City Council were fundamentally fair and whether the Applicant has met the applicable criteria set forth in Section 39.2 of the Illinois Environmental Protection Act.

JUSISDICTION

In its Amended Petition for Hearing & Review of Local Siting Approval for New Pollution Control Facility, Protect West Chicago's (PWC) first grounds for Appeal is that the decision of the City of West Chicago to grant siting approval for Lakeshore's Application should be reversed on jurisdictional grounds because Lakeshore's Application failed to comply with the Pre-Filing Notice requirements set forth in 415 ILCS 5/39.2(b). The City Council properly denied PWC's Motion to Dismiss on this issue and found that it has jurisdiction to consider the Application.

415 ILCS 5/39.2(b) required that the Applicant serve written notice of its intent to file a siting application with the City of West Chicago on all owners of property within 250 feet in each direction of the lot line of the subject property and on members of the General Assembly from the legislative district in which the site is to be located no later than 14 days before the date on which the City of West Chicago received the request for siting approval ("Pre-Filing Notice"). Such service must be "either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located..." Compliance with Section 39.2(b) is jurisdictional and must be followed to vest the City of West Chicago with the power to hear a local siting request. At issue in this appeal is the Applicant's service on the owner of parcel 01-32-506-001 (the "Parcel"). PWC incorrectly alleges that the Applicant failed to properly identify the owner of the Parcel and that the manner of service was improper.

The gist of PWC's argument is that the authentic tax records in DuPage County, Illinois, suggest that the Parcel is owned by EJ&E Railroad and that the use of UPS delivery on Canadian National Railway at its corporate headquarters at 935 Rue De La Gauchetiere Rue, Montreal, H3B2M9, Canada was not sufficient.

City Ordinance 23-O-00006, LRS's post hearing brief and the Record below shows that the Applicant did an adequate search of the authentic tax records of DuPage County, Illinois, and properly ascertained that the Parcel is owned by Canadian National Railway. John Hock is a professional engineer licensed to practice in the State of Illinois and was the person responsible to prepare, publish and serve the pre-filing notices as required in 415 ILCS 5/39.2(b). In his affidavit, Mr. Hock stated that on August 19, 2022, he searched the authentic tax records in DuPage County, Illinois, to ascertain the names and addresses of all owners of the subject property and all other property within 400 feet of the subject property. He learned that DuPage County maintains the official tax records database, which can be accessed via the DuPage County website, and the DuPage County Treasurer's Office website. The DuPage County website also links to a GIS database showing all real estate parcels in the County. This is the computer equivalent of information previously available in hard copies of plat books and section maps. The Applicant also provided explanatory testimony from Mr. Hock at the hearing and offered Applicant's Exhibits 5 and 6. Exhibit 5 is an official tax record of DuPage County, being Map page 1-32B-W of the County Clerk's official tax/plat maps. As indicated on the face of the map, these maps show the "DuPage County, Illinois, 2022 Real Estate Tax Assessment Parcels." This map affirmatively identifies the owners of two railroad track properties directly east of the subject site, one owned by Union Pacific Railroad, and the second owned by Canadian National Railway. Mr. Hock's research further determined that the old Elgin Joliet & Eastern Railway

(EJ&E) railroad had been purchased in its entirety about 10 years ago by Canadian National Railway. Part of the Record contains a letter from the Canadian National Railway which confirms both receipt of the Pre-Filing Notice at Canadian National Railway's corporate headquarters and its ownership of the Parcel. The letter likewise confirmed that the Parcel is part of the old Elgin Joliet & Eastern Railway (EJ&E) which was purchased by Canadian National Railway in 2009 and is doing business as the Wisconsin Central LTD which is a wholly owned subsidiary of Canadian National Railway. The Hearing Officer took judicial notice, based on publicly available information that the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012 and, that the Western Central, Ltd. is wholly owned by the Canadian National Railway. Having carefully considered the parties arguments, the City Council correctly found that Canadian National Railway was identified as an "owner" appearing from the authentic tax records of DuPage County, Illinois.

