BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC Petitioner, v. UNITED CITY OF YORKVILLE, CITY COUNCIL Respondent.	)	PCB No. 07-146 (Pollution Control Facility Siting Appeal)

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 7, 2008, Leo P. Dombrowski, one of the attorneys for Respondent, United City of Yorkville, filed via electronic filing the attached **United City of Yorkville's Reply in Support of Its Motion in Limine # 1**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

UNITED CITY OF YORKVILLE

By: /s/ Leo P. Dombrowski
One of their Attorneys

Anthony G. Hopp
Thomas I. Matyas
Leo P. Dombrowski
WILDMAN, HARROLD, ALLEN & DIXON LLP
225 West Wacker Drive, 30th Floor
Chicago, Illinois 60606
Phone: (312) 201-2000
Fax: (312) 201-2555
hopp@wildman.com
matyas@wildman.com
dombrowski@wildman.com

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC	)	
	)	
Petitioner,	)	
	)	PCB No. 07-146
v.	)	(Pollution Control Facility Siting Appeal)
	)	
UNITED CITY OF YORKVILLE, CITY COUNCIL	)	
	)	
	)	
Respondent.	)	

YORKVILLE'S REPLY IN SUPPORT OF ITS MOTION IN LIMINE # 1

Fox Moraine claims Yorkville would have the Board establish "a bright line test whereby failure to move for disqualification of a local decision maker is deemed a conclusive waiver" of bias "even if knowledge of such bias did not exist at the time of the local public hearing." (Resp., ¶ 6.) Fox Moraine erects this straw man because it knows that it waived issues of bias and prejudgment as to every Council Member other than Burd and Spears and it now seeks to do anything it can to avoid the consequences of its inaction.

I. FOX MORAINE BELIEVED DURING THE LANDFILL SITING HEARINGS THAT THE CITY COUNCIL MEMBERS WERE BIASED AND HAD PREJUDGED ITS SITING APPLICATION.

As Yorkville noted in its motion in limine, it is well-settled that a party waives its ability to challenge issues related to bias or prejudgment by failing to raise them at the earliest opportunity. *Peoria Disposal Co. v. Peoria County Bd.*, PCB No. 06-184, 2007 Ill. ENV LEXIS 250, at *58 (June 21, 2007). If the party learns of an issue related to bias during the hearings on a siting application, the party must raise the issue during those hearings or waive it. *Id.* at *60 (noting that petitioner waived issue of potential bias from a statement "quoted in a local newspaper" by failing to raise it during initial hearing on siting application). The Supreme Court has held that it would be unfair to allow a party to sit on its belief of bias without asserting it at

the earliest opportunity: "To allow a party to first seek a ruling in a matter and, upon obtaining an unfavorable one, permit him to assert a claim of bias would be improper." *E & E Hauling, Inc. v. Pollution Control Bd.*, 107 Ill. 2d 33, 38-39 (1985).

Fox Moraine now argues that it did not know in April or May 2007 that some Yorkville City Council members might be biased or prejudiced against granting its landfill siting application. But its claims are belied by its principal's admissions in his recent deposition. Don Hamman, one of the owners of Fox Moraine, testified that he saw on April 15, 2007 an Aurora BeaconNews article of the same date in which Walter Werderich, Arden Plocher, and Robyn Sutcliff were quoted regarding the landfill issue. (Hamman Dep. 12:18-13:17, attached as Exh. A). Upon reading the article on April 15, 2007, Hamman believed that Werderich, Plocher and Sutcliff were biased against the landfill. He also believed they were biased because he allegedly saw them wearing anti-landfill buttons or posting anti-landfill signs at various times during the landfill siting hearings. (Exh. A at 15:9-16:1; 16:22-17:19; 17:24-19:9). Moreover, Hamman further testified that as of April 17, 2007, he had seen "numerous" articles that he felt established that Council Members were biased against the landfill. (Exh. A at 19:18-20:11).

In its Response, Fox Moraine downplays the role of Jim Burnham, one of the main members of Hamman's and Fox Moraine's landfill team. Burnham acted as Fox Moraine's spokesperson on landfill issues during the hearings, helped prepare Fox Moraine's landfill siting application, engaged expert witnesses for the application and hearings, met with attorneys, and attended the hearings. (Burnham Dep. 12:7-15:4, 16:13-17:15, attached as Exh. B). As shown in Yorkville's Motion, Burnham, and therefore Fox Moraine, believed at the time of the landfill hearings that every Council Member who ended up voting against the application was biased against Fox Moraine. (Motion, ¶¶ 8-9). *See, e.g., Lease Resolution Corp. v. Larney*, 308 Ill.

App. 3d 80, 86 (1st Dist. 1999) (noting that unless an agent's interests are adverse to the principal's, his knowledge is imputed to the principal).

II. FOX MORAINE HAD A "MEANINGFUL OPPORTUNITY" TO MOVE TO DISQUALIFY ANY COUNCIL MEMBERS IT FELT WERE BIASED BEFORE THE MAY 2007 VOTE.

Fox Moraine disingenuously suggests that it did not have a "meaningful opportunity" to move to disqualify the Council members it felt were biased. Without citing to any authority, it suggests that it needed some minimum amount of time to move to disqualify the Council members. But Fox Moraine moved at the beginning of the hearing to disqualify then-Council Member Valerie Burd and Council Member Rose Spears, without arguing that it needed more time to compose the motion. Fox Moraine knew both how to write and file such a motion but also knew of all the information it would need to put in the motion days before the close of the April 2007 hearings.

