

ILLINOIS POLLUTION CONTROL BOARD
December 30, 1982

WASTE MANAGEMENT OF ILLINOIS, INC.,)
)
) Petitioner,)
)
) v.)
)
LAKE COUNTY BOARD,) PCB 82-119
) Respondent,)
)
) and)
)
VILLAGE OF ANTIOCH,)
)
) Intervenor.)

MR. DONALD J. MORAN, OF PEDERSEN AND HOUPT, APPEARED ON BEHALF OF PETITIONER;

MR. THOMAS VOLINI, OF WASTE MANAGEMENT, APPEARED ON BEHALF OF PETITIONER;

MR. GERALD F. CALLAGHAN, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF RESPONDENT;

MR. GARY NEDDENREIP, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF RESPONDENT; AND

MS. DONNA R. HENDERSON APPEARED ON BEHALF OF INTERVENOR.

OPINION AND ORDER OF THE BOARD (by I. G. Goodman):

Pursuant to Section 40.1 of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111½, par. 1001 et seq.) (Act) Waste Management of Illinois, Inc. (Waste Management) on October 1, 1982 petitioned this Board to review the decision of the Lake County Board (Lake County) to deny siting approval for expansion of its regional pollution control facility, an existing landfill. Also, on October 1, 1982, Waste Management moved that Lake County be ordered to clarify its decision denying approval and that hearing be held within twenty-one days. On October 5, 1982 this Board directed Lake County to file the record for review as required by Section 40.1 of the Act. On October 14, 1982 Waste Management's motion to clarify was denied and hearing was ordered to be held within forty-five days of that Order. With that same Board Order, the Village of Antioch was granted the right to intervene. On October 18, 1982 Lake County moved to strike Waste Management's

petition, and on October 21, 1982 Waste Management moved for reconsideration of the Board's October 14th Order. Both motions were denied on October 27, 1982. On October 26, 1982 Lake County filed with this Board a certified record pertaining to its decision.¹ The Section 40.1 public hearing before the Board was held on November 23, 1982 at the Lake County Courthouse. In addition to the record filed by Lake County, and that established at the November hearing, the three parties filed briefs with the Board on December 3 and 13, 1982. Waste Management filed a Reply Brief on December 17, 1982.

This appeal involves the expansion of an existing landfill owned by Waste Management, which is intended to handle domestic and special, non-hazardous wastes. Pursuant to Section 3(x)(2) of the Act, such an expansion constitutes a new regional pollution control facility, and therefore siting approval by the unit of local government is necessary. The existing facility, known as the HOD landfill, is within the Village of Antioch's (Antioch) boundaries, whereas the expansion is located in an unincorporated area of Antioch Township, Lake County. Therefore, on May 28, 1982 Waste Management submitted its application for siting approval to the Lake County Board. Notice to property owners and the published public notice required under Section 39.2(b) of the Act had been previously issued on May 14, 1982. The statutory requirement that these notices precede the application by fourteen days was waived by Lake County when it rendered its decision. (Lake County Rec. 3609.) Waste Management filed its application, consisting of approximately six hundred pages of supporting information, data, and exhibits, and paid a filing fee of \$8,000. The filing fee and application requirements had been established by County Ordinance adopted on April 13, 1982. (Id. 0866-0877.) That same ordinance included procedural provisions that such petitions be reviewed and recommended by a County Review Staff and that the Section 39.2 public hearings be conducted by a Regional Pollution Control Hearing Committee, in this instance a five member panel appointed by the twenty-six member County Board.

Twelve public hearings were held on the following days: July 20, 21, 27, 29 and August 3, 5, 10, 12, 13, 18, 19 and 23, 1982. Waste Management presented witnesses in support of the proposed expansion and Antioch presented witnesses in opposition. The public was allowed to cross-examine these witnesses and to testify. Both Waste Management and Lake County represented that the hearings were well attended by the public. These hearings, concluded on August 23, 1982, produced a record of approximately 2,500 transcribed pages.

On September 7, 1982 a public hearing was held by the Hearing Committee to consider the evidence and make a recommendation to the full County Board. The Hearing Committee recommended denial

¹The excellent organization of this extensive record is commended and much appreciated by the Board.

of the expansion site, which was supported by written reasons (Id. 3609). The Review Staff, on the other hand, had recommended that siting be approved (Id. 2122). On September 14, 1982, at its regular meeting, the Full County Board by resolution denied siting approval by a vote of 21-2. The resolution supporting the decision was premised in part on the attached Exhibit A, which was the Regional Pollution Control Hearing Committee's written recommendation.