However, PWC also takes issue with the manner of service. The Record shows that the Applicant arranged for a United Parcel Service Worldwide Express delivery person to serve the Pre-Filing Notice in person and that a signed receipt of actual, personal service has been filed in the Record. Protect West Chicago states that the Applicant's service of the Pre-Filing Notice to Canadian National Railway via a United Parcel Service Worldwide Express delivery person was improper notice under the siting statute, arguing that under 415 ILCS 5/39.2(b), there are only two methods prescribed by statute (personal service or registered mail, return receipt requested) which satisfies the Pre-Filing Notice service requirement and that overnight express is not one of the two methods. But 415 ILCS 5/39.2(b) does not require that delivery must be made by the Applicant by personal service. The plain language of the statute requires that "the applicant shall cause written notice of such request to be served either in person or by registered mail, return

receipt requested". This language is not in the least bit ambiguous. The Applicant did cause the Pre-Filing Notice to be served in person by a UPS delivery person. Nowhere does the Act require or suggest that the Applicant itself must travel out of the country to a company's worldwide headquarters and personally serve the Pre-Filing Notice on the owner of the Parcel in order for that type of service to be perfected. Protect West Chicago has cited no authority in support of this argument. The legislature clearly intended, as expressed in the plain language of 39.2(b), that the Pre-Filing Notice may be provided by the Applicant by causing the Pre-Filing Notice to be provided in person. In this case, the Applicant in fact caused the Pre-Filing Notice to be served in person on the owner of the Parcel and as such, as a matter of statutory construction, the matter is resolved. Accordingly, for the reasons set forth above, and in Ordinance No. 23-O-00006, and the post hearing brief filed by LRS, proper notice was given the owner of parcel 01-32-506-001, and the Motion to Dismiss for lack of jurisdiction on those grounds was properly denied. The fact that the proper parties received the notice does not disqualify the local siting authority from considering an application for local siting approval. See, e.g., Waste Management of Illinois v Illinois Pollution Control Board, 365 Ill. App 3d 229 (3rd Dist. 2005) (difference in delivery method not of "pivotal importance" when delivery method documents that the addressee received the letter); see also Olin Corp v Bowling, 95 Ill App 3d 1113, 1116-17 (5th District. 1981)).

1,000 FOOT SETBACK

PWC's second grounds for appeal is based on its argument that the proposed facility did not and does not comply with the site location standard included at 415 ILCS 5/22.14 and argues that since the Application fails to comply with the 1,000-foot set-back requirement of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses, the siting

approval must be denied. Throughout the appeal process, PWC focuses a great deal of attention on the 1,000 residential foot set back requirement and its argument that because the siting location is within 1,000 feet of a property that is zoned for residential that is the end of the story. In fact, it is just the beginning of the story as it has been proven beyond a shadow of a doubt that the referenced property is property owned by and adjacent to the railroad and cannot ever be used for residential purposes. The City of West Chicago stands on the reasoning set forth in Ordinance No. 23-O-00006 and in LRS's post-trial brief as to why a 1,000-foot residential setback does not apply to this proposed facility due to impossibility. The spirit and purpose of 415 ILCS 5/22.14(a) must prevail over the literal language if necessary to avoid an unjust or absurd result. See First National Bank v. Coleman (1979), 68 Ill. App.3d 256, 258.) see also Roxana Landfill, Inc v. Illinois Pollution Control Board, 2016 WL 4005892.

EX PARTE COMMUNICATIONS, INHERENT BIAS AND FUNDAMENTAL FAIRNESS

The Petitioners also argue that the City Council's decision should be reversed based on fundamental fairness essentially alleging that the existence of ex parte contacts, prejudgment of adjudicative facts and in the manner in which the public hearing was conducted. However, in place of providing relevant facts that might meet its burden, Petitioner, PWC concocts a convoluted conspiracy theory based on conclusions, mischaracterizations, and a collection of irrelevant events. PWC fails to present any factual evidence of bias or predisposition, and its conspiracy theory is refuted by the overwhelming evidence of the City Council's fair and honest deliberations to reach a decision.

1. Ex parte communications.

In its petition, PWC did not establish any factual basis to substantiate the conclusory allegations of ex parte contacts. It just speculates that they occurred. In fact, if there was any

basis to the claim of ex parte communications, the Petitioners had every opportunity to discover them in the extensive discovery they undertook. Yet PWC did not offer any facts to support its allegations and it provides NO evidence that ANY of the decision makers on the City Council had ANY contacts with the Applicant or any other person for that matter regarding that City Council members position on the proposed transfer station either before or after the Application for local siting was filed with the City Clerk. PWC has not and cannot identify any prefiling or post filing contacts between LRS or its representatives and any City Council member or any substantive comments about the Application or the proposed transfer station from the City Council either before or after the Application was filed. NONE.