As noted above, Hamman believed as of April 15, 2007, that Werderich, Plocher, and Sutcliff were biased and had prejudged the application. These three candidates were elected two days later on April 17, 2007, and Fox Moraine knew that they would be voting on the application. As Hamman agrees, Fox Moraine could have moved to disqualify those Council members before the landfill hearings closed on April 20, 2007, and it also could have filed a motion during the post-hearing comment period, which ran until May 21, 2007. (Exh. A at 66:5-24).[1] Fox Moraine knew that the City Council would be ruling on its motion to disqualify Burd and Spears at the public meetings to discuss the application, which were held on May 23 and May 24, 2007. (May 23, 2007 Tr. of City Council Meeting, 8:3-11; 13:5-14:2, attached as Exh.

[1] Moreover, Fox Moraine knew at the time it filed its landfill siting application that several Council members were up for reelection in April 2007. (Exh. A at 7:24-10:15, Moose Dep. 31:1-9, attached as Exhibit C). Fox Moraine could have filed its application either earlier or later than the December 2006. (Exh. A. at 7:24-10:15). By choosing to file before the election, any heated concern by the public with the landfill during the election resulted entirely from Fox Moraine's choice to file just before that election.

D). Fox Moraine does not explain, because it cannot explain, why it could not have moved to disqualify additional Council Members.

III. CONCLUSION.

The Hearing Officer should grant Yorkville's motion in limine to exclude any and all arguments, statements, questions, testimony, or evidence of any kind from any party that refer to, directly or indirectly, the alleged bias, predisposition or unfairness of any City Council Member other than Mayor Burd or Member Spears.

Respectfully submitted,

UNITED CITY OF YORKVILLE, CITY COUNCIL

By: /s/ Leo P. Dombrowski
One of Its Attorneys

Dated: October 7, 2008

Anthony G. Hopp
Thomas I. Matyas
Leo P. Dombrowski
WILDMAN, HARROLD, ALLEN & DIXON LLP
225 West Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 201-2000
Facsimile: (312) 201-2555
hopp@wildman.com
matyas@wildman.com
dombrowski@wildman.com

EXHIBIT A

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC,)
Petitioner,)
vs.) No. PCB 07 146
UNITED CITY OF YORKVILLE, CITY)
COUNCIL,)
Respondent.)

The discovery deposition of DON HAMMAN, taken in the above-entitled cause, before JENNIFER CAMPBELL, a notary public of Kendall County, Illinois, on the 30th day of September, 2008 at 2:30 p.m., at 800 Game Farm Road, Yorkville, Illinois, pursuant to Notice.

Reported by: Jennifer Campbell, CSR, RPR
License No.: 084-003282

APPEARANCES:

MUELLER ANDERSON, P.C., by
MR. GEORGE MUELLER
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500
Representing the Petitioner;

WILDMAN HARROLD ALLEN & DIXON, LLP, by
MR. LEO P. DOMBROWSKI
225 West Wacker Drive
Chicago, Illinois 60606
(312) 201-2562
Representing the Respondent;

JEEP & BLAZER, by
MR. MICHAEL S. BLAZER
24 North Hillside Avenue
Suite A
Hillside, Illinois 60162
Representing the Kendall County.

ALSO PRESENT:
Mr. Charles J. Murphy, Fox Valley Consulting Services, Inc.

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EXHIBITS

(Witness duly sworn.)

MR. DOMBROWSKI: Mr. Hamman, my name is Leo Dombrowski. I represent the City of Yorkville in this landfill appeal. I'm going to be asking you some questions today. You understand that we have a court reporter here to record everything that you and I say?

THE WITNESS: I do.

MR. DOMBROWSKI: And that if you'd let me finish my question before you start your answer, and I won't step on your answer, so that we get a clear record. All right?

THE WITNESS: Okay.

DON HAMMAN,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DOMBROWSKI:

Q. Are you on any drugs or medications or anything that you think might interfere with your ability to answer my questions today?

A. No.

Q. Let me show you what we have marked as Yorkville Deposition Exhibit No. 6.

in December with elections four months or so in the offing?
A. I have no idea why I have a managing partner group that chose to go forward. I don't micromanage my projects.
Q. But you were under no deadline or anything, I understand, that made you file it by December 1st, '06; correct?
A. What do you mean a deadline?
Q. Any legal deadline?
A. Not to my knowledge.
Q. So you could have filed the application before December 2006; correct?
A. I'm not aware of the environmental laws.
Q. I'm saying, apart from any environmental laws, you could have filed the application with the City before December of -- before December of 2006; correct?
A. I'm not sure.
Q. What would have prevented you from filing it any earlier, if anything?
A. Don't know.
Q. So as you sit here, nothing that you know of that would have prevented Fox Moraine, LLC from

filing its landfill application earlier than December of 2006; correct?
A. Repeat the question.
MR. DOMBROWSKI: Read that back if you would, please.
(Record read as requested.)
MR. MUELLER: If you know.
THE WITNESS: I don't know.
BY MR. DOMBROWSKI:
Q. Nothing that you know of; correct?
A. Not that I know.
Q. Anything that would have prevented Fox Moraine, LLC from filing the application later than December 2006?
A. Nothing that I know of.
Q. Did you assist in preparing Fox Moraine's interrogatory answers?
A. No, I did not.
Q. Did you assist in preparing Fox Moraine's responses to the document requests?
A. No, I did not.
Q. Were they ever shown to you?
A. No.
Q. You've never read them?

