

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 04 2003

STATE OF ILLINOIS
Pollution Control Board

CITIZENS AGAINST LANDFILL EXPANSION,

Petitioner,

vs.

AMERICAN DISPOSAL SERVICES OF ILLINOIS,
INC. and LIVINGSTON COUNTY BOARD,
LIVINGSTON COUNTY, ILLINOIS,

Respondents.

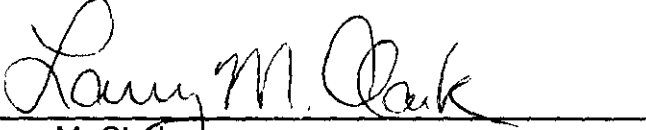
No. PCB 03-236

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 1, 2003, I caused to be filed by First Class Mail with the Illinois Pollution Control Board an original and four copies of the attached Respondent, Livingston County Board's Livingston County, Illinois, Supplemental Answers to Petitioner's First Set of Interrogatories and Supplemental Response To Petitioner's First Request for Production of by placing said material in the U. S. Post Office, Hawley Street, Mundelein, IL 60060, postage prepaid.

LIVINGSTON COUNTY BOARD


Larry M. Clark

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PROOF OF SERVICE

STATE OF ILLINOIS

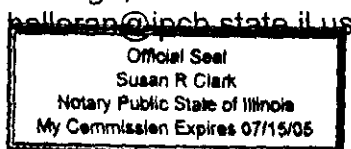
The undersigned, under oath, states that on September 1, 2003, ~~Pollution Control Board~~ and correct copy of the foregoing Notice of Filing together with the attached Respondent, Livingston County Board's, Livingston County, Illinois, Supplemental Answers to Petitioner's First Set of Interrogatories and Supplemental Response To Petitioner's First Request for Production, upon the following persons, at the addresses indicated, by first class mail and that prior to 10:00 a.m. on September 1, 2003, said Supplemental Answers to Petitioner's First Set of Interrogatories and Supplemental Response To Petitioner's First Request for Production were sent by email to the Hearing Officer and counsel for the parties, at the email addresses indicated:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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Chicago IL 60601-3218

George Mueller
George Mueller PC
501 State Street
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Illinois Pollution Control Board
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C. Thomas Blakeman
Blakeman, Schrock & Bauknecht, Ltd.
307 West Washington Street
Pontiac, IL 61764
tom@sbsltd.com

Subscribed and sworn to before me, a Notary Public, this 1st day of September, 2003.

Notary Public

C. Thomas Blakeman
Attorney at Law
307 West Washington Street
Pontiac, IL 61764
Telephone: 815-844-6177
Fax: 815-842-3288

Larry M. Clark
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Citizens Against Landfill Expansion,
Petitioners,

vs.

American Disposal Services of Illinois, Inc.,
Respondent.

and

Livingston County Board, Livingston
County, Illinois,
Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB 03-236

(Pollution Control Facility Siting Appeal)

**RESPONDENT LIVINGSTON COUNTY BOARD'S, LIVINGSTON COUNTY, ILLINOIS
SUPPLEMENTAL ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES**

NOW COMES, the Livingston County Board, Livingston County, Illinois, by its attorneys, Larry M. Clark and C. Thomas Blakeman, and for its Supplemental Answers to Petitioner's First Set of Interrogatories, pursuant to the Hearing Officer Order entered on August 28, 2003, states as follows:

5. Identify each expert witness or potential expert witness retained or consulted by LCB with respect to the Petition for Review.

Answer: None

6. Describe all communications to, from or among LCB (including its members, agents, consultants and employees) relating to annexation or potential annexation by the City of Pontiac of land at, near or extending toward Livingston Landfill.

Answer: Communications occurred at the Board Meeting of June 13, 2002 between the Board Members and Attorney Larry M. Clark regarding the possible annexation of certain land belonging to or adjacent to the Livingston Landfill. Similar discussions took place at the Agricultural Committee Meeting of June 4, 2002. Other attorney-client conversations took place between certain Board Members and counsel for Livingston County relating to such potential annexation. Respondent claims attorney-client privilege as to such conversations.