The proposed expansion is a 30.2 acre rectangular site adjoining the HOD landfill, which is approximately forty acres in size and currently permitted by the Illinois Environmental Protection Agency (Agency) as a sanitary and special waste landfill handling facility. Both parcels of land, as well as a still older, abutting closed landfill of approximately twenty acres, were acquired by Waste Management in 1975. The proposed site's northern boundary is Depot Street (Little Silver Lake Road), and north of that is vacant land zoned for agricultural use. To the east is a residential area, where five homes are located within 1000 feet of the proposed site. Southeast of both the proposed and existing site is the Little Silver Lake Subdivision, where there are 37 homes within 1000 feet of the site. The southern boundary of the proposed site abuts the existing facility and to the west is vacant land owned by Waste Management. Further west is an industrial subdivision and northwest is the Village of Antioch. The Village population is approximately 4,440 persons.

Procedural Issues

As stated above, the public hearing required under Section 40.1 was held on November 23, 1982. Approximately twenty persons attended, but only one citizen testified (Board Hearing 11/23/82 pp. 56 and 58).² No witnesses were present for any party. Rather, the parties proposed that three documents be added to the record before the Board. Waste Management sought to include two documents: 1) a letter signed by the Mayor of Antioch, Raymond B. Toft, dated September 1, 1982 and addressed to the Lake County Board members, and 2) a transcribed portion of the September 14th County Board meeting. Lake County sought to include a letter

²The Board finds it necessary to take official notice of four newspaper articles which described the then upcoming Board hearing. Each of these accounts, published on November 1 and 22, 1982 in the Antioch News and November 4 and 18, 1982 in the Antioch Reporter contained erroneous information. Contrary to the information attributed to the Village Attorney, the hearings held by the Board in these cases are open to the public and citizens are offered the opportunity to testify. Furthermore, the Board, not its hearing officer, renders the final decisions in this type of appeal. The Board's own notice of this hearing was noticed as a public hearing.

written by Thomas Volini, counsel to Waste Management, which had been delivered to the Regional Pollution Control Hearing Committee's chairperson on September 13, 1982 and distributed to other County Board members on September 14, 1982. The accuracy of these documents was stipulated in writing by all three parties. Lake County and Antioch, however, objected to admission of two documents offered by Waste Management. Waste Management did not object to its letter being included. The stipulation and three documents were accepted into evidence by the Board's hearing officer that day (Id. pp. 19, 20, 23, 27 and 28).

In support of its offer Waste Management relied on County of LaSalle, et al. v. Illinois Environmental Protection Agency, PCB 81-10 (February 16, 1982) and Village of Hannover Park v. County of Du Page, et al., PCB 82-69 (September 2, 1982). Waste Management argued that these documents constituted post-hearing documents relied upon in the decision-making, and therefore must be included in the record submitted to the Board. Lake County and Antioch objected that there was no evidence that the letter was relied upon and that the transcript was irrelevant and outside the record to be reviewed. Hanover Park was again relied on, in that the motives of the individual members were not properly subject to this Board review.

The hearing officer's ruling on both letters is affirmed in that both may have somehow influenced the County Board's decision making, and should therefore be part of the record. However, the transcript is excluded from the record. Section 39.2(d) and (e) require the County Board to conduct public hearings, which develop a record sufficient for purposes of a Section 40.1 appeal, and to put its decision in writing, specifying its reasons in accordance with the six statutory criteria contained in Section 39.2(a). Section 40.1(a) requires the Board to consider the "written decision and reasons for the decision..., the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2 and the fundamental fairness of the procedures used by the County Board or the governing body of the municipality in reaching its decision". The meeting to adopt the written decision is not a part of the Section 39.2 hearing process. Therefore, unless the comments offered by individual County Board members prior to the adoption of the written decision reveal "fundamental unfairness" in the hearing or decision-making process, they are immaterial. Having reviewed the transcript of the September 14, 1982 hearing, the Board finds no such indication. The transcript is therefore excluded as immaterial.