A. I have never read them.
I have complete faith in my management team.
Q. Are you aware, Mr. Hamman, that part of this landfill appeal -- strike that.
In this landfill appeal, you're aware that Fox Moraine is claiming that the City Council was biased against it. You understand that?
A. Repeat the question again.
MR. DOMBROWSKI: Read that back, please.
(Record read as requested.)
THE WITNESS: Yes, I do.
BY MR. DOMBROWSKI:
Q. And who on the City Council are you claiming was biased against Fox Moraine?
A. Valerie Burd, Rose Spears.
Q. Anyone else?
A. No.
Q. You're not claiming that Mr. Werderich was biased?
MR. MUELLER: Are you asking for his personal knowledge or personal claims? Because, in that case, they're irrelevant.
MR. DOMBROWSKI: I'm asking him as a

representative of Fox Moraine.
MR. MUELLER: He's already testified that as a representative of Fox Moraine he doesn't micromanage and delegates those calls to his management team. You're welcome to ask him about his personal knowledge or beliefs.
THE WITNESS: Could I ask a question?
MR. DOMBROWSKI: Sure.
MR. MUELLER: Sure.
THE WITNESS: When you said Wally Werderich, are you talking about the newly board or the old board?
BY MR. DOMBROWSKI:
Q. I'm talking about the eight aldermen who voted on the application in May 2007.
A. Well, in that case, Mr. Wally Werderich, he was biased as well.
Q. All right. Let me show you what we've marked as Deposition Exhibit No. 7, which is Fox Moraine's second amended petition for review, and attached to that is the City's resolution denying the landfill application which has a list of the aldermen who voted. Do you see that there?
A. Yes.

Q. All right. So you've mentioned three of the nine people?
A. Well, in looking at this, it refreshes my memory. Robyn Sutcliff, Wally Werderich, Joe Plocher, as I recall there was a news article two or three days prior to their -- the election, and both of them based the landfill as part of their election platform, they were against it. I believe it was in the Aurora Beacon News, if I recall correctly.
Q. And you saw that article when it appeared the Sunday before the elections?
A. We get the Beacon News delivered daily, yes.
Q. Okay. So you would have read that article that day?
A. Oh, most definitely.
Q. Did you tell anyone on your management team or landfill team what you thought of the article?
A. I would have probably called, but I don't recall if I did or not. Every time there was a news article in either the Aurora Beacon News, I would call Charles Murphy or Jim Burnham and tell

them about these articles. I don't recall if I did on that particular one, because they don't get the subscription, the daily one, like I do.
Q. You recall calling either Mr. Murphy or Burnham about this April 15th article?
A. I would have alerted them to it.
Q. And what would you have told them?
A. Take a look at this, what their platform is. It was anti-landfill.
Q. And you say that you also called them regarding other articles that -- in which you thought indicated some bias by the City against Fox Moraine?
A. Yes.
Q. Can you recall how many other articles there would have been?
A. There would have been letters to the city editor, et cetera, you know, by the various people, um-hum.
Q. Anyone else on that list who you claim was biased against the City?
A. Just those four.
Q. Okay. Well, you mentioned five, Burd, Spears, Werderich, Sutcliff, and Plocher?

A. Burd is not on here.
Q. Well, she signed it?
A. Well, but you pointed to this. She's not there.
Q. If I misspoke or if I didn't mention it, I misspoke. I meant to say the eight aldermen plus the mayor.
A. Okay. It would be the mayor as well.
Q. All right. When did you first think that Mr. Werderich was biased against Fox Moraine?
A. In seeing him around town, at functions, he had the no-landfill buttons on him.
Q. And when did you see him wearing no-landfill buttons?
A. At the meetings that I attended, the hearings. I attended some of the hearings at the high school. He had the buttons on.
Q. Now, were these the annexation hearings you're talking about?
A. No. No-landfill.
Q. So these were the landfill hearings that took place in March and April of 2007?
A. Yes.
Q. Something else that indicated to you

Mr. Werderich was biased against Fox Moraine?
A. That's it.
Q. So when you saw him wearing these buttons in March and April of 2007, I assume you shared that with your landfill team?
A. No. Everybody could see it. I didn't share it with anybody.
Q. Well, did you point out to Mr. Murphy or Mr. Burnham or anyone else that Mr. Werderich was wearing these buttons?
A. I did not.
Q. But you say you, yourself, certainly were of the belief in March and April of 2007 that Mr. Werderich was biased against the landfill; correct?
A. Repeat the question.
MR. DOMBROWSKI: Read that back, if you would, please.
(Record read as requested.)
THE WITNESS: Yes.
BY MR. DOMBROWSKI:
Q. How about Robyn Sutcliff, why do you say she was biased against the landfill?
A. She was wearing the buttons as well.

Q. Was this one button, was it different buttons?
A. No. They all had the same logo.
Q. And what was -- what was on the button?
A. It was a white button with a circle, no-landfill, with a slash across it.
Q. And when did you see Robyn Sutcliff wearing these buttons?
A. At these landfill hearings.
Q. In March and April of 2007?
A. If that's the correct time when they were going on, yes.
Q. Did you point that out to anyone on your landfill team?
A. I did not.
Q. But, again, it was your opinion at that time that she was biased against the landfill; correct?
A. Yes.
Q. How about Mr. -- anything else that supports your belief Robyn Sutcliff was biased against the landfill?
A. No.
Q. How about Mr. Plocher, what supports your

belief that he was biased against the landfill?
A. He had the buttons on as well, and he had the no-landfill signs in front of his residence.
Q. Let's take the buttons first. When did you see him wearing the buttons?
A. At the landfill hearings.
Q. And you say he had anti-landfill signs in front of his residence?
A. That's correct.
Q. What did these signs say?
A. No landfill.
Q. How did you come to see these signs?
A. Couldn't miss it. It's on the corner of Route 47 and Main Street.
Q. How did you know that was his residence?
A. Because it was where he claimed to live.
Q. How did you know that he claimed to live there?
A. Matter of public knowledge. His parents lived there.
Q. So he was living with his parents?
A. Yes.
Q. How do you know they were his signs and not someone else's signs?