10. For each Board Member, describe any meetings involving said Board Member and American Disposal that occurred since January 1, 2001, other than official meetings of LCB or committees thereof that were open to the public in accordance with the Open Meetings Act and describe the substance of communications related to such meetings.

Answer: See attached response of those still-living Board Members who voted in favor of the Siting Application.

11. Identify all documents relating to any agreement, understanding, contract or proposed agreement between any Board Member and American Disposal.

Answer: See attached response of those still-living Board Members who voted in favor of the Siting Application.

12. Identify any payments, gifts, agreements, promises, services or anything of value provided by American Disposal to LCB (or any of its members, agents, employees, attorneys or consultants) other than payments made to Livingston County pursuant to the Host Agreement.

Answer: See attached response of those still-living Board Members who voted in favor of the Siting Application.

18. Describe any interest, relationship, agreement or proposed agreement of any Board Member with any contractor that had, has or will have any business with respect to Livingston Landfill (other than de minimis contractors doing less than \$5,000 worth of business with Livingston Landfill in any given year).

Answer: See attached response of those still-living Board Members who voted in favor of the Siting Application.

28. Describe all instances in which it has been discussed or anticipated that any of LCB's consultants, employees, agents or witnesses who participated in the Application process in any way will or may provide any materials or services to American Disposal at any time hereafter.

Answer: None.

29. Describe any communications or meetings involving LCB and American Disposal that occurred since January 1, 2001 relating to the Previous Application, the Application, host fees, the proposed expansion or opposition to the expansion, other than official meetings of LCB or committees thereof that were open to the public in accordance with the Open Meetings Act, and describe the substance of any communications related to such meetings, including communications or meetings of

American Disposal's consultants and LCB's consultants that occurred between the pendency of the Previous Application and the Application.

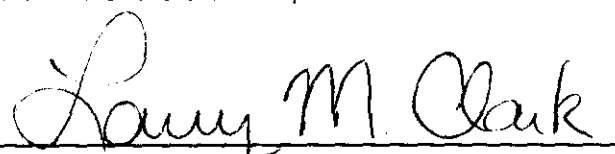
Answer: See attached response of those still-living Board Members who voted in favor of the Siting Application as well as response of Diegar & Associates.

31. Identify all persons consulted in preparing the answers to these Interrogatories, Petitioner's First Request for Production of Documents to LCB or Petitioner's first Request for Admissions by LCB.

Answer: See Answers to Petitioner's First Set of Interrogatories. Carl Borngasser, Bill Fairfield, William Flott, John Franey, Dan Hogan, Helen Holz, Roger Kirkton, George Knudsen, Catherine Kudrick, Arnold Natzke, Glen Rustman, Marvin Rutledge, Tim Shafer, John Spafford, Jack Vietti, Roger Wahls, Stan Weber, and Robert Weller.

Respectfully submitted,

LIVINGSTON COUNTY BOARD,
LIVINGSTON COUNTY, ILLINOIS

By: 
One of Its Attorneys

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RESPONSE OF ROGER KIRKTON

- 10. None.
- 11. None.
- 12. None.
- 18. None to the best of my knowledge.
- 29. None to the best of my knowledge.

RESPONSE OF WILLIAM FLOTT

10. I received a letter from American Disposal dated May 29, 2002, signed by Dave Brant. It included some handouts about Livingston Landfill. Subsequently, I had coffee at a local restaurant with Dave Bryant and John McDonnell at a time when no application was on file. No other board members were present. They wanted to know if I had any questions. No promises or agreements were discussed or implied. I also visited the Pontiac Landfill along with fellow Board Member, Dee Woodburn, to get some questions answered about their operation. Bryant and McDonnell were both present. This meeting was prior to May, 2002.

11. I have no agreement or contracts with American Disposal or Allied.

12. None

18. None to the best of my knowledge.

29. To the best of my knowledge, none other than the meetings mentioned above in answer to Interrogatory No. 10, I did attend a meeting in the spring of 2002 at a time when no application was on file where Carolyn Gerwin was present discussing the organization of a landfill expansion opposition group.