At issue is the standard of review applied by this Board in considering the decision rendered by Lake County pursuant to the authority granted it in Section 39.2 of the Act. Again, that Section requires that the local unit provide a written decision with reasons supporting the denial or grant of siting approval. As such, this authority is essentially quasi-judicial, much like that granted this Board in Section 35(a) of the Act. Therein,

the Board is empowered to grant or deny variances, which must be accompanied by a written decision. Characterized as a quasi-judicial action by the Supreme Court in Monsanto Company v. Pollution Control Board, et al., 67 Ill.2d 276, 367 N.E.2d 684 (1977), this decision-making was subject to the manifest weight standard of review. 367 N.E.2d at 689. Since the local unit of government's action is similarly quasi-judicial in that it is empowered to grant or deny siting of new regional pollution control facilities, the same standard of review is applicable. Regarding the imposition of conditions, the Board notes that Section 39.2(e) additionally and specifically requires that such conditions must be "reasonable and necessary to accomplish the purposes of this Section...", once they are determined to fall within the scope of authority granted to the county or municipality.

Waste Management argued that this Board, as an administrative body charged with considering statewide environmental interests as well as reviewing the local unit's decision, has broader review powers than a judicial reviewing power, i.e. the courts. Petitioner is correct. The Board's scope of review encompasses review of the record and decision, and evaluation of the County decision based on this record. However, the Board can only review the evidence to determine whether the six criteria were satisfied, since it is statutorily barred from accepting new evidence. The statewide interest is in that this Board assures that in each case satisfaction of the six criteria is uniformly achieved, and that the siting process is fairly conducted. Therefore, although the scope may be broader, the standard of review is the same as that defined in the Monsanto decision.

Waste Management further argues that this standard should not apply since this Board is statutorily required to hold a public hearing, after which its hearing officer weighs the credibility of witnesses. However, the Section 40.1 hearing has been limited to introduction of evidence involving the completeness of the record and the fundamental fairness of the local unit's process. New evidence and credibility only come into play on issues never previously before a reviewing body. This in no way affects the Board's review as to whether the six criteria are satisfied.

The County Board Decision General Considerations

As stated by the County in its brief, the County Board decision does not contain the level of explanatory information expected by the Board as set forth in Hanover Park, supra, and Browning Ferris Industries of Illinois, Inc. v. Lake County Board of Supervisors, PCB 82-101 (December 2, 1982). The County argues that it did not possess the recent Hanover Park decision at the time of the County Board decision. Rather the County relies upon the Board's decision in Browning Ferris which stated that a decision where the record demonstrates substantial compliance with

the Act will not be remanded. The Board accepts the County Board's explanation and argument, and will therefore consider its decision in light of the record presented.

The Board will not, however, rewrite the County Board's decision based upon arguments presented in the County's brief. The County Board's decision speaks for itself and the Board will not review issues or criteria not therein addressed. In this case the County argues that paragraphs 3 and 4 of the County Board decision taken together constitute compliance with the Act with regard to all six criteria set out in Section 39.2. Paragraph 3 states "That the applicant had the burden of proof as to each of the criteria set out in ch.111½, §1039.1, Ill. Rev. Stat." (sic) and paragraph 4 states that "That although the applicant presented testimony and evidence on each of the statutory criteria, that evidence was rebutted in part by the objector, Village of Antioch". Paragraph 3 merely states that Waste Management had the burden of proof as to the criteria cited and paragraph 4 notes that the evidence presented by Waste Management was rebutted in part during the hearings. Neither of these two findings taken separately or together are sufficient for Board review of all six criteria. The Board will therefore limit its review to the three criteria specifically addressed in the County Board decision, i.e., relationship of the facility to the public health, safety, and welfare, the necessity of the facility to accommodate the waste needs of the area it is intended to serve, and the compatibility of the facility with the character of the surrounding area and its impact on the value of surrounding property.