A. I don't know that for a fact, but if he didn't want them there, you'd certainly take them down, you wouldn't condone them being there.
Q. So you don't know who put up those signs?
A. I do not.
Q. Anything else that supports your belief, other than the buttons and signs, that Mr. Plocher was biased against the landfill?
A. No.
Q. And, again, this was your belief in March and April of 2007 that Mr. Plocher was biased; correct?
A. Yes.
Q. Did your landfill team have a or subscribe to a clipping service where they received articles regarding the landfill?
A. I don't have any idea.
Q. So by the time the vote was taken in the Yorkville elections on April 17th, how many articles do you think you would have -- how many articles do you think you had seen that indicated someone on the City Council or someone running for office was biased against the landfill?
A. Numerous.

Q. Meaning 15 to 20?
A. Numerous.
Q. More than 20?
A. Numerous.
Q. Give me an estimate.
MR. MUELLER: He's told us numerous. If he didn't put a number on it, then he's not going to put a number on it.
BY MR. DOMBROWSKI:
Q. Can you put a number on it?
A. No, I cannot.
Q. Can you give me a range?
A. Numerous.
Q. So it could have been a hundred; correct?
A. If you say so.
Q. No. I'm not saying so. I'm asking you a question.
MR. MUELLER: He's told you he can't put a number on it. Let's move on.
BY MR. DOMBROWSKI:
Q. He can put a number on it.
Could it have been more than a hundred articles?
A. No.

EXHIBIT B

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC,)
Petitioner,)
vs.) No. PCB 07 146
UNITED CITY OF YORKVILLE, CITY)
COUNCIL,)
Respondent)

The discovery deposition of JAMES D. BURNHAM, taken in the above-entitled cause, before JENNIFER CAMPBELL, a notary public of Kendall County, Illinois, on the 12th day of September, 2008 at 2:10 p.m., at 800 Game Farm Road, Yorkville, Illinois, pursuant to Notice.

Reported by: Jennifer Campbell, CSR, RPR
License No.: 084-003282

APPEARANCES:

MUELLER ANDERSON, P.C., by
MR. GEORGE MUELLER
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500
Representing the Petitioner,

WILDMAN HARROLD ALLEN & DIXON, LLP, by
MR. LEO P. DOMBROWSKI
225 West Wacker Drive
Chicago, Illinois 60606
(312) 201-2562
Representing the Respondent.

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EXHIBITS

(Witness duly sworn.)

MR. DOMBROWSKI: Let the record reflect that this is the deposition of Jim Burnham taken pursuant to notice and agreement.

JAMES D. BURNHAM,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DOMBROWSKI:

Q. Would you state your full name for the record, please, sir.

A. James D. Burnham.

MR. DOMBROWSKI: Mr. Burnham, I introduced myself earlier to you. My name is Leo Dombrowski. I'm an attorney for the City of Yorkville in this appeal. I'll be asking you some questions today.

You understand that there's a court reporter here to record everything, and that we shouldn't talk over each other; is that all right?

THE WITNESS: I do. Yes.

MR. DOMBROWSKI: And what will you do if you don't understand a question or are confused by it?

THE WITNESS: Say as such.

comments that were made during those meetings by some of the people that were in the public-comment portion of those meetings.
BY MR. DOMBROWSKI:
Q. Did you ask someone for copies of these transcripts or were they given to you?
A. I asked George for the transcript for the -- the final vote by Yorkville. And the other two, one I found in some invoices for the project, one of them I found in the invoices for the project, and the other one I think it was forwarded to me by George, although I didn't request it.
Q. Have you talked to anyone in preparation for your deposition today?
A. I spoke with George, and that's it.
Q. No one else other than Mr. Mueller?
A. Not in preparation for this. I know that Charlie Murphy was deposed, but that's all that --
Q. Have you talked to him since his deposition?
A. I have.
Q. And what did you two talk about?
A. A variety of things, but nothing in regard to this.

Q. Nothing in regard to the landfill appeal?
A. Correct.
Q. Nothing in regard to his deposition?
A. No.
Q. He didn't mention anything about his deposition?
A. I asked how it went, but that was just general conversation.
Q. And what did he say?
A. He said it went -- it went fine. It was what it was.
Q. Where do you work?
A. I don't understand. Physically where do I work?
Q. Yeah. Who do you work for?
A. Myself.
Q. What do you do?
A. I'm a consultant for a variety of clients that I have.
Q. What kind of consultant are you?
A. I don't really know how to describe it.
I do work for acquisitions, so companies that are looking to buy other companies need people to do due diligence, I do some of that. I do

business modeling. I do some project development work similar to the role that I functioned with the Fox Moraine Landfill. I do some valuation reports for companies, and I participate in brokering of companies for sale to other interested buyers.
Q. What is the name of your business?
A. JDB Consulting Services, Inc.
Q. And where is your business located?
A. 4532 Seeley Avenue, S-e-e-l-e-y, Downers Grove, Illinois.
Q. How long have you had the business?
A. Five years in October.
Q. And what's your relationship and the relationship of your business to Fox Moraine, LLC?
A. They're a client of mine.
Q. When were they first a client?
A. September of 2004. Maybe around that time frame.
Q. And what did you start doing for them in September of 2004?
A. Pardon me. I misspoke.
Could you repeat the question on Fox Moraine?
Q. Yes. When did you first start doing work

