

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FOX MORaine, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. PCB 07-146
	)	
UNITED CITY OF YORKVILLE, CITY	)	
COUNCIL,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: All counsel of Record (see attached Service List)

Please take notice that on April 24, 2009, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, Amended Motion of Petitioner, Fox Moraine, LLC for a Finding That Valerie Burd Was Not a Credible Witness

Dated: April 24, 2009

Respectfully submitted,

On behalf of FOX MORaine, LLC

/s/ Charles F. Helsten  
One of Its Attorneys

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 Petitioner, )  
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 UNITED CITY OF YORKVILLE, )  
 CITY COUNCIL, )  
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 Respondent.

**AMENDED MOTION OF PETITIONER, FOX MORaine, LLC FOR A FINDING THAT VALERIE BURD WAS NOT A CREDIBLE WITNESS**

NOW COMES FOX MORaine, LLC ("Petitioner") by its attorneys, Charles F. Helsten and George Mueller, and moves for a finding by the Hearing Officer that Valerie Burd was not a credible witness, and, in support thereof, states as follows:

1. A public hearing was held herein on April, 21, 22 and 23, 2009, on the issue of whether or not the proceedings before the Yorkville City Council were fundamentally fair. Valerie Burd, mayor of Yorkville, testified at the hearing.

2. The Hearing Officer in this type of hearing is not required to make a finding regarding the credibility of each testifying witness, but typically does make such a finding. *See e.g., Forest Preserve Dist. of DuPage County, Illinois v. Mineral and Land Resources*, PCB 96-084 (Nov. 6, 1987) (noting the importance of credibility determinations by the Hearing Officer who observes the testimony).

3. In this case, the record demonstrates conclusively that Valerie Burd was not a credible witness. In the absence of a complete transcript of the instant hearing, a more comprehensive motion is not possible, however, there is more than ample evidence to conclude that Ms. Burd was not credible.

4. Fox Moraine has contended, as one of its principal, threshold fundamental fairness arguments, that Valerie Burd (an alderman at all relevant times herein until May 8, 2007 when she was sworn in as mayor) was elected mayor on April 17, 2007, after having run as an anti-landfill candidate, and that she prejudged the merits of the case along with others controlled and influenced by her, and that she led a calculated, deliberate, collaborative effort to wrongfully deny the siting application.

5. Ms. Burd testified that Ron Parrish and Todd Milliron were members of her campaign committee, and that they served in that capacity until her election as mayor on April 17, 2007. She testified unequivocally and several times that she never knew that either Parrish or Milliron were landfill opponents. The following are excerpts of statements made publicly by Parrish and Milliron at City Council meetings or landfill public hearings, all of which Burd attended as a City alderman. All the transcripts cited herein were admitted into evidence in the instant hearing, with the exception of the transcript of the landfill application public hearing of 3/26/07, which was already in evidence as part of the record filed by the City.

Ron Parrish

9/26/06 p. 85, lines 16-8: There has never been anything done to help this or any of us out on that road to stop this landfill from going.

9/26/06 p.200, lines 9-13: I do know this. I'm against anything that the attorney for the landfill is for, so I guess he helped me make my decision. That is pretty much my determining factor.

10/24/06 p.47, lines 20-24: If you want to see a lawsuit, you haven't seen a lawsuit until you see, when you start messing up the water table for the whole City. Because, gentlemen, we get our water, and you also get your water there.

10/24/06 p. 50, lines 19-24: ...we don't need a landfill out there. And, if anything, we most certainly don't need the water contaminated. I can tell you right up front, I for one, when you contaminate mine, you've never seen such a lawsuit as you are going to get and I live right down the hill from you.

10/24/06 p.72, lines 14-19: So we already know what kind of responsibility they are going to take. ... I got news for you, it won't be their nuclear waste and it won't be their water that they messed up either. It will be ours. But you know what, you all are going to have to answer for that because I am going to remind you every day.

10/30/06 p.101, lines 16-18: Would you like to know that the Federal Government says 82 percent of them are leaking and you are an expert and don't know that?

11/14/06 p.13, lines 13-17: The next concern is that I wonder if the City of Yorkville would also consider the fact that I know that you have to be doing it for money, for funds. That's the only advantage that there could be.

11/30/06 p. 24, lines 4-8: I have said this many times. I don't want either landfill out there, but I know the County was turned down, they turned down the landfill from being out there.

