

DEC 11 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

ROCHELLE WASTE DISPOSAL, L.L.C.)	
)	
Petitioner,)	
)	
vs.)	Case No. PCB 03-218
)	
CITY COUNCIL OF THE CITY OF)	
ROCHELLE, ILLINOIS)	
)	
Respondent.)	

TRIAL BRIEF

NOW COMES the Respondent, CITY COUNCIL OF THE CITY OF ROCHELLE, by and through its attorney, RICHARD S. PORTER of HINSHAW & CULBERTSON, and for its Trial Brief, states as follows

This Board should prohibit Petitioner from delving into the mental processes of the City Council members.

As has been repeatedly held by this Board, it is inappropriate to delve into the mental processes of the County Board members. *See Village of LaGrange v. McCook Cogeneration Station, L.L.C.*, PCB 96-41 (1995); *Land and Lakes Co. v. Village of Romeoville*, PCB 92-25 (June 4, 1992); *Dimaggio v. Solid Waste Agency of Northern Cook County*, PCB 89-138 (Jan. 11, 1990); *City of Rockford v. Winnebago County Board*, PCB 88-107 (Nov. 17, 1988); *Town of St. Charles v. Kane County Board and Elgin Sanitary Dist.*, PCB 83-228, 229, 230 (May 18, 1984).

This Board has specifically held that the "integrity of the decision-making process" requires that "inquiry not extend into the mental processes of the decision-maker." *Town of St. Charles v. Kane County Board and Elgin Sanitary Dist.*, PCB 83-228, 229, 230 (May 18, 1984).

This Board in *Dimaggio* explained: "In their adjudicative role, the decisionmakers are entitled to protection of their internal thought processes." PCB 89-138. The principle that the minds of administrative decision makers should not be invaded is deeply rooted in decisions of

17-0. 829983

the United States Supreme Court. See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971); *United States v. Morgan*, 313 U.S. 409 (1941). Based on this well-settled principle that it is improper to delve into the thought processes of decisionmakers, this Board must not allow Petitioner to do so.

This Board has held that "an applicant can probe facts relevant to fundamental fairness. However, an applicant cannot elicit testimony from the decisionmaker which probes the mental processes behind a decision, where, as here, a formal written decision exists." *Land and Lakes Co. v. Village of Romeoville*, PCB 92-25 (June 4, 1992). Furthermore, this Board "cannot inquire as to how and the extent to which" each city councilmember fulfilled the obligation to familiarize himself or herself with the record. *City of Rockford v. Winnebago County Board*, PCB 88-107 (Nov. 17, 1988). Therefore, any effort by Petitioner to delve into the thought processes of the City Council members and determine the bases of the City Council members' decisions must be rejected by this Board as clearly inappropriate.

The Illinois Supreme Court has affirmed a decision by the Second District, finding that it is inappropriate to delve into the mental processes of local decision makers in determining whether a pollution control facility met the criteria set forth in 415 ILCS 5/39.2(a). See *E & E Hauling, Inc. v. Pollution Control Board*, 116 Ill.App.3d 586, 451 N.E.2d 555 (2d Dist. 1983), *aff'd* 107 Ill.2d 33, 481 N.E.2d 664 (1985). The Second District in *E & E Hauling* explained: "Although the statute does require the County Board to make written decisions which specify the reasons for its decision, 'such reasons to be in conformance with subsection (a) of this Section,' nothing in the statute would require a detailed examination of each bit of evidence or a thorough going exposition of the County Board's mental processes." 116 Ill.App.3d at 616, 451 N.E.2d at 577.

As set forth by the authorities above, it is clearly inappropriate for this Board or any party to delve into the thought processes of local decisionmakers, and this Board should so hold and prohibit any and all questions relating to the mental processes of the City Council members.

CONCLUSION

For the reasons set forth herein, Respondent, CITY COUNCIL OF THE CITY OF ROCHELLE, respectfully requests that this Board prohibition Petitioner from delving into the thought processes of the City Council members.

Dated: 12/10/07

Respectfully Submitted,

On behalf of the City Council of the City of
Rochelle, Illinois, Respondent

By: Hinshaw & Culbertson



Richard G. Porter
One of Its Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