for Fox Moraine?
A. I guess Fox Moraine was -- became an entity in 2006, maybe around March, so that's when I started doing work for Fox Moraine.
Q. In March of 2006?
A. Yes.
Q. And what did you start doing for Fox Moraine in March of 2006?
A. I was working on the Fox Moraine Landfill project for them.
Q. And tell me everything you've done for Fox Moraine on this landfill project.
A. Could you be more specific?
MR. MUELLER: Kind of a broad question.
BY MR. DOMBROWSKI:
Q. Well, just tell me generally for starters what you've done for Fox Moraine on this landfill project?
A. Participated in negotiations and the relationship with Fox Moraine and Groot. Participated in negotiations for the operation -- the proposed operator of the landfill, Peoria Disposal. I participated in engaging the various consultants that were expert witnesses. And, as we

proceeded to file an application, I participated in, you know, attending various county meetings, attending the various meetings in regard to 2000 or, you know, Fox Moraine's application of, you know, petition for annexation, the -- the application for -- the formal application for -- for the landfill.

Q. So you helped put together the formal application for the landfill?

A. I participated in -- I didn't put the thing physically together, but, yes, I under -- I was involved in preparing that application for submittal.

Q. And that application was submitted to the City of Yorkville on December 1, 2006; correct?

A. Yes.

Q. Did you have anything to do with the landfill project after the application had been submitted?

A. Yes.

Q. And what was that?

A. I was involved in the hearing process. I sat through all, if not most of the hearing itself. Met with the expert witnesses, the attorneys, was

involved in the -- you know, the project management of that project in conjunction with Charlie Murphy.

Q. So you went to all the landfill hearings; correct?

A. I believe so.

Q. And those were 23 or 24 in number?

A. Something in that regard, yes.

Q. Why did you go to all or most of all of the landfill hearings?

A. Because I was involved in the project and that was part of my scope of participation.

Q. Did you testify at any of those hearings?

A. I did not.

Q. So was it fair to say that you showed up to basically see what was going on and who was testifying as to what?

A. Yes.

Q. Did you have any involvement with the landfill project once the landfill hearings had ended?

A. Yes.

Q. And what was that?

A. Dealing with various issues. I processed the invoices to have people paid. From time to

time I interfaced with the attorneys that represent Fox Moraine and represent or participate in various discussions with the management and owners of Fox Moraine.

Q. If the landfill is eventually approved, will you have any role in the landfill after that point?

A. Can you be more specific?

Q. Well, we're going through an appeal process. Should the landfill be approved and cited and become an operating landfill, will you have any role in the landfill?

A. Not that --

MR. MUELLER: Go ahead.

THE WITNESS: Not that -- not that I've been told that I would.

BY MR. DOMBROWSKI:

Q. So as far as you know, you wouldn't have any role?

A. I don't think that determination has been made by the owners of Fox Moraine, that once the landfill would be started, what my participation would be, if any, or not. I don't know.

Q. Do you have any financial interest in the

landfill project?

A. Beyond consulting fees and a success fee, no.

Q. So if it does get approved, you get some type of bonus or contingency?

A. That's correct.

Q. How long have you known Don Hamman?

A. Probably -- I've met him from time to time starting in, you know, probably around 1995 range.

Q. Do you have anything to do with his composting facility?

A. I do not.

Q. Now, I have seen you identified in newspaper articles as the spokesman for Fox Moraine, LLC; is that a fair characterization?

A. There was a time when -- when I was interfacing with the reporters, and that was, I guess, known that if they wanted to ask questions, that I would be available, so, yes, I was a spokesman for the Fox Moraine Landfill, but not for everything.

Q. Well, what then were you a spokesman for?

A. Like I said, the Fox Moraine Landfill, but there was other issues that people reached out that

didn't involve me, so I wasn't the spokesman for issues that I wasn't a spokesman for.

Q. And what other issues are you talking about?

A. Well, I guess if -- if you're -- if you look at a company spokesman, a company spokesman, largely, you know, they deal with -- with all external and sometimes internal discussions in regard to the company.

I didn't -- I dealt with some of the reporters specifically in regard to the application or the hearing process from time to time, but not always. So there could be other issues that people needed to speak with Fox Moraine, the entity, about, but it didn't go through me.

Q. Okay. How many times do you think you spoke with reporters beginning in March of '06 through, let's say, the filing of this appeal, which was in July of '07?

A. 25 times.

Q. Let's go back to the three transcripts that you mentioned earlier. You said that you looked at those to see what members of the public had said at those public meetings; is that right?

A. Not all, all the transcripts, no.

Q. But the three or so transcripts you mentioned earlier is what I'm talking about.

A. Yeah. But all those didn't have public comments in it.

Q. But some of them did?

A. One of them did.

Q. Which one did?

A. The re-annexation hearing or meeting transcript.

Q. And did you find any comments in there by anyone from the public to be significant or relevant to this appeal?

A. I thought that Todd Milliron's comments were a good example of how the public was interfacing with the -- with the council, and, you know, how they were presenting their side of the story and their -- their belief, I guess. And I thought that that -- a couple of the people that spoke in that regard was reflective of, you know, the level of just how nasty the process at the time had been going.

Q. Well, what did Mr. Milliron say?

A. Well, he -- at that particular -- at this

particular exchange basically said that Don Hamman and, in conjunction, Fox Moraine had his hand in the back pocket of Mayor Prochaska, which, in my opinion was, you know, just an example of just the tactics that some of the people that were against the -- against the project, you know, presented their arguments and intimidated in some regards the various city council people.

Q. How do you think Mr. Milliron intimidated the city council members?

A. Well, I think it was an example of somebody would take a photograph out of the newspaper, which could have been anybody, and that photograph was taken out of context and basically defamed in some regard, at least in the way I look at things, not only Mr. Hamman, but also the mayor.