RESPONSE OF DAN HOGAN

10. Met once with Dave Bryant from American Disposal at a time when no application was on file concerning the operation of the landfill and the proposed expansion.

11. None.

12. None

18. None to the best of my knowledge.

29. To the best of my knowledge, no meetings other than the meeting mentioned in Answer to Interrogatory No. 10 above, at a time when no application was on file. I did receive a letter from American Disposal in May of 2002, providing current facts and information concerning the landfill and correspondence from CALE in opposition to the landfill and any expansion.

RESPONSE OF GLEN RUSTMAN

10. Met once with Dave Bryant and John McDonnell at a time when no application was on file. The Allied representatives wanted to know what they had done wrong in presenting their side of the issues with regard to amending the solid waste plan and were advised that Allied needed to do a better job of advising the public as to their position.

11. None

12. None

18. None to the best of my knowledge.

29 To the best of my knowledge, none other than set forth in the answer to Interrogatory No. 10 above.

RESPONSE OF JOHN FRANEY

10. At a time when no application was on file I met with Dave Bryant and John McDonnell from Allied who explained the operation of the landfill. In August or September of 2002, I attended an Open House at the landfill and viewed the facility and learned about its operation. At the time of the meeting and attending the Open House, I was not a member of the Livingston County Board.

11. None

12. None

18. None to the best of my knowledge, except I have an agreement with Jim Boomgarden from Piper City who picks up my garbage and provides me with a dumpster. I believe he has an agreement with the Livingston Landfill where he disposes the refuse he picks up although I do not know how much business he does with the landfill.

29. None to the best of my knowledge, except for the information set forth in the Answer to Interrogatory No. 10 above.

RESPONSE OF ARNOLD NATZKE

10. I met with Dave Bryant and another Landfill officer on October 24, 2002, at the Landfill at 1:00 p.m. The meeting lasted about 30 minutes and we talked about some improvements that had been made. The meeting was a result of the Landfill's invitation.

11. None

12. None

18. None to the best of my knowledge.

29. None other than the meeting mentioned in the answer to Interrogatory No. 10 above.

RESPONSE OF ROGER WAHLS

10. To the best of my recollection, at a time when no application was on file, Dave Bryant and John McDonnell of Allied met with me one afternoon at Allen's Pub and Grub in Pontiac for approximately 30 to 45 minutes. It was an informal, social meeting where they inquired of me as a citizen and Board member what concerns I may have regard the operation of the landfills in the County. I recall addressing vehicle inspections, cleanliness of Rowe Road and Route 23, traffic safety, litter removal from the areas adjacent I-55 and odor control. Understand, these issues were not in the form of complaint, but to ascertain Allied's procedures and attitude in addressing these potentially adverse issues. This is the only meeting I had with any Allied employee or representative other than official meetings of the Board or its committees.

11. I have no agreement, understanding, contract or proposed agreement with American Disposal. Nor am I aware of any Board member having such.

12. I have received nothing. I am not ware of any other entity described in the question having received anything of value.

18. None to the best of my knowledge.

29. Except for my response to Interrogatory No. 10 above, I have had no communication with American Disposal other than in official meetings of the Board or its committees. Nor am I aware of any private meetings involving the Board and American Disposal. I did meet with Doris Burnside and Julie Russow from CALE at a time when no application was on file and listened to their objections to the landfill.

RESPONSE OF STAN WEBER

10. None

11. None

12. None

18. None

29. None, except I was contacted by representatives of CALE once by phone who expressed their concerns about the landfill and expansion. This occurred at a time when no application was on file.

RESPONSE OF CATHERINE KUDRICK

- 10. None
- 11. None
- 12. None
- 18. None to the best of my knowledge.
- 29. None

RESPONSE OF ROBERT WELLER

- 10. None
- 11. None
- 12. None
- 18. None to the best of my knowledge.
- 29. None to the best of my knowledge.

