State of Illinois, County of McLean

Before the County Board

Applicant's Proposed Findings of Fact and Law

INTRODUCTION

Applicant, Lakeshore Recycling Services, LLC., (LRS) filed its application for siting approval of a new solid waste transfer station on August 18, 2023. The proposed site occupies 3.09 acres in an industrial area just south of the City of Bloomington, and is generally located east of Bunn St, north of Rhodes Ln., and southwest of the Norfolk Southern RR tracks in Bloomington. Its metes and bounds description is:

> A part of Lot 2 in Owner's Subdivision of part of the NW1/4 of Section 15, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois, more particularly described as follows: Commencing at the northwest corner of Lot 2 in Owner's Subdivision of part of the NW1/4 of Section 15 according to the Plat thereof recorded in Plat Book 9 on Page 82; thence N.89°-29'-46"E. 502.39 feet on the north line of said Lot 2 to the Point of Beginning; thence continuing N.89°-29'-46"E. 300.00 feet on the north line of said Lot 2; thence S.00°-25'-59"E. 459.60 feet to a point 1003.00 feet north of the south line of the NW1/4 of said Section 15; thence S.87°-25'- 14"W. 280.00 feet parallel with the south line of the NW1/4 of said Section 15 to a point 1003.00 feet east of the west line of the NW1/4 of said Section 15; thence N.02°-53'- 43"W. 470.15 feet parallel with the west line of the NW1/4 of said Section 15 to the Point of Beginning containing 3.09 acres, more or less.

The proposed facility will be part of the HDI Subdivision, the preliminary Plan for which was approved by the McLean County Board on Feb. 16, 2023. In said Plan the proposed facility is legally described as:

> Lot 3 in HDI Subdivision being a part of the NW¼ of Section 15, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois.

Most importantly, the McLean County Supervisor of Assessments, after the assessment plat was recorded, assigned the facility site a PIN number of 21-15-151-022. It is a separate lot with lot lines on the McClean County GIS map, directly linked from the McLean County official website. This "lot" corresponds exactly to the parcel described in the metes and bounds description above.

NOTICE & SETBACK

Pursuant to 415 ILCS 5/39.2(b) proper notice was given to all property owners within 400 feet of the subject property.

Republic Services ("Republic") claims that the much larger Henson Recycling Campus land, which includes multiple "lots," in its entirety, constitutes the lot on which the facility is proposed. This extends to the argument that LRS did not give the required pre-filing notice to everyone entitled to same. This is based on the use of the term "lot line" in the notice section of the statute.

Section 39.2(b) of the Illinois Environmental Protection Act ("Act") provides that all owners of all property within 250 feet in each direction of the lot line, excluding roadway of the subject property, must receive notice of the request for site approval within 14 days after submitting the application. The Act reads: "(b) No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property

within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways."415 ILCS 5/39.2."

The Subject Property Is Lot 1 of The Recorded Assessment Plat and is Detailed on the Authentic Tax Records and Assessor's Map. A surveyed Assessment Plat was recorded in the Mclean County Recorder's office with the McLean County Clerk on August 17, 2023 as number 2023-00010925 and delivered to the Township Assessor. The Subject Property is identified on the recorded plat as "Lot 1, Facility Site, 3.09Ac+-" and is detailed on the assessor's tax map as Lot 1 (a copy of the recorded Plat is was in the Siting Application). Republic cites the case of *Environmental Control Sys. v. Long, 301 Ill. App. 3d 612 ("Long")*, and states, it is a case, "involving an almost identical siting application issue..." LRS believes the case is factually distinguishable and, on the contrary, assert that the holding of the case, properly applied to the facts in the pending application, actually requires a finding in favor of LRS.

In *Environmental Control Sys. v. Long, 301 Ill. App. 3d 612,* the owner, ECS, was developing a recycling center and sanitary landfill at that time known as a regional pollution control facility, RPCF. (the Act has long since dropped the reference to regional, but that is immaterial to the argument here). The Section 39.2(b) notice was not sent by ECS to two landowners who were within 250 feet of the lot line upon which the RPCF was situated. In an apparent attempt to rectify its error, ECS contended that the

statute requires notification only to those landowners living in a 250-foot "proximity" to the RPCF (the Facility) a point within the lot, not to a "lot line." In discussing the issue of from where the measurement was to be calculated, the Court stated that:

> "The language of the statute requires notification of owners of land within 250 feet of the lot line. Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1039.2(b). ***The record reflects that the lot lines at issue are detailed on the authentic tax records and assessor's map.*** The lines on the map and tax records coincide with parcel five. The parcel is not further divided. The RPCF is located within a section of parcel five." (emphasis supplied). Environmental Control Sys. v. Long. 301 Ill. App. 3d 612, 622-623.

The *Environmental Control* decision directly supports LRS's case that proper notification has been given by LRS, because, as required by the Court in *Environmental Control*, where, unlike the actions of ECS in the *Environmental Control* case, who argued to measure the distance from a facility *inside* of a boundary rather than from the lot line of the tax records parcel, LRS's service did accomplish the "notification of owners of land within 250 feet of the "lot line" for the tax parcel as required by the cited statute with its own unique PIN for the lot having been assigned to the lot by the assessor. The lot lines at issue in the LRS petition are "detailed on the authentic tax records and assessor's map" of the Township Assessor's office as required by the Appellate Court in *Environmental Control*. The court specifically referenced the "lot lines" as those detailed on the authentic tax records and assessor's map as proper lot lines from which to measure the distance for notification in accordance with the statute. LRS has the lot lines of its site detailed on the authentic tax records and assessor's map, and the McLeanCounty GiS map, from which the notification distance was measured. Thus, LRS's notice is completely consistent with the Court's holding in the case regarding the requirements of notice.

The Subject Property is also described as Lot 3 of the Approved McLean County Plan of the HDI Subdivision. The Preliminary Plan of the HDI Subdivision was approved by the McLean County Board on February 16, 2023, and recorded in the Mclean County Recorder's office with the McLean County Clerk as number 2023-00010926. The Subject Property is identified on the face of the Plan as "lot 3" of the subdivision. The McLean County approval provides for a recording of a Final Plat of Subdivision which is to be substantially the same as the Preliminary Plan and to be signed by the County Plat Officer. The Final Plat will be recorded with no further McLean County Board action or approval needed. By McLean County Ordinance the County Plat officer signs the Final Plat. (§ 317-17, Plat Officer. The Plat Officer shall also approve final plats for subdivisions that have a valid preliminary plan when the final plat substantially conforms to the approved preliminary plan). The Final Plat has been submitted to the County Plat Officer.

Since the Preliminary Plan for the HDI Subdivision has already been recorded, it is part of the County's official tax records. Its lot boundaries are identical to those on the Assessment Plat, which has also been officially recorded. When the final plat is recorded, its Lot 3 designation will replace the Lot 1 designation in the Assessment Plat, although the PIN, 21-15-151-022, will remain the same. The Subject Property has an identical metes and bounds legal descriptions to Lot 3 of the Preliminary Plan and Lot 1 of the Assessment Plat. As alternate legal descriptions for the exact same property, it is legally sufficient for all notice and filing requirements.

The City of Bloomington reviewed the Preliminary Plan, incorporated and used its legal description and made it an exhibit to the Utility Agreement between the City and the property owner.

It has been recognized by Illinois Courts that in interpreting the Act in general, and in the case of the Notice requirement specifically that, "the Act requires that we construe this statute liberally. 415 ILCS 5/2(c) (West 2014) ("[t]he terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act"). Furthermore, we will not misinterpret the statute by reading into it exceptions, limitations, or conditions that the legislature did not express". (*Petersen v. Wallach*, 198 Ill. 2d 439, 446, 764 N.E.2d 19, 261 Ill. Dec. 728 (2002)).