Instead, PWC cites to the one text message that Mayor Pineda (who was not a decisionmaker and did not vote on the Application-the Mayor only votes in the event of a tie vote by the City Council), sent to a local member of the clergy, Father Josh Ebner ("Father Josh") on November 14, 2020, which said "we need to talk next week. You're pushing propaganda. Please get all information prior to posting on social media. Thanks in advance." The Mayor explained that the reason for the text was that in 2020, he was concerned that information was being sent out by Father Josh even though there was no application on file and no one had any facts about the proposed transfer station at that time. The Mayor also confirmed that at the time that he sent the text, the City Council had not decided whether or not it was going to approve any application filed in the future by LRS because there was nothing for them to decide since there was no application before them. (PCB Tr pp.135-139). There was no follow up call or meeting and the text message itself was incidental and did not affect the outcome of the decision by the alderman of the City of West Chicago who actually made the decision on the site location suitability.

As noted above, there is no evidence in the Record that any member of the City Council had any communications with the Applicant or members of the public but even if there were prefiling contacts or opinions expressed by City Council members, which there were not, the Courts have recognized that ex parte contacts between the public and its elected representatives are inevitable. For example, the Court in Waste Management of Illinois, Inc. v. Pollution Control Board (1988), 175 Ill. App.3d 1023, 1043, 530 N.E.2d 682, 697-98, upheld the integrity of a siting proceeding although several members of the county board received a petition, letters, personal contacts, and telephone calls from constituents expressing opposition to a landfill application.

In addition, as the Court in Southwest Energy Corp. v. Pollution Control Board, 275 Ill. App. 3d 84, 91 (1995), explained in addressing allegations of comments, "although a local siting proceeding more closely resembles an adjudicatory proceeding than a legislative one, the local governing body is not held to the same standards as a judicial body. Both Illinois courts and the General Assembly have recognized this point. For example, in 1992, the legislature amended Section 39.2 of the Act (Pub. Act 87-1152, § 1, eff. January 1, 1993 (1992 Ill. Laws 3136, 3138)) to add *only one sentence* to that section, as follows:

> "The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue." (415 ILCS 5/39.2(d) (West Supp. 1993).)

The Southwest Energy Corp. Court construed the sentence added by Public Act 87-1152 as demonstrating the General Assembly's understanding that it has called upon locally elected officeholders on municipal or county boards — not judges — to adjudicate whether the siting criteria set forth in Section 39.2(a) of the Act are present in a given case. In that amendment, the legislature recognized that standards governing judicial behavior cannot and do not apply to such

local officeholders. The Court in Southwest Energy Corp. also noted that the Supreme Court of Illinois has specifically rejected the argument that an inherent bias is created when an administrative body is charged with both investigatory and adjudicatory functions. (See EE Hauling, Inc. v. Pollution Control Board (1985), 107 Ill.2d 33, 43, 481 N.E.2d 664, 668; see also Citizens Against Regional Landfill v. Pollution Control Board (1994), 255 Ill. App.3d 903, 908, 627 N.E.2d 682, 685.)

It is the burden of the Petitioner to prove that there was an ex parte communication or communications that disqualified a decisionmaker from participating in the decision, and the Petitioners here have failed in that burden. They have not and cannot point to even one ex parte contact or other action which could be said to have unfairly influenced the decision-maker or that has caused prejudiced to the Petitioners'. The reason that the Petitioners cannot demonstrate that there were any ex parte contacts that tainted the process and rendered the proceedings fundamentally unfair is because it simply did not happen. The Board must presume that the City Council acted without ex parte contacts in the absence of Petitioners' showing some facts to the contrary. The mere suggestion of an improper contact does not constitute proof that it occurred. Without a showing of ex parte contacts, and without a showing of prejudice or a showing that the proceeding was "irrevocably tainted", this Board should not reverse the City Council's decision on those grounds. See F.A.C.T. V. PCB, 555 N.E 2d 1178, (3rd Dist. (1990); DiMaggio v. Solid Waste Agency of Northern Cook County, PCB 89-138, (January 11, 1990), Waste Management, 530 N.E.2d 697, 698; E & E Hauling, 451 N.E.2d 555, 571.