Public Health, Safety, and Welfare

Much of the County Board's decision was based upon this second statutory criteria. Paragraph 5 of the decision cites evidence that the proposed site is located too close to existing public and private wells in the area and too close to a residential neighborhood. Paragraph 2 states that existing sand lenses in the underlying geology and lack of sufficient number of soil borings would jeopardize the public health, safety and welfare of the residents in the area. Paragraph 8 states that leachate from the existing facility was not used in soil permeability tests and that therefore none of the representations of Waste Management with respect to the permeability of the soil underlying the proposed site are reliable. Paragraph 14 finds that the proposed inspection and monitoring of the site is insufficient. Paragraph 16 states that Waste Management did not prove that the underlying aquifer would be protected for all times. With the exception of the last part of paragraph 5 (too close to a residential neighborhood), all of the above findings addressed the highly technical details of the landfill design and construction. The Board has previously found in Waste Management of Illinois, Inc. v. Board of Supervisors of Tazewell County, PCB 82-55 (August 5, 1982) and Browning Ferris, supra, that these highly technical issues are beyond the jurisdiction of the local authorities and are to be

determined by the Illinois Environmental Protection Agency (Agency). The Board therefore rejects the above noted findings as beyond the statutory authority of the County Board.

In paragraph 9 of its decision, the County Board finds that the legislative intent of Section 39.2 was to allow County Boards to consider all aspects of landfill siting considerations including the geology of the site, effects of leachate on the soils, and all other scientific factors that could affect public health, safety and welfare, citing the testimony of State Senator Geo-Karis. With all due respect to Senator Geo-Karis who was a co-sponsor of the original legislation, the Board finds that notwithstanding the Senator's intention in presenting the legislation, the legislative history as set forth by the Board in Waste Management and Browning Ferris, supra, indicates that the legislative intent at the time of final adoption was to give exclusive jurisdiction of these highly technical matters to the Agency.

Site Necessity

Paragraph 10 of the County Board decision states that "...if the site location is denied there will remain 10.75 years for the County or Waste Management to find another landfill site given the remaining capacities of existing landfill sites serving the area". Clearly, the County Board has stated that the proposed site expansion is not necessary to accommodate the waste needs of the area it is intended to serve pursuant to paragraph 1 of Section 39.2(a) of the Act.

Waste Management argues that its proposed expansion is necessary to accommodate the area that it is intended to serve. A considerable amount of evidence was presented to the County Board in support of this contention. An expert witness, Richard Eldridge, testified that in his opinion the expansion of the landfill was necessary to meet the needs of the area it is intended to serve. (County Board Hearing 7/20/82, pp. 16-90.) Mr. Eldridge's opinion was based upon certain governmental reports concerning licensed landfills and their projected lives, data obtained from Waste Management concerning areas served by the existing landfill site, and his opinion that landfills should be located within a 15 mile radius of the area served in order to minimize the cost of transportation to a disposal site. It was his opinion that without the proposed expansion two other comparable landfill sites would remain in the area, one with a life expectancy of approximately 15 years and the other with an expected life of approximately 30 years. A third landfill apparently has a short term life expectancy of approximately 3 years and it was estimated that the existing landfill has an expected life of approximately 1 year. Mr. Eldridge also testified concerning the entire area of northeastern Illinois.

Waste Management also argues that the Lake County staff report (Lake County Rec. 3510-3582) supports Mr. Eldridge's opinion. The staff report notes that if the proposed facility

is not accepted, dislocation and redirection of wastes would significantly impact the area. The staff was of the opinion that sending the material to the remaining two landfill sites would result in additional expenses and that the remaining landfills would have a shortened life expectancy. The staff report was based primarily upon information furnished by the application. Both the County and Intervenor, Antioch, allege that Mr. Eldridge and the staff's opinion are premised upon information provided by Waste Management and are therefore entitled to less weight than if the underlying information had been subject to cross examination or had been prepared independently.

The County on the other hand relies on evidence presented at hearing by Alfred J. Little, Chairman of Intervenor Antioch's Landfill Investigative Committee. Using information presented by Waste Management and the Lake County staff, Mr. Little prepared an exhibit (Antioch Ex. 70, Id. 2486) purporting to show that the waste needs of the area presently served by the Antioch site would be accommodated by the aforementioned other two Waste Management sites with a minimum life expectancy of at least 10 to 11 years per site. Mr. Little testified concerning the number of other landfill sites and under cross examination admitted he was not an expert but had merely developed the exhibit using the evidence previously presented in this matter. His estimation of 10 to 11 years estimated life expectancy of the other two landfills should the proposed Antioch expansion be denied was not challenged.

