

ILLINOIS POLLUTION CONTROL BOARD
September 26, 2023

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

HEARING OFFICER ORDER

On September 19, 2023, Protect West Chicago (PWC) filed a “Motion *in Limine* (Mot.) PWC filed the 30-page motion with several hundred pages of attachments. The motion requests that the Board admit its attached Exhibits PWC 808 and 812. Mot. at 1. On September 21, 2023, Lakeshore Recycling Systems, LLC, filed its response. (Lakeshore Resp.) Also on September 21, 2023, the City of West Chicago (City) filed its response to the motion. (City Resp.) Lakeshore and the City were directed to file their respective and expedited responses due to the lengthy motion filed by PWC and the upcoming hearing on September 28, 2023.

PWC Motion in Limine

PWC argues that the exhibits are public records and therefore reliable and are relevant to the matter at bar. PWC’s Exhibit 808 is the Report and Findings of Fact and Conclusions of Law issued by Dennis Walsh who served as the City of Moline’s hearing officer, in which he recommended approval of Lakeshore Recycling Systems LLC...City of Moline Application for a waste transfer station. Mot. at 1-2. PWC notes that “Mr. Walsh made the substantive recommendation while serving as Special Counsel for a waste transfer station in West Chicago.” *Id.* PWC states that PWC Exhibit 812 “is a web page from the law firm of Ancil Glink’s ‘People’ page. This exhibit identifies Ancil Glink equity members, two of which are Derke Price and David Silverman.” *Id.* at 2. PWC further explains that “Ancil Glink, through Derke Price,

served as West Chicago's independent hearing officer in which he recommended approval of Lakeshore's West Chicago waste transfer station." Further, PWC notes that "Ancel and Glink, through Mr. Silverman, also served as corporate counsel for the City of Moline (Moline) in regard to Lakeshore's Application for a waste transfer station." *Id.*

PWC further argues that the in the past the City has opposed a second waste transfer station finding that "the proposed facility would thus 'burden Hispanic Americans'." *Id.* at 3-4. *Citing* (2003 City's Findings of Fact and Conclusions of Law)¹. PWC alleges nothing has changed since the finding other than "the Hispanic population in West Chicago[now] is in excess of 50%."²

PWC marches on in its attempt to support its pre-judgement/ lack of fundamental fairness allegations by laying out the following events that transpired subsequent the City entering into a Host Agreement³ with Lakeshore in April 2019. Mot. at 4-14. To wit:

1. West Chicago retained the services of Aptim Environmental and Infrastructure LLC (Aptim)⁴ subsequent the Host Agreement to assist the City and review whether all of the criteria was met pursuant the Act; Mot. at 5;
2. FOIA litigation⁵ regarding Lakeshore's Application which resulted in production of emails between the City officials and Lakeshore, as well as between Lakeshore and Aptim and other third parties that concerned compliance with the criteria; Mot. at 5-6;
3. FOIA documents revealed that Special Counsel Walsh learned of and was concerned about the relationship between Lakeshore and Aptima. In an email to Aptim, Mr. Walsh, among other things, stated that "this communication addresses the potential conflict of interest and Aptim's expressed representation that its involvement in the two [other] confidential development projects, (whether they include LRS or not), will not impact its ability to provide the City of West Chicago with sound guidance on its current review services for the proposed transfer station in West Chicago." Mot. at 8 The email also made clear that Aptim was to represent the City's interest and all who would oppose it.⁶ *Id.* at 9. The email response from Aptim confirmed as much and agreed. *Id.* at 10;
4. At the local citing hearing, Hearing Officer Derke Price prevented PWC from asking its own expert about environmental justice concerns and failed to arrange a Spanish-Language interpreter at any of the public hearings; *Id.* at 11;

¹ PWC references a number of proposed Exhibits to support its position; Exhibit M1; PWC Exhibit M2; PWC Exhibit 702; PWC Exhibit -M16

² The 2003 Proposed Findings of Fact and Conclusions of Law found the Hispanic population at 48.6 percent. Mot. at 3.

³ PWC proposed Exhibit 6

⁴ PWC proposed Exhibit 7

⁵ PWC proposed Exhibit 28

⁶ PWC proposed Exhibit 14

5. On February 27, 2023, the City met in a two hour closed deliberative session where “[n]o public comment or scrutiny was allowed...” *Id.*
6. On February 28, 2023, in a five-minute open session, Two Alders stated that they didn’t believe Lakeshore met a total of 4 of the criteria. (#1,2,3 and 8)

In light of the above, PWC argues that “[t]he series of events that occurred between February 24, 2023 (Hearing Officer Derke Price forwarded his Report Findings and Conditions) and February 28, 2023, reveal that the decision to approve Lakeshore’s Siting Application was based on and prompted by comments from Ancil Glink and Special Counsel Walsh and that the decision to approve Lakeshore’s Application may not have been the decision of the City of West Chicago, as it is required the law.” *Id.* at 13.

Lakeshore’s Response

On September 21, 2023, Lakeshore filed its response. Lakeshore objects to the expedited filing deadline of its response. In any event, Lakeshore argues that PWC’s motion “does not allege any actual bias or conflict...and “[t]hat the motion is essentially smoke and mirrors, hinting at a conspiracy theory based on otherwise unrelated facts in this case and the participation of some individuals in a subsequent, unrelated proceeding.” Lakeshore Mot. at 2. “The factual allegations in PWC’s motion are all innocent and normal procedure in a specialized subject matter area, where many of the same individuals are frequently involved in multiple proceedings, often in different roles.” *Id.* Citing caselaw, Lakeshore reminds PWC that hearing officers are not decision makers. Citizens Against Regional Landfill v. Pollution Control Board, 255 Ill. App. 3d 903, 907, 627 N.E.2d 682, 685, 194 Ill. Dec 345, 348(Ill. App. 3 Dist. 1994). Lakeshore further argues that PWC cites to the opposition of the proposed 2003 transfer station in West Chicago without distinction. (“respective similarities and differences of the two citing applications or the respective similarities and differences of economic and other conditions” 20 years ago) *Id.* at 2-3.