2. Inherent bias and prejudgment by the City Council.

The members of a local siting authority are considered to have acted without bias (E E Hauling, Inc. v. Pollution Control Board, 107 Ill. 2d 33, 42 (1985)), and the fact that a member

of the authority has taken a public position or expressed strong views on the issue does not overcome this presumption (Concerned Adjoining Owners v. Pollution Control Board, 288 Ill. App. 3d 565, 573 (1997)). To establish bias, the complaining party must show that a disinterested observer might conclude that the local siting authority adjudged both the facts and law before hearing the case. Concerned Adjoining Owners, 288 Ill. App. 3d at 573. As the Court in Waste Management of Illinois, Inc., teaches, where the municipal government, operates in an adjudicatory capacity, bias or prejudice may only be shown if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it. The facts of the instant case do not reveal that the City Council had made any prejudgments about the Application or the criteria for siting approval, and the Petitioners did not present any evidence to show how the City Council was biased, other than the generic argument that it must have been. This argument is simply not sufficient to overcome the presumption that the City Council acted fairly and objectively where the record does not indicate that any City Council member had prejudged the Applicants' siting request. It should also be noted that even if the single text message from Mayor Pineda to Father Josh somehow suggests that he was biased, which it does not, as noted above, the Mayor did not vote and as such, no prejudice could result from this text. Simply put, it's irrelevant and the Board need not rule on or consider the Mayor's actions in deciding if the ultimate decision makers had predetermined the Application. The fact that the Mayor may have been called upon to vote is simply not enough. It's the bias, predetermination or predisposition of the ultimate decision makers, the alderman of the City Council in this case, that matter in this calculus.

Given PWC's lack of direct evidence of any bias, predetermination, or predisposition, PWC attempts to bolster its lack of relevant evidence by trying to attach to the City Council, a

variety of random facts and actions by the City of West Chicago staff and/or the staff's consultant. This shotgun approach throws out many random allegations, hoping one or a few will stick in an attempt to create the appearance of smoke where no fire exists.

As the record reflects, the City staff was as a party to this proceeding and the hearing officer makes recommendations, but the decision maker in this case are the alderman of the City of West Chicago. Absent a showing of bias or prejudice, "members of a siting authority are presumed to have made their decision in a fair and objective manner." Timber Creek Homes, Inc. v. Village of Round Lake Park, et al., PCB 14-99, slip at 3 (Aug 21, 2014) (citations omitted), and despite PWC's intense scrutiny of the actions of City staff members and/or the staff's consultants, the Petitioners' cannot produce a single statement, writing, document, or any other form of communication from any member of the West Chicago City Council expressing support for or approval of the LRS Application before reviewing all of the evidence presented to it. As noted, it is well established law in Illinois that the mere existence of pre-filing contacts does not establish bias or prejudgment, but rather that the Petitioners must identify evidence showing that the City Council is actually biased. As the Court in Stop the Mega-Dump noted, until an applicant seeking local siting approval filed its application, members of the local siting authority were legislators, rather than adjudicators and the local siting authority assumes its adjudicative role only after an applicant initiates the siting proceedings by filing the application. See Stop the Mega-Dump v. County Bd. of De Kalb County, 365 Ill.Dec. at 932, 979 N.E.2d at 536. And yet in this case, the Petitioners cannot even point to the existence of ANY pre-filing contacts by any of the decision makers. That's because there simply were NONE. Accordingly, the Board should find no reversible error in this regard.

3. Fundamental Fairness.

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., PCB 90-163 (Dec. 20, 1990). The issues of ex parte contacts and the prejudgment of adjudicative facts have been addressed above. A siting authority's role in the siting-approval process is both quasi-legislative and quasi-adjudicative. Land & Lakes v Illinois Pollution Control Board, 319 Ill. App. 3d at 47, 252 Ill. Dec. 614, 743 N.E.2d 188 (3d Dist. 2000). Recognizing this dual role, courts have interpreted a party's right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross examine adverse witnesses, and impartial rulings on the evidence. Id. at 47–48, 252 Ill. Dec. 614, 743 N.E.2d 188. Fox Moraine, 2011 IL App (2d) 100017, ¶60. 21. The Act does not provide specific procedures for conducting the local hearing itself and it does not prohibit the local siting authority from establishing its own rules and procedures governing conduct of a local siting hearing so long as those rules and procedures are not inconsistent with the Act and are fundamentally fair. Waste Management of Illinois, 175 Ill. App. 3d at 1036.

In this case, both Petitioners', PWC and People Opposing DuPage Environmental Racism (PODER) were represented by counsel at the local hearing, they were each allowed to file motions, respond to motions, cross-examine witnesses, present their own witnesses, and evidence and submit their own Proposed Findings of Fact and Conclusions of Law. Here, the Petitioners are not alleging an unfairness argument claiming that the City Council did not follow its own rules regarding the conduct of the hearing. What they allege in their petitions is that there was a lack of the fundamental fairness of the procedures used by the City Council because the

Application was not translated into Spanish, and there was not a Spanish interpreter at the public hearing. They also argue that the hearing officer refused to allow cross-examination and testimony on the issue of environmental justice (albeit PWC was given the right to present an offer of proof). These fundamental fairness arguments are unsupported by any legal authority and are without merit.