11/30/06 p.175, lines 9-14: [T]his gentleman has mishandled the truth before. It scares me that he is going to be the one that says, okay, this is what the bond should be. I **wouldn't trust him to take my daughter to school, much less tell me what the bond should be** (referring to Fox Moraine Landfill design engineer Devin Moose).(emphasis added).

#### Todd Milliron

9/26/06 p.23, lines 2-24; p.24, lines 1-24; p.25, lines 1-15: We're only here tonight because Art Prochaska and the City Staff decided to offer very lucrative zoning candy to two adjoining property owners. This chain of property owners leads to the Hamman landfill property. How this deal was put together behind closed doors without the normal fair debate and a normal hearing process time tables should have all of you asking questions of why this vote is being called on such short notice.

Why is the City trying to slide all these annexations and zoning through under the rug on a ramrod timetable? It's not fair to the citizens of Yorkville or this County. You are – as a Council member said, this is a fair process, but preferential treatment has been given to these three property owners that are here tonight, and you are naïve and uninformed about the true motive behind the end game of annexing and zoning all these four properties.

This is supposed to be a democracy with rules and procedures for us all, and all have been broken in this case. From the date of the public notice to this vote tonight has only been 19 days. This is not an emergency annexation where a great public need is being addressed for the good of all citizens.

The only emergency is Mr. Hamann has lost out in the bidding competition of the current County landfill site process. There is a need for a landfill – landfill site in this

County, but at present there is only need for one and only one, not two. We don't need one in the City and the County.

9/26/06 p.198, lines 17-21: So this is the end game and the truth is here. We're connecting all these properties one-by-one to get out here, and now we're discussing a landfill when that wasn't on the agenda.

10/10/06, p. 22, lines 11-21: I am here tonight to plead not to vacate Sleepy Hollow Road. Many on the City Council think this is a foregone conclusion and it's inevitable that Mr. Hamman is going to site his landfill. It is not. Sleepy Hollow Road is a major incumbrance on that 220 acre proposed landfill site. I would like to have you look at your host agreement and the topographical map that is the last page of that host agreement and you will see that that road virtually runs right down the middle of that landfill site. It is a lock on that site.

10/10/06 p. 23, lines 14-15: Why are you helping him with the dump that nobody in this town or county wants?

10/10/06 p. 24, lines 9-23: [Y]ou're proposing to take it away from us and give it to Mr. Hamman so he can reap substantial financial benefit at the expense of all of us where our home values are going to be decreasing, devalued. We are going to have increased truck traffic on already overburdened roads and there is going to be 12 months of stink a year...I want you to think about this road as you will be doing irreparable harm to this community. You are elected to protect and serve. You are supposed to serve all of us, not the one person with the most money in this County.

10/24/06 p.39, lines 19-20; p. 40, lines 1- 8: This town does not want this garbage dump and you choose to ignore the very people you are elected to serve. You might as well change the name of this town right now to the United City of Rotdale...Again, Joe Besco and you gentlemen keep finding a way to help Mr. Hamman get his landfill. Why? Why are you helping him? Why won't you listen to us?

10/24/06 p. 40, lines 12-24: I am tired of being ignored. Your time to pay for your bad decisions cannot come soon enough. ...**We don't want Fox Moraine to get to the landfill finish line, siting finish line first; yet, you persist in making that a reality, which is a nightmare to all of us. Stop it and stop it now.** (emphasis added)

10/30/06 p. 146, line 11- 14: I'm trying to come to a calm demeanor tonight. It's a little hard for me to do that because I am so passionate about this issue.

10/30/06 p. 146, line 22 - p. 147, line 5: I would like to thank Rose and Ms. Burd for at least giving the opportunity for the City Council to vote on that. But it looks like this is another opportunity for you all to limit the debate to try to hold the decent and forget about us who all are sooner or later, if we live in the City, are going to have an opportunity to elect you guys on April 17th.

11/14/06 p. 11, lines 12-20: If you support this [referring to his proposal for a referendum], Fox Moraine will not be allowed to file for siting application on December 1, 2007, as they indicated -- or 2006 as they have indicated. I will put this process -- it will put this process on hold for six months until the April election and maybe the County will have made their landfill decision in the County. I am under the opinion we only need one landfill, not two, and that would be one in the County and one in the City.