While LRS believes it has strictly complied with the pre-filing notice requirement, we are compelled to point out, as an alternative argument, that the word "lot" does not have a precise and universally accepted meaning. A definition of "lot" in Black's Law Dictionary is "Any portion, piece, division or parcel of land." Webster's Dictionary defines "lot" as "any portion, piece or division of land." Britannica Dictionary definition of "lot" as to land is, "chiefly US: a small piece of land that is or could be used for building something or for some other purpose, or a portion of land".

When the Illinois Supreme Court was required to consider the meaning of the word "lots" it stated, "Neither the appellants nor the appellees refer us to any authorities as to the technical or exact meaning of the word "lots," and from our own examination we are of the opinion that there is no fixed or inflexible rule which gives this word an exact meaning. The courts always read and interpret it in connection with the context and the circumstances under which it is used." The Court listed cases, among many others, which it stated could be cited, to illustrate the elasticity with which the term is applied. It stated, "In the case of *Aldrich* v. *Thurston,* 71 Ill. 324, in construing the Homestead Exemption law, providing that "the lot of ground and the buildings thereon occupied as a residence

and owned by the debtor" shall be exempt, we held that a quarter-section of land, being a legal subdivision, could be considered as a lot." and "In the later case of *Gardner* v. *Eberhard,* [***22] 82 Ill. 316, we held that this court would take judicial notice of governmental surveys of public lands; that a quarter-section of land consists of four forties, each with well defined bounds, and that if the value of the forty-acre tract on which the residence buildings are situated does not exceed $1000 in value it is exempt as a lot."

In the context of the Act, Illinois Statutes, and case law the term, "lot line" is a generic reference to a boundary of a specific description of the subject property, and there is no requirement in the Act that it be a lot in a "platted" subdivision. The term "lot" is not capitalized, special or a defined term in the Act. There is no reference to, or definition of, the word "lot" in the applicable IEPA statute or Administrative rules. The state statute refers to a pollution control "facility". The Illinois Pollution Control Board regulations state: ""Site" means any location, place or tract of land used for waste management. A site may include one or more units." Ill. Admin. Code tit. 35 § 807.104. "Unit" means any device, mechanism, equipment or area used for storage, treatment or disposal of waste." Ill. Admin. Code tit. 35 § 807.104".

While LRS argues that the "lot lines" of the subject property are derived from multiple authentic tax records of McLean County, this conclusion is not necessary in order for LRS to prevail. The reference in Section 39.2(b) to authentic tax records is solely for the purpose of identifying the property owners who are entitled to notice. 415 ILCS 5/39.2 states regarding the notice: "the applicant shall cause written notice . . . on the owners of all property within 250 feet in each direction of the lot line of the subject property, said

owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located"

Based on the foregoing, a strong argument can be made that the metes and bounds description of the proposed site, regardless of whether instruments, confirming that description have been recorded, is sufficient to establish the "lot lines."

Accordingly, LRS has, in multiple ways, established and proven the legal lot lines of the subject property.

An argument which flows from Republic's lot line argument is that the proposed facility is located within 1,000 feet of residential or residentially zoned property in violation of section 22.14 of the Act. This argument would place the western boundary of the subject site to be at Bunn St. If LRS has correctly identified its lot lines, this argument is factually irrelevant and inapplicable.

Alternatively, Republic argues that the road leading from Bunn St. to the subject property is part of the site, and this creates the same 1,000 foot setback problem as treating Bunn St. as the western lot line of the property. The road, to be known as HDI Court, is not part of the subject property. HDI Court will be a public street and not a part of the site of the proposed Transfer Station. The Preliminary Plan and Plat of the HDI Subdivision (found in the siting application), recorded Assessment Plat and Utility Agreement with the City of Bloomington, all include and identify a dedication of HDI Court as a public street with its own unique PIN. The plans provide it will be dedicated by the recording of the Final Plat of Subdivision (copy in the siting application), physically constructed by and at the cost of LRS, and when construction is completed, accepted by the appropriate public body. The HDI subdivision is

approximately 44 acres and comprises the Henson Recycling Campus. The Campus already contains multiple users and HDI Court will be the primary access for some of these, and the location of public utilities for the lots in in the HDI subdivision. It will not be gated, but will, instead be available for use by all tenants in the subdivision and by the public in general. It is being constructed by agreement with the City of Bloomington to the City's city street standards. There was substantial testimony about the public use of HDI Court.

Finding 1 – the Applicant complied with the notice requirements of section 39.2(b).

FUNDAMENTAL FAIRNESS

Public hearings on the application, commenced on November 29, 2023, and concluded on Nov. 30, 2023. At both sessions, there was adequate space for the participants and the public. Public comment was allowed without restriction. The only party that registered as an objector was allowed to cross-examine witnesses and present its own evidence. There were no filings or motions made with regard to alleged decision maker bias or with regard to the manner in which the hearing was conducted.

Finding 2 - the public hearing was conducted in a fundamentally fair manner.

CRITERION 1 - NEED

The evidence presented by LRS on the nine siting criteria was mostly uncontested and unrebutted. Cross examination by Republic was minimal, even on

Criterion 1 (Need), which was contested. Republic offered one witness, Sheryl Smith, who is best described as testifying from the era when need for transfer stations was "computed" and evaluated in the same way as need for landfills. In that thankfully bygone era, need was determined by computing projected future waste generation and then subtracting projected "capacity." No case has ever distinguished between disposal capacity and transfer capacity, although such a distinction is substantively important. In the case of landfills, this simplistic approach makes perfect sense, because when generation exceeds disposal capacity, one can literally envision a scenario where waste has nowhere to go. In the case of transfer stations, where the possibility of direct waste haul by collection vehicles to landfills makes "transfer capacity" irrelevant, it quickly becomes obvious that the need calculus requires consideration of different, real-world factors such as competition and its effect on pricing, fuel usage, emissions, wear and tear on roads and the like. John Hock correctly testified that determining "need" for transfer stations is largely about waste disposal logistics.

John Hock, a professional engineer in Illinois, and five other states with 35 years experience in the solid waste industry, testified that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. Initially Mr. Hock provided background on the applicant, Lakeshore recycling systems, LLC, and described current and proposed operations at the site. LRS is a local, privately owned company with over 2000 employees and 60 locations in the Midwest. LRS has owned Henson disposal for approximately two years. The proposed Transfer Station site is located on 3.09 acres and is part of the 42 acre Henson Recycling Campus that includes the area's only general construction or demolition debris recycling facility, a

woody waste mulching and recycling operation, a concrete recycling operation, and a concrete batch plant.

Mr. Hock briefly described the usual improvements planned for the Transfer Station site, the most notable of which is the public road, (HDI Court) which will be built to the standard city of Bloomington requirements for public roads, including a sidewalk and utility corridor. It will be dedicated to the public following the same procedure as a typical subdivision. HDI Court will serve all other users of the larger recycling campus, including the mulching operation and concrete batch plant. It will also be available for other potential users.

Mr. Hock described the transfer process where loads of incoming waste are transferred to larger vehicles for delivery to remote landfills, in this case, most likely the Clinton landfill. All waste handling at the Transfer Station will occur indoors.

Mr. Hock summarized the benefits of the Transfer Station, those being improved pricing for waste and recycling management, improved level of service for waste and recycling management, funding for the community, all with the highest level of environmental protection and safety. All this will occur in an ideal location with minimal impact on traffic.

The service area for the proposed landfill is McLean County. There are no active landfills in the service area and there is one active MSW Transfer Station in the service area, that being the Republic Services Bloomington Transfer Station, which accepts approximately 300 tons per day. Mr. Hock estimated that the service area generates approximately 500 tons per day of MSW, so the shortfall of 200 tons per day is managed by transfer stations or landfills outside the service area. Republic has a landfill

(Livingston) north of the service area. Waste management has a Transfer Station proximate to the service area and GFL Environmental has two landfills proximate to the service area. LRS proposes to use one of the GFL landfills. All these companies offer collection services in the service area.

Both the City of Bloomington and the town of Normal provide collection services for residences in their respective municipalities. The bid specifications for these collection services include a requirement that the successful bidder must have a Transfer Station or landfill located within a 10 mile radius of the intersection of Main and Division Streets. Only Republic meets that bid specification, and therefore, GFL and LRS, formerly Henson, were precluded from the bidding process.