Although very simplistic in its nature and admittedly developed with no expertise in landfill siting, Mr. Little's presentation appears to the Board to go to the heart of the issue presented by the statute. Because this is a regional facility, the county cannot ignore the scope of the area to be served. For example, if the site is intended to serve to a significant degree, a community or industry outside its boundaries, but within the intended area, the county must consider it. However, the statute also says a facility must be necessary to accommodate the waste needs of the area it is intended to serve. It does not say "convenient". And most importantly it does not say that land use planning must be considered. Mr. Little's unrebutted presentation indicates that at the present time there are two other landfill sites available to accommodate the waste needs of the area and that they will be available for ten years in the future. The Board therefore finds that the decision by the County Board that the facility is not necessary to accommodate the waste needs of the area it is intended to serve is not against the manifest weight of the evidence presented in the record.

Incompatibility and Effect on Value

In support of its contention that the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property (Section 39.2(a)(3) of the Act), Waste

Management provided a number of expert witnesses and supporting exhibits. Mr. J. Christopher Lannert, a landscaping and planning expert, testified concerning the compatibility of the proposed expansion facility with the character of the surrounding area (County Board Hearing, 7/21/82, pp. 12-102). Mr. Lannert testified that in his opinion the proposed site would be compatible with the characteristics of the surrounding area noting that the proposed site adjoins the existing and operating landfill and is surrounded by low intensity uses. In the presentation he discussed road access, prevailing winds, existing vegetation along the parameters of the site, a proposed screening berm along Depot Street, additional berms during operation and closure of the landfill and the proposed final configuration of the landfill subsequent to its closure. In addition he noted that there were few home sites in close proximity to the proposed site. Referring to applicant's Exhibits 16-21, Mr. Lannert described the vegetation using photographs taken at close range to the proposed site and discussed the final effect of the proposed landfill, specifically its ultimate height, from the perspective of the site boundary line. Mr. Lannert explained that in addition to the existing vegetation, screening berms and fences will be erected to hide the operations of the proposed landfill during its life. In addition, exhibits were presented indicating the final use of the proposed landfill as open space. Under intense cross examination by Antioch, Mr. Lannert indicated that his testimony was based upon a confined perspective, essentially from adjacent roadways, and that Waste Management did not have control of some of the vegetation that he had referenced. Mr. Lannert testified that he had not considered the proposed landfill from the perspective of Antioch proper and when asked why he had not, he stated "I don't find landfills objectionable". (County Board Hearing, 7/21/82, p. 51.)

Under cross examination by citizens, Mr. Lannert testified that although he only counted ten homes within a 500 foot radius of the proposed site, there were considerably more homes just outside the area he studied. When queried as to why he did not go beyond the area he studied, he stated "the impact of existing landfills is probably more closely felt by the existing homes in the Little Silver Lake, so I geared most of my study observations along the public roadways." In response to a question by Senator Geo-Karis concerning the effect on values of the surrounding residences Mr. Lannert stated "I do not feel landfills abate the value". In response to a citizen question concerning the economic potential of the area with respect to recreational people Mr. Lannert stated "I believe we will be able to observe it from many points, but it I don't believe it will be objectionable."

Robert B. Rennebohm testified on behalf of Intervenor Antioch Rebbebohm is a landscape architect specializing in community planning. Considering only the residential areas north and northwest of the proposed site he concluded that the proposed landfill would not be visually compatible with the character of that area. Additional testimony was presented on behalf of Antioch by Mr. Robert Duchek (County Board Hearing, 8/19/82, pp. 47 - 61).

Mr. Duchek testified that the landfill expansion would be inconsistent with the adjacent local residential development. In particular he mentioned the probable noise and dust generated would make residential use of the adjacent areas less desirable. On further cross-examination Mr. Duchek testified there was some question concerning the suitability of the soils in the adjacent areas for the construction of homes.

Waste Management presented a number of witnesses concerning the effect on property values by the proposed landfill extension. Witness Robert P. Schroeder presented an appraisal report which he had prepared (Applicants Ex. 24, Lake County Rec. 22-26) in which he purported to review in detail site and area data including land use, zoning, economic factors and relevant residential sale and resale data. It was Mr. Schroeder's opinion that because the proposed landfill expansion would be compatible with the character of neighboring properties, it would not adversely effect their value. This opinion was based generally upon observation of the surrounding area, a study of resale values in nearby subdivisions and the fact that the general area of the subject site is rural in nature. Review of Mr. Schroeder's testimony indicates that the market study is based on a very low number of transactions, due no doubt to the recent real estate market conditions. The emphasis was on consecutive sales within a subdivision rather than on a comparison with other homes of like value not in the area of the landfill. Under questioning by a citizen concerning the sale of two identical lots, one by a dumpsite and one on open land, Mr. Schroeder indicated that based on his study there would be no adverse effect by the landfill and that neither one would sell more quickly than the other.