1/23/07 p.75, lines 18-24; p.76, lines 1-4: [re: picture in paper] Now, who do we see in that picture? Look closely. One gentleman has his arm around the other. Art, do you recognize yourself in that picture? You look pretty cozy with the gentleman that has his arm around you. Could that gentleman be Don Hamman? **Please note, you can see both of our Mayor's hands in the picture, but only one of Mr. Hamman's. I am wondering where Mr. Hamman's other hand is, and you the on the City Council should, too.** (emphasis added)

3/26/07 p.61, lines 10-14: I have seen Mr. Hamman and his Fox Moraine associates holding court back by the Fox Moraine model and a couple of councilmen were back there being courted by Mr. Hamman and his associates about the finer attributes of this dump.

3/26/07 p.65, lines 3-16: These developments were unknowingly duped, along with the Kendall County Forest Preserve, into participating in this landfill scheme back in April of 2006. How these five developers -- I will call them the Landfill 5 -- were suckered into a 24-million-dollar SSA that made this scheme work just like dominoes ready to fall in line. It was a very calculated and engineered scheme that shows collusion and bias in the early part of the spring of 2006. This decision to site the dump was made sometime in late 2006 and April 2007.

3/26/07 p.85, lines 17-20: **This is all about greed and money. I don't know who is greedier, our mayor, the City, or Mr. Hamman. No one here wants Mr. Hamman's dump money.** (emphasis added).

3/26/07 p.90 lines 4-10: **I feel like a Jew being told Auschwitz is a summer camp. I had garbage storm troopers visit my home and take pictures.** I made a police report of that encounter and it is on file with the County. These were no little guys. These were 300-pound paparazzi storm troopers sent to intimidate me. (emphasis added)

3/26/07 p.90, lines 20-24, p.91, lines 1-9: I refuse to be quiet. I am going to continue to bring this deal to the light of day and expose the conspirators that are in the bed with Fox Moraine. **I feel like we've all been led to slaughter by a lying, Nazi mayor.** This has all been very orchestrated and well-planned out. It is not fair. It shows bias and collusion and we, the citizens, have not been heard, let alone represented by our city representatives in this whole sordid affair. **I am continuing to lead the dump fighters of the Yorkville ghetto. We have nothing to lose.** (emphasis added).

6. When other witnesses were asked about Parrish and Milliron, none of them had any difficulty acknowledging that both Parrish and Milliron were vocal landfill opponents throughout the annexation and siting hearing process. In defending the relevance of a line of questioning with Mr. Parrish, one of the City attorneys even referred to the fact that Parrish was speaking out against the landfill at a meeting. Ms. Burd was apparently so desperate to avoid the inescapable inference that she prejudged the application and was biased against Fox Moraine – an inference that properly flows from the fact that she surrounded herself and staffed her campaign with vocal landfill opponents – that she denied the undeniable, while testifying under oath. Such conduct is an insult to the oath.

7. Additionally, Ms. Burd testified that she received no campaign contributions from members of Friends of Greater Yorkville (FOGY), the organized and incorporated landfill opposition group. However, Ron Parrish testified that he had been an officer of FOGY and that he made numerous donations to Burd's campaign, including two round trip airplane tickets to anywhere in the US to be used at a fund raising event.

8. Ms. Burd also withheld the fact that Ed Sleezer, an opposition expert witness called by FOGY (3/28/09 pages 6-89), was a member of her campaign committee. Ms. Burd was asked a second time if she had named all the members of that committee, and again she failed to disclose Mr. Sleezer. Additionally, she failed to disclose her relationship with Mr. Sleezer at any time during the siting hearing. Arden Plocher, a sitting alderman and another member of Ms. Burd's campaign committee, testified that he was certain that Sleezer was on Burd's campaign committee.

9. The other members of Burd's campaign committee included Wally Werderich, one of the founding members of FOGY, and the person who had drafted its articles of incorporation. In his testimony, Werderich identified Plocher as another FOGY member.