Mr. Hock's company, CEC, monitored operations at the Bloomington Transfer Station on March 30, 2023. They observed approximately 90 tons of residential waste going into the Transfer Station, 160 tons of other waste from Republic trucks, approximately 30 tons from LRS residential collections in unincorporated and rural areas and approximately 20 tons of miscellaneous waste. This totaled 300 tons, and while Republic's witness criticized this methodology as being an insufficient sample size, the actual numbers produced by Ms. Smith are remarkably close to Mr. Hock's 300 ton total. On the day of the CEC observations, Waste Management and GFL did not use the Bloomington Transfer Station.

Republic hauls waste from the Bloomington transfer station to their landfill in Livingston County, thereby achieving complete vertical integration. GFL is required to direct haul their waste to one of their proximate, but not adjacent, landfills. This is an operational disadvantage, since one transfer trailer can hold about three to four times

what a conventional garbage collection truck holds, and transfer trailers get approximately double the gas mileage of conventional collection vehicles. Fuel savings, reduced wear and tear on roads, reduced emissions, and all other advantages of transfer trailer use over direct haul are a significant benefit and facts supporting a finding of need for a second transfer station in the service area.

Republic does not pay any host fees for the Bloomington Transfer Station, while LRS has negotiated host agreements, both with McLean County and the city of Bloomington, so that each would receive significant funds from the Transfer Station. This is an additional fact supporting a finding of need.

Mr. Hock detailed the historic and recent consolidation in the waste industry in Illinois, suggesting that such consolidation will have anti-competitive impacts. Most of the publicly traded waste companies are able to transfer waste to their own landfills, thereby giving them vertical integration. The primary advantage of vertical integration is the ability to control every aspect of one's own costs. Independent waste collectors and haulers who use the Bloomington Transfer Station are at the mercy of Republic's pricing, which is an unknown and variable factor that impairs competition. The proposed Transfer Station would provide additional capacity and competition to the single Transfer Station in the service area, it would somewhat defeat the monopolistic effect of the local bid restriction, and, as such, it is a significant argument in favor of a finding of need.

The Federal Trade Commission has recognized the benefit of increased competition, and Mr. Hock quoted the FTC website, which states, "competition in America, is about the price selection and service. It benefits consumers by keeping

prices low and the quality and choice of goods and services high." The FTC and Mr. Hock conclude that competition makes our economy work. Mr Hock provided a closely related example from Will County, where Waste Management of Illinois had a virtual monopoly on waste transfer prior to the Village of Rockdale approving, over Waste Management's vehement opposition, the Moen Transfer Station, located 1.25 miles from the existing Waste Management Transfer Station. Rockdale recognized the competitive and other benefits of this second Transfer Station, and since its original approval with a throughput limit of 350 tons per day, the facility has had its permit amended to allow 1060 tons per day. Recent observations at the Moen Transfer Station document regular throughput at 600 to 800 tons per day.

A second example is the recently approved LRS transfer station in West Chicago, located one half mile from the DuKane Transfer Station, owned and operated by Waste Connections, another of the "big three" national companies.

McLean County has ambitious recycling goals, and a major factor in their achieving 40% recycling was the 2016 decision to divert bulky waste to the Henson C&D Recycling facility. Placing an MSW transfer station in close proximity to the recycling facility will improve and streamline its operation and should result in the County's recycling rate being increased further, explained Mr. Hock.

As previously indicated, Republic does not pay a host fee for its use of the Bloomington Transfer Station. The county solid waste management plan recognizes the need for additional or make up funding due to the recent closure of the McLean County landfill, and the plan even recognizes that additional transfer stations may provide a new revenue source to make up for these lost host fees. LRS's host agreements with

the County provide for payment of $1.00 per ton, fifty cents of which will be used to support recycling. Additionally, LRS has a utility agreement with Bloomington which also provides for $1.00 per ton host fees payable to the City.

From a purely mathematical perspective, the Bloomington transfer station is likely physically sufficient to accommodate the waste generated within the service area. However, the need analysis in this case is not based on a simplistic formula of waste generation, compared to disposal or transfer capacity. In this case need is based on competitive, economic, and environmental factors. Mr. Hock explained that the existing transfer station in the service area is owned by a vertically, integrated national company, which uses its monopoly to drive up prices and choke off competition.

Hauling contracts have to include the cost of ultimate disposal as a price component, so that the smaller companies, like LRS, which do not have complete vertical integration, are unable to set their own prices and are at a competitive disadvantage. These competitive advantages and disadvantages are of course, passed on to the communities and ultimately the retail customers.

Cross examination consisted, primarily of challenging, computations, and pointing out minor inconsistencies. For example, Republic emphasized that estimating the Bloomington transfer station's throughput based on a single day of observations is inadequate, but Republic failed to comment on the fact that the numeric results reached by Mr. Hock are very similar to those provided by Republic's witness, Sheryl Smith. However, the cross examination did not even come close to establishing the lack of necessity for the facility. Instead, Republic's counsel emphasized the fact that there appeared to be adequate physical capacity to deal with the amount of waste generated

in the service area. That's a point which LRS does not dispute, but the approach of Republic misses the main argument, namely, that increased competition, and its economic and other benefits, as well as improved environmental impacts, are sufficient to prove need.

As previously stated, Transfer Station need analysis has undergone a quantum shift in the last 10 years and is no longer based on the traditional capacity versus generation analysis.

Applicant's approach here is very similar to the evidence in the Rockdale Transfer Station case.

Both the Pollution Control Board, and the appellate court affirmed the new approach, and the Village's finding that need had been established. The Third District held: "The proposed facility will increase competition to the service area and increase transfer capacity. It will also provide benefits to the village of Rockdale pursuant to the host agreement, provide benefits to Will County as more waste will be disposed at Prairie View RDF, have longer operational hours than the Joliet Transfer Station, and reduce environmental impacts." Rejecting arguments, similar to those made by the opponent here, the court further held: "Petitioners' argument that ERDS failed to meet criterion (i) because it did not conduct a transfer capacity analysis of the transfer stations is unpersuasive. Respondents do not need to show "absolute necessity" for a new facility. Rather, respondents must show an "urgent need" for the facility and a "reasonable convenience of establishing it." *Id.* Respondents have demonstrated this in the evidence presented in the record." *Will Cnty. v. Vill. of Rockdale*, 2018 IL App (3d) 160463, ¶ 59, 121 N.E.3d 468, 484

In an attempt to rebut the conclusions of Mr. Hock, Republic called as it's expert, Sheryl Smith. Ms. Smith prepared a written report which was admitted into evidence. Even a cursory reading of her report demonstrates unequivocally that Ms. Smith still adheres to the outdated, rejected generation minus capacity approach of determining need numerically, and she is not in touch with the contemporary judicially approved approach to determining need for transfer stations based on economic and environmental factors. This is not surprising since Ms. Smith, who is based in Ohio, has not worked in Illinois for many years except the one instance where she offered very similar testimony on behalf of Waste Management in the Rockdale Transfer Station case. Her testimony in Rockdale was rejected by the Rockdale Village Board, the Pollution Control Board and the Appellate Court.

In section 1.2 on page 3 of her report, Ms. Smith details her methodology for determining need for a solid waste facility. The bottom line of this methodology is to determine whether a capacity shortfall exists. LRS agrees that here there is no capacity shortfall in the classic sense. Since Ms. Smith's fundamental premise is mistaken, and her criticisms of Mr. Hock's methodology and computations are based on the validity of this premise, her direct testimony becomes largely irrelevant. Her cross-examination, however, demonstrated that she failed to look at, or was not aware of much of the information relevant to a determination of competitive factors (real need) and their influence in the McLean County market. Although she opined that GFL took waste to the Bloomington Transfer Station, she did not know how much, when they had last done so, or how much they were charged. She also did not investigate how Transfer Station

charges had changed in Will County since the Moen Transfer Station became operational.