Under Section 39.2(c) of the Act, the applicant is only required to submit to the City a copy of its siting application and any documents submitted to the Illinois Environmental Protection Agency. The City must then make these documents available for inspection before the public hearing, which it did by not only making the Application available at the City Hall but by posting it on the City's website. Neither of these Petitioners' dispute that the Application was made available to them, and nowhere in Section 39 of the Act is it required that it be translated into Spanish. In fact, nowhere in the history of Illinois siting has there ever been a finding that an application for local siting must be translated into Spanish or any other language[1] or that the local siting authority must provide an interrupter at the public hearing, particularly when there is no evidence in the Record that either of the Petitioners' nor did anybody else, made a request for either. Both Petitioners' fail to cite any authority in support of these arguments, and as such, they are waived on review for that reason. See, Concerned Adjoining Owners v. Pollution Control Board, 288 Ill. App.3d 565, 680 N.E.2d 810 (1997). In any event, Petitioners' have not shown that they or any other member of the public were denied access to the Application (or other filings with the City), or the public hearing, and they have failed to prove the proceedings before the City Council were fundamentally unfair based on these allegations. Fundamental fairness is only applicable to procedures before the local siting authority pursuant to Section

[1] Even so, the City of West Chicago has a Google translation feature on its website to provide access to Spanish language information on the siting process and its related documents.

40.1. Therefore, any claim related to translating documents into Spanish should be distinguished from fundamental fairness of the siting proceeding and is more along the lines of an argument related to a due process claim. In essence, Petitioners argue that it is a violation of due process that the City of West Chicago did not make available certain documents including the Application in Spanish and did not provide a Spanish interpreter at the hearing and yet neither of those things sufficiently impaired or prejudice either Petitioners' ability to prepare for or participate in the hearing so as to amount to a due process violation. It is established law that siting proceedings are not entitled to the same procedural protection as more conventional adjudicatory proceedings. See County of Kankakee, PCB 03-31, slip op. at 24, citing Southwest Energy Corp v. PCB, 275 Ill. App. 3d 84, 92 (4th Dist. 1995). Participants before a city council in siting proceedings may insist the procedure comport with fundamental fairness, but they are not entitled to constitutional due process. Id.

Furthermore, as the Board is well aware, at the local level, the siting process is governed by Section 39.2 of the Act. Under Section 39.2, a local governing body's authority to act in approving or disapproving a request for siting approval of a new pollution control facility is purely statutory. Section 39.2(a) provides that local authorities are to consider as many as nine criteria when reviewing an application for siting approval. These statutory criteria are the only issues which can be considered by the local siting authority when ruling on an application for siting approval. Section 39.2(g) dictates that the procedures contained in Section 39.2 shall be the exclusive siting procedures, rules, and appeal procedures for new pollution control facilities, and there is nothing in that statute or case law that provides that concept of "environmental justice" is a factor that must be, or even should be, considered in relation to an Illinois local siting proceedings under Section 39 (a) nor is there any indication as to how that concept is to be

woven into the local siting process. If the City Council went outside of the nine statutory criteria and added environmental justice as an additional criteria or factor to be considered in determining if the Applicant had met its burden, the City Council's failure to comply with the statutory provisions in reaching a decision under Section 39.2 would render that decision void. Petitioners argue that environmental justice is implicit in the criteria, but they presented the City Council and this Board with no legal authority to support that position. Perhaps the concept of "environmental justice" is something the Illinois Environmental Protection Agency must consider in the subsequent permitting process but, until the law is changed, that concept does not have a statutorily prescribed role in the local siting approval process under Section 39.2, and it is simply not something that a local siting authority is even allowed to consider.