Lakeshore states that there is nothing amiss about Lakeshore and the City entering into a Host agreement. Lakeshore supports its argument by citing Stop the Mega Dump v. DeKalb County, PCB 10-103, March 17, 2011, where the Board held “all of the contacts of which STMD complains of between County Board Members that occurred prior to the filing of the application-filings were permissible under prior Board precedent. They were not, by definition, *ex parte* contacts.” *Id.*

Next, Lakeshore addresses PWC’s new concern about the years old comments made by Aptim uncovered during the FOIA litigation. The comments were made by Aptim “during their pre-filing review of an early draft of the siting application. Pre-filing review is a well-established practice that has been affirmed in multiple PCB reviews of local decisions. Some of Aptim’s pre-filing review comments were critical, a fact that PWC relied on heavily in their cross-examination of LAKESHORE’ experts at the siting hearing.” *Id.* at 3. Lakeshore states that it is “quite surprising ...that PWC now claims, without additional facts and with no compelling legal authority, that Aprim (consultant for Moline siting and West Chicago) had an actual conflict of interest based upon Aprim’s representation of LAKESHORE in a subsequent

proceeding.” *Id.* at 3. Finally, Lakeshore addresses PWC apparent claim that it was prejudicial that the siting application was deliberated in a closed session. Lakeshore points out that is an accepted practice. Citizens Opposed to Additional Landfills v. Greater Egypt Environmental Complex, PCB 97-233 (Nov. 6, 1997). *Id.* at 4-5.

City’s Response

Like Lakeshore, the City objects to the extremely limited time in which to respond to PWC’s 30-page motion *in limine* with several hundred pages of attachments. Nevertheless, the City argues that PWC’s motion is “hard to follow but it appears that PWC is weaving some strange artificial conspiracy theory in its motion and the tortured logic...” City Resp. at 2. The City vehemently disagrees with PWC’s suggestion that a conspiracy exists because some of the attorneys from Ancil and Glink, and consultants, worked on both the City of Moline’s Siting Application and the City of West Chicago’s. Like Lakeshore, the City points out that there are a “limited number of attorneys and consultants whose practice area include local siting” and would necessarily be connected to any number of siting hearings. *Id.*

The City likewise takes issue with the apparent allegation by PWC that “Aptim’s partiality was compromised due to the fact that it was consultant to LRS in the Moline hearing.” *Id.* The City argues that PWC’s partiality claim, however, is contradicted by PWC itself where “throughout the hearing and the filings of PWC, including in this motion itself, PWC purposely highlighted all of the ways in which Aptium pointed out the deficiencies in LRS’s draft applications.” *Id.* Nor was there any conflict of interest with Aptim representing Lakeshore because Dennis Walsh “painstakingly took steps to make sure there was not a conflict of interest and that Aprim affirmed that any relationship it has, or will have, with LRS would not in any way interfere with, or limit Aptim’s ability to fully represent the City of West Chicago in the matter of LR’s desire to site a transfer station on Powis Road.” *Id.* at 2-3.

Finally, the City takes umbrage at PWC’s suggestion that “Aptim, myself and/or Derke Price of Ancil Glink were the primary decision makers.” *Id.* at 3. The City Council, the siting authority, [that] made the decision based upon the entire Record after it deliberated.” *Id.* “[N]othing PWC can present at hearing and these proposed exhibits (Exh. PWC 808, 812) do nothing to demonstrate otherwise.” *Id.*

Discussion and Ruling

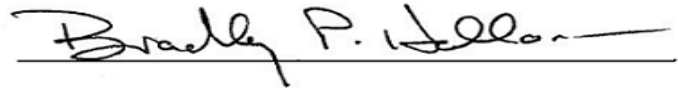
PWC’s argument that because Exhibits 808 and 812 are a matter of public record and therefore reliable and relevant is incorrect. Reliability has no bearing on whether the Exhibits are relevant. The Board rules of evidence that, at an adjudicatory hearing, the hearing officer “may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs...” 35 Ill. Adm. Coode 101.626 (a).

PWC's attempt to include Exhibit 808-Report and Findings of Fact and Conclusions of Law issued by Dennis Walsh pursuant to his duties as a hearing officer at Moline's siting proceedings and Exhibit 812- a web page from Ancil and Glink's People page, to reinforce its allegation that the local siting proceedings at West Chicago lacked fundamental fairness fails. No prudent person would find this relevant in PWC's quest. The Exhibits are not relevant to the existence or absence of PWC's lack of fundamental fairness allegations by the decision maker.

Furthermore, PWC's apparent attempt to suggest collusion or predetermination by the siting authority because Dennis Walsh, hearing officer at the Moline siting proceedings and Special Counsel for the City of West Chicago during their siting proceedings, and Derke Price who served as a hearing officer in the West Chicago siting proceedings, both employed by Ancil Glink, is a meritless conjecture. Serving as a hearing officer and being connected to a firm where other experienced hearing officers may also be connected, is not bias by the decision maker. The hearing officer's make recommendations, but the decision maker in this case is 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).

PWC's motion *in limine* is denied.

IT IS SO ORDERED



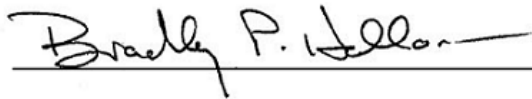
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on September 26, 2023, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on September 26, 2023:

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