In a futile attempt to offset LRS's claimed benefit of host fee revenue to the County and to Bloomington, Ms. Smith testified that Republic had recently offered a 10 year contract, which included host fees. However, the fact that this offer appears to be related in time to the first siting application filed by Henson, prior to its acquisition by LRS, is actually evidence that supports the Applicant's case.

The bottom line on Sheryl Smith is that when she was asked directly if she agreed with the FTC website statements about the value and importance of competition, as related by Mr. Hock, she said that she did. Therefore, neither her report nor testimony undermined any of the Applicant's conclusions on need.

Finding 3 - the Henson Recycling Campus Transfer Station is necessary to accommodate the waste needs of the area it is intended to serve.

CRITERION 2 – PUBLIC HEALTH, SAFETY AND WELFARE

Karl Finke testified that the Henson Recycling Campus Transfer Station is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. Mr. Finke is a professional engineer with over 26 years experience in all aspects of solid waste. He initially reiterated the benefits of the proposed Transfer Station as originally outlined by John Hock. He pointed out that local siting approval is just the first of multiple regulatory steps required to develop and operate a Transfer Station.

Mr. Finke described the site location as being in an undeveloped and isolated portion of the 42 acre, Henson, recycling campus, located outside the corporate limits of the city of Bloomington, and currently zoned M2, manufacturing district. Generally, this is a state of the art facility with the best available current technology to avoid or minimize potential problems. For example, odors will not be masked; instead, they will be eliminated by active filtration in the ventilation system which will have multiple completer air exchanges every hour.

The facility is designed to safely and comfortably handle up to 400 tons of municipal solid waste per day. This is a relatively modest amount.

Mr. Finke detailed how the proposed facility will meet all the statutory location standards, related to wild and scenic rivers, protected archaeological or historical sites, threatened or endangered species, residential setback, wetlands, and airports. The army corps of engineers has confirmed that there are no jurisdictional wetlands present on the site.

The central Illinois regional airport is 2.7 miles from the site, and the airport authority and LRS have agreed to work together to not cause any increase in wildlife attractants. In fact, LRS will use wildlife hazard mitigation features developed for Transfer Station applications where the proposed facility was located across the street from airports.

The transfer building itself will be a pre-engineered 100' x 200' metal building with three bay doors for incoming vehicles, and one load out bay. The bays have rapid opening and closing doors, and no more than one door can be open at a time. Stormwater detention will occur in underground vaults which have been designed to

accommodate the maximum anticipated precipitation events. Volumes of these vaults and anticipated discharge rates comply with the requirements of McLean County.

Acceptable wastes include residential garbage, commercial waste, and residential and commercial recyclables. Unacceptable wastes include potentially infectious medical waste, asbestos, white goods, batteries, and tires. All waste will be handled only indoors. Transfer trailers will also tarp in the transfer building.

Mr. Finke reiterated that HDI Court will be a public road initially paid for by private funding. After it is completed and dedicated, it will operate under the jurisdiction of the township.

Mr. Finke conducted an extensive throughput analysis to determine if the proposed Transfer Station can safely handle the anticipated amount of waste. His conclusion is that it can easily do so, and in support, he pointed out that no collector vehicles will be stacked behind the scale during the peak hour or peak 15 minutes of the day, that there is conservatively excess capacity for one additional transfer trailer per hour, and with only eight collector vehicles unloading during the peak hour, and with three bays for unloading, there is excess capacity for 13 additional collection vehicles per hour.

Mr. Finke summarized the key operational controls to be employed by the facility, including odor and dust control, litter control, vector control, noise control, training for staff, and most importantly, frequent and regular load checking, including three formal, random load checks per week.

On cross-examination Mr. Finke was asked multiple questions about soil stability and the load-bearing capacity of the area where ponds are being filled in. He indicated

that this type of analysis and load-bearing calculations are routine in any construction project and will assure that the site has sufficient stability. It should be emphasized that while Republic questioned the site's stability, they did not present any evidence that the site would not be stable. A general rule of construction is that negative cross-examination suggesting harm, which does not follow up with substantive evidence, should be disregarded.

Similarly, Mr. Finke was asked multiple questions about the design and operation of the stormwater detention system. Once again, Republic did not follow up with any substantive evidence that contradicted any of Mr. Finke's answers. Mr. Finke answered all these questions appropriately, and his answers were not challenged. For example, in response to a question about constructing in an area that had been backfilled with C&D material, Mr. Finke opined that C&D material is actually a stronger foundation material than soil.

Republic did not offer any witnesses or other evidence to rebut Mr. Finke's conclusions on this criterion. Even probing cross-examination, and LRS would not characterize the cross-examination here as reaching that level, does not undermine an expert's conclusions unless clear inconsistencies or errors are pointed out or admitted. None of that occurred here. It is, therefore, fair to conclude that the LRS presentation on Criterion 2 is unrebutted.

Finding 4 – The Henson Recycling Campus Transfer Station Is so located, designed and proposed to be operated that the public health, safety and welfare will be protected.

CRITERION 3 – LAND USE COMPATIBILITY AND PROPERTY VALUES

Dale Kleszynski, a certified real estate appraiser and longtime member of the appraisal institute testified 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. He used historical analysis and photographs to confirm that the property is located in a largely undeveloped and industrial area just south of Bloomington. Zoning in the area is primarily industrial and open space. The site is visually well buffered from nearby land uses. The dominant nearby land uses are recycling and other industrial uses. The site has coexisted with the hilltop residential area to the west for over 50 years.

Mr. Kleszynski also testified that developing the property as a solid waste transfer station is the highest and best use of the property. The property meets the four pronged test of highest and best use, legal permissibility, physical possibility, financial feasibility, and maximum productivity. He opined that developing property to its highest and best use generally does not negatively impact the value of surrounding properties.

As a final check on the validity of his conclusions, the witness also examined reported sales data from two nearby transfer stations, one in Springfield, Illinois, and the other the nearby Bloomington Transfer Station. In neither case did the reported data show any adverse impact from the Transfer Station on surrounding real estate uses and property values.

Mr. Kleszynski's conclusions were not challenged by the token cross-examination.

Finding 5 – The Henson Recycling Campus Transfer Station is located so as to minimize incompatibility with the character of the surrounding area, and to minimize the effect on the value of surrounding property.

CRITERION 4 – 100 YEAR FLOODPLAIN

Karl Finke testified that the subject property is more than 4,600 feet from the nearest floodplain. No one took issue with this conclusion.

Finding 6 - the Henson Recycling Campus Transfer Station is located outside the boundary of the 100 year floodplain

CRITERION 5 – OPERATIONAL PLAN

Mr. Finke described how the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. This plan includes both prevention of accidents and response. In the event they occur, there will be a safety officer on site at all times. All employees will be trained in accident prevention and response. The transfer building will be equipped with an automated fire rover. A water source is located on site, and site access has been designed so as to accommodate emergency services, including fire trucks.
These conclusions were not to challenged.

Finding 7- the plan of operations for the Henson Recycling Center Transfer Station is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

CRITERION 6 - TRAFFIC

Michael Werthmann, a traffic engineer with over 33 years experience in traffic engineering for both the public and private sector, who has testified on over 25 solid waste related projects, reviewed traffic patterns to, and from the facility. First he looked at existing conditions, including physical and operating characteristics of the roadway system. Second, he looked at facility traffic characteristics, and determined the type and volume of traffic generation by the facility. Then he analyzed the impact of the facility generated traffic on the roadway system.

Mr. Werthmann indicated that a major road improvement in the nature of the Hamilton Rd. East-west connection to Bunn St. is scheduled to start in 2024, but that whether this project is completed has no bearing on his conclusions.

Next, Mr. Werthmann conducted traffic counts at the seven relevant intersections near the proposed facility, including counts for the turning movements. Traffic counts were conducted for the weekday morning peak hours (6-9 AM) and weekday afternoon peak hours (3-6 PM). He stated that the Transfer Station operating hours will be from 6 AM to 6 PM Monday through Friday and 6 AM to noon on Saturday. The anticipated route for outbound waste will be south on Bunn Street to west on Hamilton Rd. to southbound US route 51.