Q. And as a matter of fact, Mr. Hamman sued Mr. Milliron for defamation; right?

A. I believe so, yes.

Q. And that case was dismissed; correct?

A. I'm not -- I don't exactly recall the outcome.

Q. Do you know anything about the outcome?

A. I can't recall.

Q. Do you have any idea if the suit is still ongoing?

A. I do not know.

Q. Any other comments from that transcript that you find relevant?

A. I think George Gilson was another person that was outspoken in his opposition to the landfill project. And I thought that his comments were also caustic. I thought that that was the -- the reason that I was looking at that particular transcript is I thought that that was the one where he basically stood up and said to the city council people that if you move forward on this landfill project that you're -- nobody is going to want to sit by you in church, and, you know, the neighborhood is watching. And I also thought it was one of the times when he said that, you know, voters are going to vote you out of office if you, you know, go forward with this. So I thought that -- I thought that is where he made some of those comments. And the one about the people sitting next to them in church wasn't in that transcript. I can't recall which one it is in, but it's in one of the transcripts. So I thought,

EXHIBIT C

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

FOX MORAINE, LLC,)
Petitioner,)
vs.) No. PCB 07 146
UNITED CITY OF YORKVILLE, CITY)
COUNCIL,)
Respondent.)

The discovery deposition of DEVIN MOOSE, P.E., taken in the above-entitled cause, before JENNIFER CAMPBELL, a notary public of Kendall County, Illinois, on the 30th day of September, 2008 at 3:30 p.m., at 800 Game Farm Road, Yorkville, Illinois, pursuant to Notice.

Reported by: Jennifer Campbell, CSR, RPR
License No.: 084-003282

APPEARANCES:
MUELLER ANDERSON, P.C., by
MR. GEORGE MUELLER
609 Etna Road
Ottawa, Illinois 61350
(815) 431-1500
Representing the Petitioner;

WILDMAN HARROLD ALLEN & DIXON, LLP, by
MR. LEO P. DOMBROWSKI
225 West Wacker Drive
Chicago, Illinois 60606
(312) 201-2562
Representing the Respondent;
JEEP & BLAZER, by
MR. MICHAEL S. BLAZER
24 North Hillside Avenue
Suite A
Hillside, Illinois 60162
Representing the Kendall County.

ALSO PRESENT:
Mr. Charles J. Murphy, Fox Valley Consulting Services, Inc., and
Mr. Don Hamman.

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EXHIBITS

(Retained by Mr. Dombrowski.)

(Witness duly sworn.)

MR. DOMBROWSKI: Mr. Moose, my name is Leo Dombrowski. I represent the City of Yorkville in this landfill appeal. I'll be asking you some questions today.

Is it okay if I call you Devin?

THE WITNESS: It is. And Leo okay with you?

MR. DOMBROWSKI: Fine.

You understand that we have a court reporter here to record everything that you and I say. And please let me finish my question before you start your answer, and I won't step on your answer, as best I can do; fair enough.

THE WITNESS: Fair enough.

MR. DOMBROWSKI: If you don't understand a question, please let me know. Otherwise, I'll assume that you've understood it. Okay?

THE WITNESS: Yes.

DEVIN MOOSE,
called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DOMBROWSKI:

Q. Are you on any medication or anything that

We've heard about him over and over and over again. No matter how many times we had to hear about it, we had to hear about it again.

Q. But the city council did not permit people to testify, that was the hearing officer's role; right?

A. I don't think any of them testified. A few of them did. I think Stan Lewinski or Lewinski, I may have pronounced that wrong, testified. But very few of them subjected themselves to testimony. Most of them got up and provided public comment.

Q. And it was the hearing officer's role to say -- to recognize people who would be providing public comment; correct?

A. Yes.

Q. Did you have any input in deciding when to file the landfill application?

A. Just had to get the application done by the date. Other than whether or not we were able to complete the technical work by the date, but other than that, no.

Q. When you say "by the date," what do you mean?

A. Several dates were discussed, and I don't remember the precise date. And the questions were, "Can you have it ready by this time?" And we said yes.

Q. Okay. Who asked you to get it ready by a certain date?

A. Mr. Murphy.

Q. And what date was he shooting for?

A. I don't recall. It was the date that we filed. Whenever, whenever that was.

Q. That was December 1, 2006?

A. It was a snowy day, I recall that. Yeah, it was the 1st of December. Yeah.

Q. That was no legal deadline, though; was it?

A. Well, in the fact that we had already noticed, I think we had some legal obligation to file on that date.

Q. What do you mean you had already noticed?

A. We had published a notice in the paper that we were going to file on that day.

Q. But you could have -- there was no legal deadline to publish that notice; am I right?

A. Not that I'm aware of.

Q. So the landfill application could have been filed earlier, it also could have been filed later; correct?

A. Yes.

Q. And when you filed the application on December 1, 2006, you knew that the City of Yorkville would be holding elections in April of 2007; correct?

A. I was aware, yes.

Q. Let me show you what has been marked as Yorkville Deposition Exhibit No. 3, which is Fox Moraine's interrogatory answers to this landfill appeal. And you have seen these before; correct?

A. Yes.

Q. And in the response to Interrogatory No. 1, you're listed as one of the four people who supplied information or documents used in preparing these answers; correct?