RESPONSE OF JACK VIETTI

10. At a time when no application was on file, I met with Dave Bryant and John McDonnell to discuss various landfill issues.

11. None

12. None

18. None to the best of my knowledge.

29. None to the best of my knowledge.

RESPONSE OF CARL BORNGASSER

10. At a time when no application was on file, I talked with Dave Bryant at a restaurant and had a cup of coffee with him while having a general discussion about the Landfill. Also, Dave and one other person gave a rotary program for the Fairbury club I belong to at a time when no application was on file. They gave a general program on the landfill that they gave to the Pontiac rotary and other clubs.

11. None

12. None

18. None to the best of my knowledge.

29. None other than the Answer to Interrogatory No. 10 above.

RESPONSE OF MARVIN RUTLEDGE

- 10. None
- 11. None
- 12. None
- 18. None to the best of my knowledge.
- 29. None to the best of my knowledge.

RESPONSE OF JOHN R. SPAFFORD

- 10. None
- 11. None
- 12. None
- 18. None to the best of my knowledge.
- 29. None to the best of my knowledge.

RESPONSE OF BILL FAIRFIELD

10. None

11. None

12. None

18. None to the best of my knowledge.

29. None to the best of my knowledge except for meeting on December 3, 2002, with CALE members, Doris Burnside and Julie Russow, who expressed their opposition to the landfill and any expansion.

RESPONSE OF HELEN HOLZ

- 10. None
- 11. None
- 12. None
- 18. None to the best of my knowledge.
- 29. None to the best of my knowledge.

RESPONSE OF TIM SHAFER

10. At a time when no application was on file, I met with Dave Bryant and John McDonnell from Allied for about 30 minutes to discuss the landfill in general.

11. None

12. None

18. None to the best of my knowledge.

29. See answer to Interrogatory No. 10 above. At a time when no application was on file, I received a telephone call from Dave Bryant concerning the general disposition of the new Board.

RESPONSE OF KNUDSEN

10. Received and granted one request from John McDonnell and David Bryant of American Disposal to meet with me at my home. This meeting took place at a time when no application was on file. Our discussions centered for the most part on my listening to their views concerning the landfill and its operations and the contributions the business is making to the county as a whole.

11. None

12. None

18. None to the best of my knowledge.

29. To the best of my knowledge no meetings other than the meeting mentioned above in answer to Interrogatory No. 10. with American Disposal. Did receive a letter dated May 29, 2002 from American Disposal providing current facts and information concerning the landfill. Also, at a time when no application was on file, I met with Carolyn Gerwin and other CALE representatives at the home of Doris Burnside to listen to their concerns about the landfill and future expansion and I received certain materials that they had researched on the subject. Shortly after that Dr. And Mrs. Gerwin stopped by my residence and we discussed their concerns about the landfill. Julie Russow also stopped by the house to deliver additional material.

RESPONSE OF DEIGAN & ASSOCIATES

29. The following communication events occurred between Deigan & Associates, LLC and the Applicant/Applicant's Consultants during the period between the pendency of the Previous Application and the Application:

October 22, 2002 - Gary Deigan and Kerry Van Allen (Deigan & Associates, LLC) attended a meeting with the American Disposal Representatives and their consultants at Livingston Landfill. The substance of the communications during this meeting was to discuss the withdrawal of the Previous Application and a schedule and format for refiling an amended siting Application.

November 13, 2002 - Gary Deigan attended a meeting with American Disposal Representatives and their consultants at Livingston Landfill. The substance of the communications during this meeting was to inspect the operations of the landfill and confirm the schedule and format of the amended siting Application.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

Citizens Against Landfill Expansion,)	
Petitioners,)	
)	
vs.)	PCB 03-236
)	(Pollution Control Facility Siting Appeal)
American Disposal Services of Illinois, Inc.,)	
Respondent.)	
)	
and)	
)	
Livingston County Board, Livingston)	
county, Illinois,)	
Respondent.)	