To provide a true worst case analysis, Mr. Werthmann assumed year 2041 traffic volumes. The projected 2041 traffic volumes were developed as part of the Hamilton Rd., East-West connection project. He also assumed a 100% increase in the existing traffic currently traveling to and from the Henson recycling campus.

Other proposed off site road improvements consist primarily of the construction of HDI Court, which will intersect Bunn St. at the location of the existing recycling campus southern access drive. This public road will have one inbound and one outbound lane, with larger turning radii at Bunn St. to accommodate turning trucks.

The traffic analyses were performed using the widely accepted Highway Capacity Software, which grades the intersection performance on an A to F basis. All the critical movements at the studied area intersections currently operate at a good level of service. The future signalized intersection of Bunn St. and Hamilton Road and the critical movements at the stop sign controlled intersections are projected to also operate at a good level of service. The existing and future roadway system has sufficient reserve capacity to accommodate the additional traffic to be generated by the Transfer Station.

Mr. Werthmann concluded that the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows, thereby satisfying criterion six of section 39.2.

During cross-examination Mr. Werthmann admitted that he was not aware of whether the Applicant had considered other possible ingress and egress points to the Transfer Station, but using the proposed Bunn St. location made most sense to him, because Bunn St. is a low volume collector of mostly industrial traffic. The witness and counsel for Republic then debated peak hours, and why counts weren't performed during off-peak hours, with Mr. Werthmann patiently explaining that morning and afternoon peak hours generate the highest amount of traffic to be anticipated, and as such, represent the worst case traffic scenario.

The remainder of the cross examination consisted largely of the witness further explaining his methodology and results, as it was clear that counsel for Republic was not completely familiar with all the concepts presented.

Finding 8 – The traffic patterns to, and from the Henson Recycling Campus Transfer Station are so designed as to minimize the impact on existing traffic flows.

CRITERION 7 – NO HAZARDOUS WASTE

Mr. Finke testified that the facility will not be receiving, storing or transferring, hazardous waste. In fact, he went into significant detail about how hazardous and other unacceptable wastes will be screened out, identified and removed. His conclusions were not challenged.

Finding 9 – the facility will not be treating storing or disposing of hazardous waste.

CRITERION 8 – SOLID WASTE MANAGEMENT PLAN

John Hock testified that the proposed facility is consistent with the McLean County solid waste management plan. He first reviewed the history of solid waste management planning in McLean County, including the various five year updates, especially as they related to the possibility of developing Transfer Stations in the county. The original solid waste management plan was adopted in 1997 with five year updates approved in 2002, 2007, 2012 and 2017. The process has, since 2017, been coordinated by the Ecology Action Center. The most recent plan update considered

improvements in recycling strategies and systems, fluctuations in commodity markets, contemporary perspectives, and behaviors by residence on waste issues, and new emerging technologies for more efficient, waste management. The solid waste management plan aggressively encourages recycling, and for all the reasons previously identified, the proposed Henson Recycling Campus Transfer Station will promote more C&D recycling. Importantly, the plan recognizes the need for additional funding, and that new waste transfer stations provide the possibility of new revenue sources through host fees. The current LRS proposal for a new Transfer Station accomplishes that goal.

The 2017 plan update recognizes that the establishment of additional waste transfer stations could have multiple economic benefits including increased competition, resulting in more beneficial ways disposal rates. This language in the most recent solid waste management plan update literally makes LRS's need case.

There is only one active Transfer Station in McLean County, and the solid waste management plan has in its own way recognized the need for more transfer stations.

Based on the foregoing, Mr. Hock concluded that the LRS proposal is consistent with the McLean County solid waste management plan. Republic, neither presented evidence nor cross-examined on this criterion, so it should be deemed proven.

Finding 10 - the proposed Henson Recycling Campus Transfer Station is consistent with the McLean County solid waste management plan as amended.

CRITERION 9 – REGULATED RECHARGE

Karl Finke testified that there are no regulated recharge areas in the vicinity of the proposed site and, therefore, this criterion is not applicable.

Finding 11 - the facility will not be located within a regulated recharge area

RECORD OF ADMISSIONS, CONVICTIONS

There are no admissions or convictions of IEPA violations. That should be the end of this issue, but Republic chose to muddy the waters with an exhibit about Violation "notices," most of which pre-date LRS's acquisition of Henson Recycling.

The misleading information offered by Republic is found in group Exhibit 12, which was admitted over Applicant's objection. The exhibit reports to identify 10 violations over a three-year period, but a closer look is necessary. Items 1 and 4 are the same with 1 being the inspection report from December 6, 2022, and 4 being the resulting violation notice. Items 5 and 6 are two versions of the same violation for blowing litter. The remaining items all predate LRS's acquisition of the Hanson operation. So,10 alleged violations are really 2.

John Hock pointed out that blowing litter is inherent in outdoor operations such as C&D recycling when the wind is blowing. It cannot be prevented, but it does need to be cleaned up. Blowing litter is also a non-issue in transfer stations where all waste handling operations occur indoors. With regard to the violation notice issued in March, 2023, Mr. Hock indicated that all of the alleged violations are hotly disputed by LRS, and he provided a detailed explanation summarizing the reasons they are disputed. As part of this explanation, Mr. Hock pointed out that "open dumping" is the IEPA's over-dramatic way of alleging blowing litter.

With regard to the other alleged violation, which counsel for Republic seemed to think was serious, improper filling, Mr. Hock explained that this work was all

unregulated, because it is filling above ground, intended to raise the grade of certain portions of the property. As an aside, he also explained that there has been and will be no filling of any kind where the transfer building is proposed to be constructed. This makes previous questions to Mr. Finke on this subject, irrelevant.

Mr. Hock also pointed out that after the March, 2023, violation notices were received, LRS brought its own employee onto the site to manage daily operations even though Tom Kirk, the previous owner, continued to be employed by LRS. He concluded by emphasizing that none of the violations alleged, even if true, represented actual or threatened environmental harm.

Despite Republic's, insinuation, to the contrary, LRS's compliance record is actually excellent, a fact recognized by the Ecology Action Center after hearing all the evidence. In their final report they state:

> "LRS demonstrates a significant absence of violations at any of their current transfer stations. Statements made by LRS at the hearing also reveal that they have proactively taken measures to enhance future operations at the Henson facility, including addressing concerns, such as blowing litter, by already stationing a designated authority on-site. LRS's track record and proactive actions alleviate previous concerns about the pattern of violations that were occurring at Henson Disposal and improve confidence in their ability to safely operate the proposed transfer station."

Finding 12 – Applicant's operating history is not a cause for concern

PUBLIC COMMENT

Oral public comment was received by the hearing officer. Although this is not a popularity contest, the vast majority of the oral public comment *favored* LRS. The same is not true for the written post hearing public comment, which heavily opposed LRS, although multiple letters from the community, supporting the project, were contained in

the siting application. Public comment is unsworn, not subject to cross-examination, and also not subject to relevance considerations. That is why it is not given the same weight as testimony.

The written public comment in this case is a classic example of why public comment, especially the written variety, should be largely disregarded. The timing and content of the written public comments in this case suggest there was a massive disinformation campaign by anonymous opposition. Many of the resulting comments referred to this project as a garbage dump, they foresaw future problems, especially odors, which one might expect from a poorly run open landfill, and worst of all, they expressed opposition to McLean County receiving "Chicago garbage." Whoever informed these citizens has done them a grave disservice.

To clarify, the Henson Recycling Center Transfer Station will receive LOCAL waste, transfer it indoors to larger tractor-trailers, and safely and efficiently move it OUT of McLean County. The comments by the Sam Leman Corp. auto group are a bit concerning, because one would expect the owners of six auto dealerships to be better informed. Their comments envision many of the same problems as the Chicago garbage haters predict, especially significant traffic and odors. The Sam Leman headquarters are located north-east of the proposed site, meaning the 16 or so daily transfer trailers that will move waste to a remote landfill will be traveling in the opposite direction, and will never be seen at the Sam Leman headquarters.