A. Yes.

Q. What did you do to help prepare Fox Moraine's interrogatory answers?

A. I discussed them on the phone with Mr. Helsten.

Q. Anything else?

A. Not to my recollection, no.

Q. Did you supply any documents?

A. Not to my recollection, no.

Q. Throughout the annexation and landfill process beginning in let's say September -- let's say beginning of September 2006, did you or anyone at Shaw Environmental subscribe to a newspaper clipping service to gather articles that were appearing in the press regarding the landfill?

A. I subscribed to four or five different electronic and conventional press clipping services.

Q. And what are those?

A. Illinois Press Association, the Illinois Recycling Association, NSWMA.

Q. What is that one?

A. National Solid Waste Management Association. I think that's probably where I get most of them.

Q. And during 2006, 2007, were you receiving articles regarding the proposed Fox Moraine landfill?

A. Yes.

Q. And where were those articles appearing?

EXHIBIT D

UNITED CITY OF YORKVILLE, ILLINOIS

SPECIAL MEETING OF
THE CITY COUNCIL

REPORT OF PROCEEDINGS had and testimony taken at the hearing taken on May 23, 2007, at the hour of 7:00 p.m., before Christine M. Vitosh, C.S.R., at the Grande Reserve Elementary School, Yorkville, Illinois.

PRESENT:

MAYOR VALERIE BURD,
MR. JASON LESLIE, Alderman,
MR. WALLY WERDERICH, Alderman,
MR. ARDEN "JOE" PLOCHER, Alderman,
MR. GARY GOLINSKI, Alderman,
MR. MARTY MUNNS, Alderman,
MS. ROBYN SUTCLIFF, Alderman,
MR. JOSEPH BESCO, Alderman,
MS. ROSE SPEARS, Alderman;
MR. PAUL JAMES, Alderman,
MR. JOHN CROIS, City Administrator,
MS. LISA PICKERING, City Clerk.

ALSO PRESENT:

WILDMAN, HARROLD, ALLEN & DIXON
2300 Cabot Drive, Suite 455
Lisle, Illinois 60532
(630) 955-6594
BY: MR. MICHAEL M. ROTH,
appeared on behalf of the United City of Yorkville.

- - - - -

(WHEREUPON, the proceedings were resumed as follows:)

MAYOR BURD: Calling the meeting to order, would you please rise for the pledge?

(Pledge of Allegiance)

MAYOR BURD: Roll call by the clerk, please.

MS. PICKERING: Leslie.
ALDERMAN LESLIE: Here.
MS. PICKERING: Werderich.
ALDERMAN WERDERICH: Here.
MS. PICKERING: Golinski.
ALDERMAN GOLINSKI: Here.
MS. PICKERING: Plocher.
ALDERMAN PLOCHER: Here.
MS. PICKERING: Munns.

(No Response)

MS. PICKERING: Sutcliff.
ALDERMAN SUTCLIFF: Here.
MS. PICKERING: Besco.
ALDERMAN BESCO: Here.
MS. PICKERING: Spears.

ALDERMAN SPEARS: Here.
MS. PICKERING: Burd.
MAYOR BURD: Here.

(Enter Alderman Munns)

MAYOR BURD: We have a quorum.
ALDERMAN MUNNS: Here.
MAYOR BURD: Would the city attorney please introduce this case?

MR. ROTH: This is a special meeting of the City Council of the United City of Yorkville, Illinois, called for the sole purpose of consideration of an application filed by Fox Moraine, LLC, for a landfill siting approval pursuant to 415 Illinois Compiled Statutes Chapter 39.2 of the City of Yorkville.

Notice of tonight's meeting has been given as required by law. By way of background, on December 1st of 2006, Fox Moraine, LLC, filed an application with the City for siting approval of a solid waste landfill upon a 443-acre parcel of property located generally at Route 71, four miles west of the intersection of Route 71 and 47.

The City appointed a hearing officer to conduct public hearings on the application in accordance with the standards and procedures set out in Section 39.2, rule upon evidentiary issues and motions, and to make substantive findings and recommendations to the City Council as to the application.

Public hearings were then held on 23 days from March 7th, 2007, through April 20th of 2007, at which testimony and other evidence was given.

The hearing officer then closed the public hearings on April 20th of 2007 and, pursuant to statute, a period for receipt of additional written comment was open from April 21st, 2007 through May 21st of 2007.

The applicant, the public, and representatives of any public agencies and organizations made comment and introduced evidence. Many written comments, including a report, recommendation from the City Staff and its attorney, were received, and all of this, including a filing dated May 21st from the applicant, has been included in the public record

in this matter.

The hearing officer has submitted his findings and recommendations and those have been forwarded to the City Council. These findings and recommendations are advisory to the City Council.

We are now in a stage of this proceeding where the City Council shall consider and deliberate over the application. No further evidence or input from the applicant or the public is to be taken.

The City Council's general rules and procedure as set forth in the City's Code regarding Council debate governs tonight's proceedings.

The issue tonight is whether or not the applicant has met his burden of proving that the proposed landfill meets the statutory siting criteria under the Illinois Environmental Protection Act.

The City Council has three options: It may approve the application, it may deny the application, or it may approve the application on certain conditions.

The City Council is under no legal obligation to satisfy the siting standards for the applicant by fixing conditions of approval.

Before deliberation begins, there are two preliminary matters that need to be attended to. The hearing officer did not rule on two pending motions, but left them for the City Council to decide, so the first order of business is to do that.

The first pending motion is whether to dismiss the matter based on an assertion that the property is the subject -- that the property that is the subject of the local siting application was not properly annexed to the United City of Yorkville and that, therefore, these proceedings are not under the jurisdiction of the City.

Consistent with the recommendation of the hearing officer, we recommend that the Council deny the motion. The question of the propriety of the annexation is not subject to an indirect legal challenge to these proceedings, annexation is presumed by law

to be valid and we, therefore, recommend that this motion be denied.