Waste Management next presented Mr. William A. McCann, a real estate appraiser, consultant and broker with experience in the Metropolitan Chicago area (County Board Hearing, 7/21/82, pp. 165-174). Mr. McCann based much of his testimony on Mr. Schroeder's study and indicated that, after an initial impact experienced at the time the landfill initiates operation, residences subsequently have been sold and resold at roughly the same rate of appreciation as homes more remotely located. It was Mr. McCann's opinion that the proposed expansion facility would be compatible with the character of the surrounding area and would not unduly depreciate the value of the surrounding properties.

The Lake County Staff Report makes some interesting observations concerning the proposed facility. The Staff considers that the present existing landfill affects the factual context of the subject criteria. This presumption by the County staff permeates their opinion as a whole and in particular with in respect both to the effect on property values and compatibility with adjacent areas. Their basic precept seems to be that the damage has already occurred.

Michael Warren, a real estate broker testified on behalf of Intervenor Antioch (County Board Hearing 8/18/82, pp. 40-90). It was Mr. Warren's opinion that market values in the adjacent subdivision were progressively effected as the landfill operations came closer to it. In addition he indicated that the landfill has a negative impact on property values in the subdivisions because of buyer reluctance to purchase property near the operation. He also indicated that he was unable to replicate Mr. Schroeder's trend analysis although he apparently was able to find more information than Mr. Schoeder had indicated. In addition he felt that the present landfill retarded potential subdivision growth in its area. Under cross-examination Mr. Warren indicated through his answers that his attempt at performing a trend analysis concerning property values was probably of no more value than was Mr. Schroeder's.

The mayor of Antioch, Raymond Toft, testified on behalf of Intervenor Antioch concerning the proximity of the downtown area to the proposed site (County Board Hearing 8/18/82, pp. 22-38). Mayor Toft testified concerning the size of a village and its population and indicated there were roughly 200 business establishments inside the village limits and approximately 1600 residences. He testified that the existing landfill was roughly a third of a mile from the downtown area and that the proposed site would be about a half mile from this area. He indicated that the Village Board of Antioch had voted unanimously to oppose the siting of the landfill. It was the Mayor's opinion that the growth pattern in the village would be to the east or to the south and that currently most of the new growth is to the east. In the Mayor's opinion the proposed landfill expansion would stop the growth of the Village of Antioch to the east because of the fact that the no one would like to live next to a landfill, and that it would not be practical to extend village utilities to the other side of the landfill. During cross-examination the Mayor testified that one subdivision in the area of the landfill had rebuffed attempted annexation by the city, but that he had also received complaints from the residents of that subdivision concerning the landfill.

Waste Management, during its presentation, made much of the fact that the request herein is for the extension of an existing landfill and therefore argued that many of the issues concerning the effects of the proposed expansion upon the surrounding community are moot. Certainly the existence of the landfill and the experience gained in its operation over the years are properly to be considered by the County. However, with regard to the issue of compatibility with the character of the surrounding area and the effect on the value of the surrounding property, expansion must be considered in the same light as a totally new facility. There are two reasons for this holding, one of which is legal and the other more practical and philosophical in nature. The legal reason for considering a landfill expansion in the same category as a new facility is that the legislature has so specified.

Section 39.2(a) of the Environmental Protection Act (Act) addresses new regional pollution control facilities which are defined in Section 3(x)(2) of the Act, inter alia, as "the area of expansion beyond the boundary of a currently permitted pollution control facility". From a reading of the two sections of the Act cited it is clear that the legislature intended any expansion of the physical boundaries to be considered in the same manner as a totally new facility.

The practical and philosophical standpoint was well stated by Mr. William McCann, one of Waste Management's expert real estate appraisers and consultants, in that "...landfill sites are temporary uses of land." Mr. McCann goes on to say "They ultimately return to the community, usually for open recreation purposes and people within the vicinity envision that that will be a large expanse of land which will never be put to any other use, other than the perpetual open space. It may, in itself, have a favorable impact, aside from the termination of the existing landfill." (County Board Hearing, 7/21/82, p. 202.)