Reviewing odor control again, in addition to the indoor operation and the fast opening doors, Mr. Finke testified that the transfer building will have negative air pressure to keep odors indoors. Additionally, there will be ozonators, which actually

remove odors through an oxidation process. With four rooftop ventilation units, the transfer building can accomplish 6 to 8 complete air exchanges per hour.

The largely uninformed written public comment notwithstanding, the oral public comment, by people who presumably attended at least some part of the public hearing, was, on the whole, very favorable to siting of the transfer station facility.

Finding 13 – Public comments did not provide any basis to deny the Application

STAFF REPORTS

The final reports of the County's, professional staff, unanimously favor granting siting approval, although with a small number of conditions, none of which LRS objects to. The primary condition is completion of the formal HDI subdivision process, which is a mere formality, since the preliminary subdivision plan has been approved, the assessment plat has been recorded, and the subject property has been assigned its unique PIN number. The McLean County Department of Building and Zoning final report shows a keen understanding of and agreement with the Applicant's need demonstration.

Finding 14 – the County professional staff favors granting conditional siting approval

CONCLUSION

LRS proposes a state of the art waste transfer facility to safely and efficiently transfer up to 400 tons per day of municipal solid waste and single stream recyclables

from the McLean County service area to a nearby landfill. LRS has in their Application and with expert testimony proven each of the applicable siting criteria in 415 ILCS 5/39.2(a). Much of the expert testimony was not even challenged and none of it was rebutted. Republic Services, a competitor of LRS, operates an existing Transfer Station in Bloomington, and appeared at the public hearing to oppose the application. They called one witness whose conclusions should be disregarded, because they are based on an outdated, no longer valid, understanding of the law regarding proving the need for transfer stations.

All requirements of Section 39.2 were complied with, and the proceedings were fundamentally fair.

LRS has proven every element of its case by a preponderance of the evidence, and the siting application should be granted.

Respectfully submitted,

Lakeshore Recycling Systems

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***IN RE* LAKESHORE RECYCLING SYSTEMS, INC. / HENSON DISPOSAL**
POLLUTION CONTROL FACILITY SITING
McLEAN COUNTY BOARD

CLOSING ARGUMENT OF REPUBLIC SERVICES

Although Lakeshore Recycling Systems, LLC ("LRS") has failed to establish that it meets each of the nine criteria for siting approval set forth in Section 39.2 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/39.2, this Board must also deny LRS' application for another reason – it does not have jurisdiction. The Board lacks jurisdiction to grant this application because LRS failed to properly notify owners of all property within 250 of the lot line of the proposed transfer station in accordance with 415 ILCS 5/39.2(b), and because "[n]o person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling." 415 ILCS 5/22.14(a).

Notwithstanding the clear mandates of the Act, LRS seeks to construct a waste transfer station directly across the street from a manufactured home community. A "pollution control facility" is defined by the Act as "any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator." 415 ILCS 5/3.330. In turn, a "Transfer Station" is "a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility." 415 ILCS 5/3.500. While it is not in dispute that the proposed LRS waste transfer station constitutes a pollution control facility as defined by the Act, the site boundaries of the facility are disputed for purposes of application of the statutory 1,000 foot setback.

Based on the plain reading of these definitions, a transfer station includes more than just the building in which the waste is transferred. This view is bolstered by other provisions of the Act. For example, looking at 415 ILCS 5/39(c), the last requirement states that the *site* must have local zoning approval:

> The Agency may issue a permit for a municipal waste transfer station without requiring approval pursuant to Section 39.2 provided that the following demonstration is made: (1) the municipal waste transfer station was in existence on or before January 1, 1979 and was in continuous operation from January 1, 1979 to January 1, 1993; (2) the operator submitted a permit application to the Agency to develop and operate the municipal waste transfer station during April of 1994; (3) the operator can demonstrate that the county board of the county, if the municipal waste transfer station is in an unincorporated area, or the governing body of the municipality, if the station is in an incorporated area, does not object to resumption of the operation of the station; and (4) *the site has local zoning approval.*

The McLean County Code provides that "[t]he terms used in these procedural rules and regulations shall have the same meanings as the same terms are defined in the Environmental Protection Act of the State of Illinois, in effect as of the date hereof and as said Act may be amended or modified from time to time." §289-1. The very next section of the code is entitled "Request for **site** approval." §289-2 (emphasis added). This makes it clear that the proposed waste transfer station is a site which needs approval and the site is more than just the building.

Looking at the Illinois Administrative Code, "'Site' means any location, place or tract of land used for waste management. A site may include one or more units." 35 ILL. ADMIN. CODE. §807.104. Circling back to the restrictions laid out in IEPA §22.14(a), it naturally follows that the pollution control facility is the entire site, or tract of land, and that the site must be located 1,000 feet from the residential area in its entirety.

The eastern side of Bunn Street is roughly 100 feet from the eastern side of the nearby manufactured home community. In its Application, LRS indicated that it intended to construct a roadway from Bunn Street to the proposed facility. At the hearing, various representatives from LRS, using an animated video rendering of the facility, testified that trucks would enter the site from Bunn Street using that roadway. Clearly, the roadway constitutes part of the site for purposes of the 1,000 foot setback. *See City of Des Plaines v. Solid Waste Agency of Northern Cook Cty.*, PCB92-127, 1993 WL 196207 (Ill. Pol. Control Bd. 1993) (finding that an administration building near a waste transfer station was not included for purposes of calculating the setback where the administration building "may not be used as part of the transfer station operations.").

LRS attempts to subvert the 1,000-foot setback by constructing a road that only it recognizes as public. As reflected by the "deep concerns" expressed by Bloomington Township Highway Commissioner Rodney Boester, the proposed "public" nature of the roadway is a legal fiction created to obviate the 1,000-foot setback requirement: "Township will be responsible for maintaining a roadway that was only built or one business that needs a public roadway to obtain a permit . Had to subdivide property in-order to be 1000 feet away from residential, thus also needs to have public access." Additionally, County Engineer Jerry Stokes submitted a final report related to the proposed roadway that stated "[a]s proposed, the newly constructed HDI Court would become a street under the jurisdiction of Bloomington Township Road District. HDI Court should be transferred to the City of Bloomington upon completion and acceptance by Bloomington Township Road District." As is clear from Mr. Stokes' comment, HDI Court is not yet a street under the jurisdiction of Bloomington Township Road District. LRS has not demonstrated that the City of Bloomington has agreed to expend its resources to maintain HDI Court for the primary use of LRS. Even if the City of Bloomington had made such an agreement, the fact that this roadway was privately owned and intended to be used as part of the site's operations renders LRS's application improper.

LRS also attempts to improperly distract from an equally salient issue, its failure to notify the members of the manufactured home community, by focusing much of its argument on the definition of the term "lot." Section 39.2 (b) specifically requires that notice be provided:

> "No later than 14 days prior to a request for location approval the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owner of all property within 250 feet in each direction of the lot line of the subject property, *said owners being such persons or entities which appear from the authentic tax records* of the County in which such facility is to be located * * *." (Emphasis added.)

415 ILCS 5/39.2(b). "Authentic tax records" is the term used in the statute and chosen by the legislature. *Id.* "Authentic" is defined as:

> Genuine; true; real; pure; reliable; trustworthy; having the character and authority of an original; duly vested with all necessary formalities and legally attested. Competent, credible, and reliable as evidence.