The second motion is that Mayor Burd and Alderman Spears be disqualified from participation in the local siting process. Fox Moraine has alleged that those two officials have engaged in conduct that show bias. This request is contrary to Section 39.2, and no evidence was introduced as to this contention by the applicant. For these reasons, we recommend that this motion also be summarily denied.

So, first, I recommend that a motion be made to deny Kendall County's motion to dismiss for lack of jurisdiction.

ALDERMAN SPEARS: So moved.

ALDERMAN LESLIE: Second.

MAYOR BURD: Could I have roll call, please?

ALDERMAN MUNNS: Any discussion on that?

MAYOR BURD: Any discussion? Any questions, any discussion?

ALDERMAN MUNNS: Just one question, why the hearing officer who attended every

MS. PICKERING: Golinski.
ALDERMAN GOLINSKI: Aye.
MS. PICKERING: Werderich.
ALDERMAN WERDERICH: Aye.
MR. ROTH: Next I recommend that a motion be made to deny Fox Moraine, LLC's motion to disqualify Mayor Burd and Alderman Spears from participating in these proceedings.
ALDERMAN GOLINSKI: So moved.
ALDERMAN WERDERICH: Second.
MAYOR BURD: We have -- Any discussion on this? Any questions?
(No Response)
ALDERMAN SPEARS: I want to vote against any rules or any landfill -- their rules, am I allowed to vote on this to remove myself? Okay. Thank you.
MAYOR BURD: Any other questions?
(No Response)
MAYOR BURD: Roll call vote, please.
MS. PICKERING: Plocher.
ALDERMAN PLOCHER: Aye.
MS. PICKERING: Spears.
ALDERMAN SPEARS: Aye.

MS. PICKERING: Sutcliff.
ALDERMAN SUTCLIFF: Aye.
MS. PICKERING: Besco.
ALDERMAN BESCO: Aye.
MS. PICKERING: Leslie.
ALDERMAN LESLIE: Aye.
MS. PICKERING: Golinski.
ALDERMAN GOLINSKI: Aye.
MS. PICKERING: Werderich.
ALDERMAN WERDERICH: Aye.
MS. PICKERING: Munns.
ALDERMAN MUNNS: Aye.
MAYOR BURD: Now we move into the debate section.
ALDERMAN WERDERICH: Actually, actually, if I could make a point here before we move in, one of the things that we did receive today in regards to things that we're supposed to take into consideration was post-public hearing written comments by the applicant, Fox Moraine. I would like to ask the attorney, one, whether this is something that can be done and can be taken into consideration especially in the voluminous amounts that has

been provided to us at this point.
MR. ROTH: Well --
ALDERMAN WERDERICH: And I guess the timing of it, too, is the other thing. What's concerning to me is the fact that we were given these voluminous amounts right before the period of time that we were supposed to make the deliberations and decisions.
MR. ROTH: I can only tell you that --
ALDERMAN WERDERICH: Is that --
MR. ROTH: -- this binder -- this binder of information --
ALDERMAN WERDERICH: And that's double-sided, right?
MR. ROTH: It's double-sided. -- appeared tonight to have been filed -- received by the City on the 22nd, it was post-marked on the 21st, and according to your ordinance, that is sufficient within the 31-day -- the 30-day period, excuse me, for post-hearing comment, so it is before you and it is in the record.
MAYOR BURD: If anybody would like

to move to adjourn until tomorrow --
ALDERMAN BESCO: Yes.
MAYOR BURD: -- so that you can read this through and you feel that you need more time for consideration --
ALDERMAN LESLIE: I am concerned about the time.
MAYOR BURD: We have to vote by the 29th of May. That means that would move us back another day, so you need to consider that. We can't do all of this in one night. We need to have discussions --
ALDERMAN WERDERICH: I --
MAYOR BURD: Excuse me, please. We need to have discussions and then we will have to give our attorneys time to prepare a resolution based on the consensus of the City Council and they will come back the next day with that resolution and then we will vote, so we need at least one night of debate, and then the next night we will have the resolution that we will vote on and you can debate that resolution at that time. So that's the outline of what we're going to do.

CERTIFICATE OF SERVICE

I, Patti Racky, a non-attorney, certify that I caused a copy of the foregoing **Notice of Filing and United City of Yorkville's Reply in Support of Its Motion in Limine # 1** to be served upon the Hearing Officer and all Counsel of Record listed on the attached Service list by sending it via Electronic Mail on October 7, 2008.

/s/ Patti Racki

[x] Under penalties as provided by law pursuant to ILL. REV. STAT. CHAP. 110 – SEC 1-109, I certify that the statements set forth herein are true and correct.

SERVICE LIST

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
hallorab@ipcb.state.il.us

George Mueller
Mueller Anderson, P.C.
609 Etna Road
Ottawa, Illinois 61350
george@muelleranderson.com

Charles Helsten
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389
chelsten@hinshawlaw.com

Michael S. Blazer
Jeep & Blazer, LLC
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
mblazer@enviroatty.com

Eric C. Weiss
Kendall County State's Attorney
Kendall County Courthouse
807 John Street
Yorkville, Illinois 60560
eweis@co.kendall.il.us

James J. Knippen, II
Walsh, Knippen, Knight & Pollock
2150 Manchester Road
Suite 200
Wheaton, IL 60187
jim@wkkplaw.com
heather@wkkplaw.com

James B. Harvey
McKeown, Fitzgerald, Zollner,
Buck, Hutchison & Ruttle
24255 Glenwood Avenue
Joliet, IL 60435
jim@mckeownlawfirm.com