It follows that the residents in the area of the landfill may well have looked forward to such an eventuality when they purchased their property or have continued to live in the area with such expectations. Those same people must also be aware that an expansion of the landfill might be proposed or that indeed a new landfill might be proposed in the area. By the same token the landfill operator must be mindful that the area around the existing landfill might become incompatible with the expansion of an existing landfill. It therefore follows that the Board must consider such an expansion as if it were a totally new facility with regard to the question of compatibility and land values. The Board will not allow the potential of damage to the surrounding community due to a proposed expansion to be negated by a "bootstrapping" argument that the existing landfill has already caused real or perceived damage to that same area. Therefore, the potential of further damage due to such a proposed expansion is a legitimate concern.

In regard to the issue of compatibility with the surrounding area the evidence presented is generally divided into two categories. Waste Management has testified as to the area immediately adjacent to the proposed site. i.e. within 500 feet. The thrust of Antioch's testimony concerns the effect of the proposed landfill at a greater distance up to and including one half mile which extends to the center of the Village of Antioch. The first question then is at what distance from the proposed site may one still be considered in the surrounding area. It is clear that the effect on the surrounding area depends upon the size and shape of the subject of concern. Certainly the surrounding area of, say, an advertising sign would be different from that of a large manufacturing facility or a tall building. It would appear clear that in this case a 30 acre mound with a height above grade of 70-90 feet would generate an effect upon the surrounding area to

a greater extent than five hundred feet. Without addressing precise measurements concerning this effect, the Board finds that at the very least the subdivisions near the proposed site will be affected and that the finished mound would probably be a major land characteristic from the perspective of the business district of Antioch. Since the majority of land in that area is relatively flat (certainly at least when compared to the landfill mound), and since the area is generally considered a resort type area, the Board finds that the County Board's decision that the proposed landfill extension is not compatible with the surrounding area is not against the manifest weight of the evidence presented.

With respect to the issue of the effect on the value of the surrounding property, it appears that the analytical efforts on the part of both Waste Management and Intervenor Antioch to determine this issue were relatively ineffectual. However, the testimony of local citizens and the Mayor of Antioch coupled with that of a local real estate broker tends to indicate that, although there may be little continuing effect on values, there is an initial decrease in value of the surrounding property coupled with a chilling effect on development. The initial effect of the landfill site on the surrounding property was indeed verified by Waste Management's expert. The Board therefore finds that the Lake County Board's decision on this criteria is not against the manifest weight of the evidence presented.

Fundamental Fairness

Waste Management complains that the County Board's decision was primarily founded upon the objection of the organized group of residents and property owners who utilized the public hearing process to demonstrate their opposition and to influence their legislative representatives in this matter. The Board will acknowledge the interest of the citizens at the hearings and their sometimes boisterous demeanor. The question here however is whether or not procedures used were fundamentally unfair. As the Board stated in Hanover Park, supra, the motives of the County Board members in reaching their decision are not a proper subject of Board review. The Board is not concerned with why the County Board voted as it did but rather whether its decision is supported by the record, including its written reasons. If the County Board makes the correct decision based upon the record but is motivated by political concerns, the decision is correct and the motivation is immaterial. If the County Board makes the wrong decision based upon the record with the most commendable motives, the decision is incorrect and the motives are immaterial. If Waste Management had argued that it was not allowed to present evidence or was somehow prevented from sufficient cross-examination, then the Board would consider its claim of fundamentally unfair procedures. The only argument that Waste Management presents however, is that of political motivation which, if true, will be cured upon Board review of the record. This Board, being a state-wide agency, is certainly immune from local political considerations and therefore makes its decisions based only on the record before it.

The Board concludes that the record herein supports the denial of site approval of the proposed Waste Management landfill extension. The Board will therefore affirm the site approval denial.

This Opinion constitutes the findings of fact and the conclusions of law of the Board in this matter.


ORDER

The September 14, 1982 denial of the Waste Management, Inc. proposed landfill in unincorporated Antioch Township by the County Board of Lake is hereby affirmed.

IT IS SO ORDERED.

Board Chairman J. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30th day of December, 1982 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board