Authentic, BLACK'S LAW DICTIONARY 121 (5th ed. 1979). Words used in a statute are to be given their plain and commonly understood meaning in the absence of an indication of legislative intent to the contrary. *See In re Village of North Barrington*, 144 Ill. 2d 353, 362 (1991). In this matter, LRS is relying on fictional boundaries that are not yet recognized by the tax assessor's office because they are from a *preliminary* subdivision plan. Even if they do become legally recognized lot lines per authentic tax records, they were not such at the relevant time: when pre-filing notice of the hearing was required to be given. The legislature, in choosing to use the term "authentic tax records" certainly did not intend to allow a site applicant to create boundaries to avoid providing notice to interested parties. *Only* when notice is in compliance with the statute and places those potentially interested persons on inquiry can it be sufficient to confer jurisdiction on the county board.

In this matter, notice was insufficient and, as a result, a large sector of potentially interested persons (namely the residents of the manufactures home community) were potentially not allowed an opportunity to appear at the hearing on this application. This is relevant for jurisdictional purposes, and also as it relates to concerns about wear and tear on current public roadways.

A very large portion of the written public commentary on the site application submitted post-hearing focuses on concerns over heavy traffic and wear and tear on public roadways. Most of the concern is presumably related to the impact on Bunn Road, which runs along the manufactured housing community and is the proposed access to the transfer station site. Public concerns are echoed and thus validated, in a letter objecting to the new station submitted by Rodney Boester, Bloomington Township Highway Commissioner.

The record demonstrates a failure by the applicant to meet several of the criteria required under Section 39.2. However, this is secondary to the failure meet the statutory notice requirements necessary to confer jurisdiction over the matter to the board. As such, Republic Services requests that the County Board deny LRS's application and submits the enclosed Proposed Findings of Fact and Conclusions.

Respectfully submitted,

Republic Services, Inc.

By: /s/Claire A. Manning

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IN RE LAKESHORE RECYCLING SYSTEMS, INC. / HENSON DISPOSAL
POLLUTION CONTROL FACILITY SITING
McLEAN COUNTY BOARD

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pursuant to Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 (the "Act"), on August 18, 2023, Lakeshore Recycling Systems, LLC ("LRS") applied to the McLean County Board for local siting approval of a new municipal waste transfer station at the existing, approximately 42-acre Henson Recycling Campus located at 2148 Trilakes Road, Bloomington, Illinois 61704 (as legally described in the application and hereafter referred to as the "Property"). LRS has identified the Property as parcels 21-15-151-021, 21-15-151-022, and 21-15-151-023.

2. The Property is owned by TKnTK, LLC, and is presently leased to Henson Parent, LLC, pursuant to a Lease Agreement dated December 31, 2021, and effective from January 1, 2023 until December 31, 2025.

3. The Property is located in the unincorporated area of McLean County, Illinois.

4. Public hearing on the application was opened on November, 29, 2023.

5. The hearing closed on December 1, 2023.

6. In accordance with the Illinois Environmental Protection Act, 415 ILCS 5 *et seq.* (the "Act"), written comment was then received by the Office of the City Manager within 30 days after the close of the Hearing pursuant to Section 39.2(c).

7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states in relevant part, that the applicant shall cause written notice of its requirements for site approval "to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located…."):

A) Applicant failed to cause written pre-filing notice of their request to be served either in person or by registered mail, return receipt requested, to all properties within 250 feet in each direction of the lot line of the subject property, said owners being such person or entities which appear from the authentic tax records of the County in which such facility is to be located;

B) The authentic tax records for McLean County demonstrate that the property lot line for purposes of compliance with Section 39.2(b) notice requirements, at the time the application was filed on August 18, 2023, is the lot line that creates the boundary of the entire property (referred to in the application as the 45 acres Henson Recycling Campus or HRC);

C) Applicant's argument that it complied with Section 39.2(b)'s pre-filing notice requirements is rejected because the lot lines it relied upon when calculating the 250-foot notice requirement are created by a *proposed division* of the original parcel and those lot lines were not consistent with and do not appear in the *authentic tax records* of McLean County at the time the application was filed;

D) The parcels Applicant relies upon and has identified as 21-15-151-021, 21-15-151-022 and 21-15-151-023 do not represent existing real estate property for purposes of calculating pre-filing notice under Section 39.2(b), which requires use of *authentic tax records*; said parcels are part of a preliminary plan, subject to further approval, and they have not been legally established or recognized by either the McLean County Recorder of Deeds or the McLean County Assessor's Office;

E) The McLean County Department of Public Health recognized this flaw in the application and filed written prehearing comment, noting that the only lot line legally recognizable at the time of the application is the one that surrounds the existing parcel;

F) Thomas Anderson, Director of Environmental Health for the McLean County Health Department, conducted a preliminary review of the application after its submission on August 15, 2023. Anderson indicated that the information provided in support of Criterion 2 is confusing because it includes a "part of a lot in Owner's Subdivision, the Preliminary Plan for HDI Subdivision, an 'Assessment Plat', and a 'Plat of Survey'." In his preliminary report, Mr. Anderson states that the information provided in support of Criterion 2 "implies a lot exists when it does not."

G) Due to its mistaken reliance on the lot lines proposed by a Preliminary Subdivision Plan, Applicant failed to provide the required pre-filing notice, under Section 39.2(b) of the Act, to owners of residential property within 250 feet in each direction of the lot line of the subject property, namely, owners of the properties located on the opposite side of Bunn Street and part of a residential manufactured home community with approximately 600-800 residents;

H) On December 1, 2023, during the public comment portion of the hearing, a resident of the nearby manufactured home community, Douglas Shaw, objected to the lack of pre-filing notice stating he only found out about the hearing by signs and conducting his own investigation into the matter;

I) Due to fatal flaws in meeting pre-filing notice requirements under Section 39.2(b), and abuse to those property owners in proximity to the subject property, it must be concluded that the County does not have jurisdiction over this matter. *See Env't Control Sys., Inc. v. Long,* 301 Ill. App. 3d 612, 622–23 (5th Dist. 1998) (deciding jurisdictional issue based upon lot lines detailed on authentic tax records and assessor's map, and further concluding that the term *lot lines* referred to the greater parcel line);

8. Accordingly, Applicant failed to comply with all pre-filing notice requirements of Section 39.2(b) of the Act. As these statutory pre-notice requirements are jurisdictional, the County has no jurisdiction to act on this application.

9. Concerning Section 22.14 of the Act (which states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"):

A) Under Illinois Pollution Control Board regulations, the "site" for a facility means the entire "location, place or tract of land used for waste management" and it "may include one or more units." *See* 35 ILL. ADMIN. CODE § 807.104;

B) The application identifies a primary access point to the facility from Bunn Road, which is currently identified as "public" by McLean County, via another road that has not yet been constructed, that Applicant wishes to build and delegate responsibility to McLean County for maintenance, and which runs across land currently owned by the applicant to the proposed site location. (See Section 2 of the Application, Sheets 5 and 6);

C) The non-public road, which has not yet been built, as the means of crossing the 45 acres parcel from Bunn Road to the proposed facility site owned by applicant, must be considered a part of the facility because it is part of the "location, place or tract of land used for waste management";

D) For purposes of calculating set-back requirements under Section 22.14 of the Illinois Environmental Protection Act, because the non-public road identified above is a part of the proposed facility, the 1,000-foot set back requirement from zoned residential property or any dwelling has not been met;

E) Accordingly, the requirements of Section 22.14 have not been met because a portion of the proposed WTS facility lies within 1,000 feet of the nearest zoned residential property and established dwellings as identified by the application, including residences of 600-800 McLean County citizens residing in the manufactured home community across from the proposed site;

10. The Applicant has additionally failed to meet its burden of showing that the proposed facility meets the requirements of Criterion 1, as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, in failing to show that "the facility is necessary to accommodate the waste needs of the area it is intended to serve...." *Will Cty. v. Vill. of Rockdale*, 2018 IL App (3d) 160463, ¶¶ 61–62.