RESPONDENT LIVINGSTON COUNTY BOARD'S, LIVINGSTON COUNTY, ILLINOIS
SUPPLEMENTAL RESPONSE TO PETITIONER'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

NOW COMES, the Livingston County Board, Livingston County, Illinois, by its attorneys, Larry M. Clark and C. Thomas Blakeman, and for its Supplemental Response to Petitioner's First Request for Production of Documents, pursuant to the Hearing Officer Order entered on August 28, 2003, states as follows:

1. All documents identified in response to Petitioner's First Set of Interrogatories to Respondent LCB.

RESPONSE: See Record on Appeal and Answers to Petitioner's First Set of Interrogatories and Supplemental Answers to Petitioner's First Set of Interrogatories from both Respondents. Also see attached Memo from Larry M. Clark to Livingston County Ag Committee dated June 4, 2002.

3. All documents that contain or otherwise relate to facts or information that Respondents contend refute, in any way, the basis for reversal contained in the Petition for Review.

RESPONSE: See Record on Appeal and Answers to Petitioner's First Set of Interrogatories and Supplemental Answers to Petitioner's First Set of Interrogatories from both Respondents.

6. All documents that refer to CALE or its members or representatives.

RESPONSE: See Record on Appeal and Answers to Petitioner's First Set of Interrogatories and Supplemental Answers to Petitioner's First Set of Interrogatories from both Respondents.

7. All documents relating to any agreement, understanding or transaction between any Board Member and American Disposal.

RESPONSE: None.

10. All documents that relate to any expression by a Board Member of approval or disapproval of expansion of Livingston Landfill and/or approval of the Application or Previous Application.

RESPONSE: See Record on Appeal and Answers to Petitioner's First Set of Interrogatories and Supplemental Answers to Petitioner's First Set of Interrogatories from both Respondents. See specifically Livingston County Board Resolution No. 03-012 dated May 15, 2003, which is a part of the Record on Appeal.

11. All documents that relate to any expression by a Board Member of approval or disapproval of collection of additional host fees resulting from the expansion of Livingston Landfill and/or approval of the Application or Previous Application.

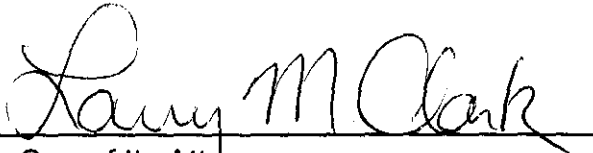
RESPONSE: See Record on Appeal and Answers to Petitioner's First Set of Interrogatories and Supplemental Answers to Petitioner's First Set of Interrogatories from both Respondents. See specifically Amendment Agreement of February 15, 2001, to Host County Agreement and Related Documents (Livingston County Exhibit No. 3).

12. All documents dating from and after May 1, 2002 relating to actual, proposed or potential use of Host Fees from the proposed expansion to fund any County expenditure or project.

RESPONSE: See Record on Appeal and Answers to Petitioner's First Set of Interrogatories and Supplemental Answers to Petitioner's First Set of Interrogatories from both Respondents.

Respectfully submitted,

LIVINGSTON COUNTY BOARD,
LIVINGSTON COUNTY, ILLINOIS

By: 
One of Its Attorneys

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MEMORANDUM

To: Agricultural & Zoning Committee
Livingston County

From: Larry M. Clark

Re: Amendment of Solid Waste Plan

Date: June 4, 2002

This Memorandum is written pursuant to the County's request for an opinion of options and possible ramifications of the County Board's approval or denial of an amendment to the Solid Waste Plan that would provide part of the requirements needed for American Disposal Services of Illinois and Allied Waste Industries, Inc. (hereinafter referred to as "Allied") to obtain local siting from Livingston County. In order for a landfill company to obtain permission to build or expand a landfill in Illinois, they must first obtain permission (local siting approval) from the local entity that has jurisdiction over the property (the county or a municipality, if located within the corporate limits of a municipality). This process is commonly referred to as a SB 172 hearing, named for the Senate Bill from which it originated.