Petitioners offer no statutory authority for their position, but instead simply suggest that without consideration of that concept in local siting, the process is fundamentally unfair. Maybe so, maybe not, but it is an issue that is best deferred to the General Assembly, not here. The General Assembly has provided specifically by law exactly what needs to be considered and determined in the local siting process by the siting authority, and it has not included or even suggested that the concept of environmental justice is a factor that is to be considered in that evaluation. If the City Council had allowed the concept of "environmental justice" to be a factor in its evaluation, it would have been an obstacle to the accomplishment and execution of its role in the siting process and to the full purposes and objectives of the General Assembly. A central ambition of statutory interpretation is to ensure that judges act as faithful agents of the legislature. The decision to include environmental justice into the local siting process is a matter best deferred to the legislature. Clearly, the General Assembly knows how to amend the laws of this State, and if the legislature chooses to act to allow for environmental justice to be a factor in

future local siting proceedings, which it has not to date, it can amend the statute to that effect. With that being said, there is nothing in the law that would allow the PCB to conclude that the failure of the City Council to consider something outside of what the City Council is expressly allowed to consider under the Act, is a violation of fundamental fairness as a matter of law which trumps that local siting authority's findings on the Application.

On the challenges to the fundamental fairness of the proceedings before the City Council then, the Board should find none which rendered the proceedings conducted by the City of West Chicago to be fundamentally unfair.

SITING CRITERIA

Section 39.2 of the Act governs local siting determinations. Section 39.2(a) presently outlines the nine criteria the City Council is to consider when reviewing an application for site suitability. When reviewing challenges to the siting approval on these types of substantive claims, the standard of review the Board must apply is whether the findings below were against the manifest weight of the evidence. See, McLean County Disposal v. County of McLean (4th Diet. 1991), 207 I11.App.3d 352, 566 N.E.2d 26. Petitioners' assert that the City Council's decision should be reversed on the grounds that its findings that the criteria set forth in Section 39.2(a) (i), 39.2(a) (ii), 39.2(a) (iii) and 39.2(a) (viii) were met was against the manifest weight of the evidence.

In administrative proceedings such as those undertaken pursuant to Section 39.2 of the Act, it is the province of the local hearing body to weigh the evidence, assess the credibility of witnesses and resolve conflicts in the evidence. See Concerned Adjoining Owners v. PCB, 288 Ill.App.3d 565, 576, 680 N.E.2d 810, 818 (5th Dist. 1997); and Land and Lakes Co. v. PCB, 319 Ill.App.3d 41, 53, 743 N.E.2d 188, 197 (3rd Dist. 2000). Where there is conflicting evidence, the

PCB cannot reverse merely because the local authority could have drawn different inferences or credits one group of witnesses and does not credit the other. Sierra Club v. City of Wood River, PCB 95-175 (October 5, 1995). Simply put, it is axiomatic that the PCB is not in a position to reweigh the evidence or credibility of the witnesses but must determine whether the decision is against the manifest weight of the evidence. See Tate v. PCB, 188 Ill.App.3d 994, 1022, 544 N.E.2d 1176 (4th Dist. 1989); Land and Lakes Co. v. PCB, 198 App.3d 41, 743 N.E.2d 188; and Fairview Area Citizens Taskforce v. PCB, 198 App.3d 541, 555 N.E.2d 1178 (3rd Dist. 1990). In performing its duties under the Act, the City Council here made its own independent evaluation and judgment of the credibility of witnesses, weighed the evidence, and determined that the Applicant had met its burden, despite the existence of less credible, conflicting testimony by witnesses for the opponents. In this case, as set forth in City Ordinance No. 23-O-00006 and LRS's post hearing brief, the Record contains substantial and persuasive evidence in support of the City Council's finding that LRS met the requirements of all applicable criteria of Section 39.2 of the Act. The City Council's decision is well supported by the Record, and PWC and PODER have failed to prove that the opposite result is clearly evident, plain, or indisputable. At best, the Petitioners have merely offered an alternative view of the evidence. The City Council's decision must, therefore, be affirmed.

On behalf of the **CITY OF WEST CHICAGO**
and the **WEST CHICAGO CITY COUNCIL**

By: /s/ _____
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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on November 13, 2023, the City of West Chicago and the West Chicago City Council electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **RESPONDENTS CITY OF WEST CHICAGO'S AND THE WEST CHICAGO CITY COUNCIL'S INITIAL POST-HEARING BRIEF**, copies of which are served upon you.

Respectfully submitted,

CITY OF WEST CHICAGO and
WEST CHICAGO CITY COUNCIL,
Respondents

By: _____
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AFFIDAVIT OF SERVICE

I, the undersigned, on oath state that I have served this **Notice of Filing and Respondents City of West Chicago's and the West Chicago City Council's Initial Post-Hearing Brief** upon the following persons via email transmittal from 15010 S. Ravinia – Suite 10, Orland Park, Illinois 60462, on the 13th day of November, 2023.

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