A) Applicant witness, John Hock, Professional Civil Engineer, testified on the necessity issue under Criterion 1, as follows:

1. Based on averaging 2022 data obtained from the Ecological Action Center and the Illinois Department of Commerce and Economic Opportunity (DCEO), the service area is estimated to generate 500 tons per day of municipal solid waste that requires disposal;

2. There is only one active municipal solid waste transfer station in the area (ADS or Republic Services Transfer Station) which Hock stated is currently accepting 300 tons of solid waste daily, leaving 200 tons of municipal solid waste that is currently managed outside of McClean County;

3. John Hock based his above-referenced daily waste estimates on just a single day of observation of trucks entering and exiting the current facility serving the area;

4. When asked whether the numbers suggest that both a new waste transfer station and an existing waste transfer station are necessary based on the number and the loads of waste that are currently generated, and expected to be generated in the future in McLean County, Hock testified that "[i]t's not a question of capacity;"

5. Hock believes that a new transfer station will benefit the county by providing healthy competition which will help control prices and improve services;

6. John Hock used a census figure of a population 170,000, and added in an estimated population for students living at Illinois Wesleyan and Illinois State University based on their enrollment figures, resulting in a final population number of 193,000 as a foundation for his report even though the census figure already included said students; thereby overestimating the amount of waste being generated in McLean County;

7. McClean County has aggressive recycling goals, and recycled waste at a 40% rate between 2016 and 2022 and intended to recycle waste at a 50% rate in 2022;

8. McClean County has set a goal of recycling of 80% of its waste by 2037;

9. According to Hock, a new transfer station will assist McClean County in reaching its recycling goals; however, if there was a bad C&D load, they would not recycle it but would send it to the transfer station, potentially lowering the C&D recycling accomplished at the HRC campus;

10. According to Hock, a new transfer station may provide a new revenue source to McLean County through host fees, and a host agreement;

11. According to Hock, the new transfer station would increase the capacity and /or efficiency of C&D recycling, although no processing equipment has been designed or is proposed to be installed at the facility.

B) Sheryl Smith testified on behalf of Republic Services as a civil engineer by education and an experienced solid waste professional, with respect to necessity, under Criterion 1 as follows:

1. Applicant's analysis of necessity mistakenly added student populations from Illinois Wesleyan University and Illinois State University to census data resulting in increasing the actual census data of 176,000 to 191,000 people, thereby inaccurately increasing Applicant's calculation of the total amount of waste generated;

2. The correct population is closer to 171,000, so that waste generation rates based on the DCEO estimate of 7.84 pounds per capita per day results in a total annual waste generation of 244,000 tons;

3. Over a twenty-year time span, between 2023 to 2042, if McLean County reaches the recycling goals outlined in the adopted 2017 McLean County Solid Waste Management Plan, the net waste requiring disposal will decrease from 365 tons per day to 137 tons per day;

4. The 2017 McLean County Solid Waste Management Plan is thoughtful and when the Ecology Action Center (EAC) developed the plan it relied on 45 different entities to develop the plan making it a good tool for estimating waste generation and disposal;

5. Applicant, through its use of inaccurate data, overestimated how much waste will be generated in the service area and require disposal;

6. Applicant did not do any projections for future waste generation;

7. Applicant did not consider any of the McLean County recycling goals that were in the solid waste plan;

8. Applicant's estimation of waste entering the current facility is based upon one day of observation in March 2023, resulting in an estimate of 300 tons per day entering the current facility, which is flawed because it does not take into consideration seasonal, or even weekly, variations impacting quantities of waste (e.g. influx and egress of student population on the college campuses, different trash pick-up days, increased waste generation around holidays);

9. Applicant incorrectly indicated that GFL and Waste Management were not customers of the transfer station, and failed to account for other haulers that currently use the station;

10. Tonnage data from the ADS transfer station shows that in 2022 there were 203 days the station received more than 300 tons per day of waste, and the peak was 543 tons in one day, and in 2023, up until November 19, 2023, there were 199 days the station received more than 300 tons a day;

11. The current facility handles, on average, 350 tons of waste per day, and has demonstrated that it can handle at least 543 tons of waste in a single day;

12. The current facility does not have permit conditions that limit the total tons of waste per day that can be received.

13. McLean County presently generates an estimated 393-400 tons of waste per day for disposal, which is well within the existing capacity of the existing waste transfer station;

14. There are other facilities (solid waste landfill and transfer stations) in close proximity to the service area that are currently receiving McLean County waste.

C) Applicant has failed to meet its burden of establishing Criterion 1. Section 39.2 of the Act places the burden of proof on Applicant stating that Applicant "shall submit sufficient details describing the proposed facility and evidence to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets" the criteria. 415 ILCS 5/39.2(a); *see also Waste Mgmt. of Ill., Inc. v. Pollution Control Bd.*, 123 Ill. App.3d 1075, 1086–87 (2d Dist. 1984).

1. Applicant has failed to demonstrate that this facility is necessary to meet the waste needs of the McLean County, as the existing waste transfer station has excess capacity to meet McLean County's present, and projected future, waste disposal needs;

2. Evidence presented demonstrates that existing available facilities are able to handle waste in the service area;

3. Data relied upon by Applicant in support of its calculations of necessity is unreliable and flawed and therefore the calculations of need based on population of the area cannot be considered;

4. The applicant' reliance on one day's worth of observations of trucks delivering waste to the ADS transfer station is flawed and creates a shortfall that does not exist.

5. The applicant's report did not include availability of processing of bulk materials at the Municipal Bulk Transfer Station in McLean County.

6. The evidence presented supports the conclusion that the current transfer station in the service area is currently meeting all waste disposal needs in the area, and with consideration of future recycling goals, will continue to meet waste needs over the next twenty years, between 2023 and 2042. *See Waste Mgmt. of Ill., Inc. v. Pollution Control Bd.*, 123 Ill. App.3d 1075, 1086–87 (2d Dist. 1984).

11. Applicant has failed to meet its burden of showing that the proposed facility meets Criterion 2: "The facility is so designed, located and proposed to be operated that the public health, safety, and welfare will be protected;":

A) The location of the proposed facility is on a portion of the existing property which originally had lakes that have been filled in to accommodate the location of the facility. The lakes have been filled in and this occurred at some point after the original application was filed for a transfer station in this area;

B) The Illinois Environmental Protection Agency has filed violations against the owner of Henson related to the use of soil as fill in the area that will constitute the proposed site, and the parties were unable to reach a Compliance Commitment Agreement; thus the violations are presently pending referral to the Office of the Illinois Attorney General for enforcement;

C) Applicant presented no evidence to contravene evidence that violations have been filed and resolution is pending, or to clarify if they are related to the lakes that were filled in at the proposed site or that contamination exists that will need to be removed. Issues related to the enforcement action pending by the Illinois EPA, and involvement by the Illinois Attorney General's Office, are ongoing and unresolved;

D) Applicant has failed to present any evidence to ensure that these unresolved issues will not impact public health safety and welfare or raise other environmental concerns;

E) The unresolved nature of pending environmental matters related to the lakes, the location of the lakes, soils, and the relation of both the proposed site, combined with potential negative impact on surrounding roadways, support the conclusion that the applicant has failed to meet it burden of showing that the proposed facility meets Criterion 2.

12. Questions have been raised regarding the impact of the increased traffic on area roads, with respect to Criterion 6 ("the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows") which have not been clearly addressed by Applicant. Rodney Boester, Bloomington Township Highway Commissioner, submitted public written comment on this matter, objected to the proposed facility and in support of the objection stated that increased truck traffic "will not only increase the maintenance of various surrounding township roadways, but decrease public safety." Additionally, Applicant simply assumes that McLean County and/or the Bloomington Township Highway Commissioner will accept the obligation to maintain the roadway it wishes to construct as an entrance to the proposed facility, despite the "deep concerns" expressed.

13. Each of the foregoing deficiencies, standing alone, is fatal to Applicant's proposal. The evidence presented demonstrates that, as a preliminary matter, the Board does not have jurisdiction over this matter given the deficiencies in the notice of these proceedings provided by Applicant and the facility's proximity to nearby residences. Notwithstanding the lack of jurisdiction, Applicant's failures to meet Criteria 1, 2, and 6 each require that this application be denied. As such, it is the conclusion of this Board that LRS' application for siting approval is hereby denied.