SB 172 requires that an applicant must meet a number of statutory criteria in order to obtain such local approval. These criteria include, among others, whether the facility is needed; whether it will be designed, built and operated so as to protect the health, safety and welfare of the citizenry; whether the traffic impact will be minimized; and most importantly for this discussion, whether the proposed facility is consistent with the County's Solid Waste Plan. If the applicant cannot meet all

of the required criteria, local approval may be denied. Without local approval, an applicant cannot seek a State IEPA permit and cannot construct a facility. If local approval is denied, an applicant may seek review before the Pollution Control Board, the Appellate Courts, and the Illinois Supreme Court.

It is my understanding that Livingston County first entered into a Host County Agreement with Allied's predecessor in 1994 for portions of the Pontiac facility. This Agreement has been modified and amended several times over the course of the last 8 years. The Host County Agreement has been developed in conjunction with the Livingston County Solid Waste Plan so as to provide as much control over the disposal of solid waste as possible. The last 5-year update to the Solid Waste Plan specifically provided for the expansion of the Streator Landfill because the facility needed to be expanded, but did not address any other expansions so that the County could, in fact, retain such control until they were ready to extend it to another. The last amendment to the Host County Agreement specifically anticipated the expansion of the Streator facility as well as the Pontiac facility and greatly increased the host fee to be paid to the County. The County now stands to collect a host fee that is competitive with all others throughout the State of Illinois.

Should the County determine not to amend the Solid Waste Plan to provide for an expansion to the Pontiac landfill, the possible ramifications include the following:

- o tipping fees increases would be frozen, subject only to CPI increases
- o waste deposited into the Pontiac facility would eventually cease
- o waste would have to be transported to Streator or other disposal facilities

Under the terms of the Host Fee Agreement, if the County does not amend the Solid Waste Plan, Allied may still (and probably would) file an application for an expanded landfill for the Pontiac facility. The County would be obligated to hold a hearing to determine if Allied meets all of the required criteria, including the one that relates to compliance with the County's Solid Waste Plan. If Allied is denied local siting approval based upon the County's determination that it does not comply with the Solid Waste Plan (or other criteria), the denial may be appealed to the Pollution Control Board, appellate courts, and potentially the Illinois Supreme Court. To date the PCB and courts have not issued definitive opinions to indicate whether or not this proposed facility could be

successfully denied local siting approval based upon the Solid Waste Plan Criterion. In my opinion, however, it would appear more likely than not that the PCB and courts would uphold any County denial based upon this criteria

If the denial is upheld, or if Allied withdraws its application for expansion, the Host Fee in place at the time (currently \$1.50 to \$2.50/ton) will be frozen and no further increases would take place, except for CPI increases annually. Once the landfill reaches capacity, all further Host Fees will terminate. Haulers would then have to find alternate disposal facilities.

If the County agrees to amend the Solid Waste Plan, then Allied would still have to perform the following:

- o apply for and receive local siting approval of all applicable criteria (8 criterion as well as any specific conditions imposed by the County with an approval)
- o apply for and receive a state permit from IEPA

In one year tipping fees would escalate to \$4.00/ton plus yearly CPI increases for the life of the landfill. The County would retain rights to 25 years of capacity, water well protection, certain free disposal, and home value protection rights.

The one "indeterminate" in this review is the possibility that the Pontiac landfill property could be annexed into the City of Pontiac and exclude the County from local siting review. The County's Plan Criterion would still be applicable, but the City would be the party "determining" whether or not the County's Plan Criterion was met. The County could intervene in the City's local siting hearing and could eventually appeal any adverse determination to the PCB and courts. The outcome of such a scenario is questionable at best.

In order for the City to annex the landfill property, they must have contiguity to the property and either (a) the consent of Allied or (b) must go through a specific petition for annexation that is subject to approval by the majority of the property owners of the annexed land. Practically neither is a viable alternative because of contiguity requirements and the lack of determinable outcomes for

Allied. Finally, Pontiac cannot "force" annex this property, even if they had contiguity, because a municipality can only "force" annex parcels of 60 acres or less.