10. Although Ms. Burd indicated that she never opposed the landfill prior to the vote on siting, it was amply evident even during the City Council meetings in late 2006 and early 2007, that Ms. Burd publicly aligned herself with the landfill opponents, for which she received congratulatory kudos from landfill opponents during public meetings. For example:

Transcript of October 30, 2006, *Page 153, line 7 to p. 154, line 24* [statement of Randy Scott]:

I also am a citizen of Kendall County who did not get a single say in any of this because of the annexation agreement... Tonight is my chance to participate. I will do it less in five minutes. **Alderman Spears and Alderman Burd, I congratulate you. You deserve a big round of applause. (Applause.) You are for the People. You are by the People. You are with the People. You are the People.** Now, I'll tell you something. I know my rights. I lost my rights. You have heard this before, but I'm sorry, I am going to say it again. I lost my rights being a citizen of the County....**The point I am trying to make here is Ron [Parrish] mentioned the other day -- my good friend, Ron -- he mentioned the other day that we need to do our homework. Okay. Some of you are doing your homework. You are doing a lot of it and you are doing it very good. ...Thank God for Alderman Spears and Burd.** (emphasis added).

11. The falseness of Ms. Burd's testimony that she was not a landfill opponent prior to the date of the final vote is further illustrated by her own statements at meetings. She proudly announced on October 24, 2006 that she had "voted against every single annexation that was leading up to **this whole thing**, all six of them and then the four. I voted against every single one of them..." (Transcript of Oct. 24, 2006, *Page 168, Line 23 – Page 169, Line 4*)(emphasis added).

12. Further, Ms. Burd's explanation of the June 15, 2007 Wildman law firm invoice for services from April 27, 2007 through May 29, 2007 in the amount of over \$94,000 (FM Ex. 16) is not as obviously, but otherwise just as equally, incredible. The extensive and focused



efforts of three Wildman lawyers detailed on this invoice prior even to Burd's installation as mayor completely belie her testimony that she did not direct them to do any work, let alone the specific work detailed in the invoice. Moreover, the immediate focus by the Wildman lawyers on opposition evidence, and disconnection of the landfill territory from the City (something, of course, that only becomes possible if there is a siting denial), leads invariably to the conclusion that those lawyers received specific instructions prior to April 27 (at a time when Burd had no authority to issue such instructions), and that those instructions were to build a case for denial of the application.

13. In his comments on the record on May 23, 2007, during deliberations, Alderman Munns made reference to recommendations from three lawyers, one of them, a memo from Attorney Roth, being a recommendation for denial (FM Ex 18 p.59, lines 5-10). We know that two of those recommendations are the City expert staff report authored by Attorney Price, and the Hearing Officer's report, and that both of these reports recommended approval with conditions. The third recommendation referred to by Munns can only be the secret "Roth Report" prepared by the Wildman firm.

14. Alderman Besco testified that prior to Sep. 26, 2006, Burd was a promoter of annexation and the possibility of a landfill (wanting the City and not the County to get the tipping fees). He noted that upon seeing the large crowd of opponents at the meeting on that night (when the host agreement and annexation were to be considered by the council), she immediately did a 100% turnaround in her view, and was thereafter hostile to annexation and the other pre-siting steps required of Fox Moraine.

15. The matters on which Ms. Burd has obviously testified falsely, as set out in this motion, are not trivial or collateral. They go to the heart of her denial of bias and prejudgment,

including her unequivocal testimony that she never expressed an anti-landfill opinion prior to the night of the final vote. Accordingly her testimony that she was not biased and did not prejudge the application is no more credible than the specific details of her testimony which have been demonstrated to be unbelievable.

WHEREFORE, Petitioner respectfully prays that the Hearing Officer enter a finding that the testimony of Valerie Burd was not credible.

Dated: April 24, 2009

Respectfully submitted,

On behalf of Petitioner

/s/ Charles F. Helsten

One of Its Attorneys

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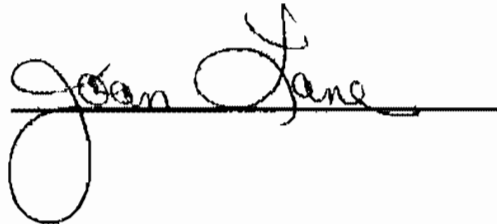
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**AFFIDAVIT OF SERVICE**

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on April 24, 2009, she served a copy of the foregoing upon:

Via E-Mail – hallorab@ipcb.state.il.us Bradley P. Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center 1000 W. Randolph St., Ste. 11-500 Chicago, IL 60601	Via E-Mail – dombrowski@wildman.com Leo P. Dombrowski Wildman, Harrold, Allen & Dixon 225 West Wacker Dr. Suite 3000 Chicago, IL 60606-1229
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Via E-mail.

A handwritten signature in black ink, appearing to read "Joan Lane", is written over a horizontal line. The signature is cursive and includes a large loop at the beginning.

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