

**STATE OF ILLINOIS
COUNTY OF MCLEAN
BEFORE THE COUNTY BOARD**

FILED
McLEAN COUNTY, ILLINOIS
JAN 10 2024
Kathy Michael
COUNTY CLERK

In Re:

**APPLICATION OF
LAKESHORE RECYCLING SYSTEMS, LLC/
HENSON RECYCLING CAMPUS TRANSFER STATION
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2
OF A NEW POLLUTION CONTROL FACILITY**

**REPORT OF HEARING OFFICER
RECOMMENDED FINDINGS OF FACT AND
RECOMMENDED CONDITIONS OF APPROVAL**

INTRODUCTION

On August 18, 2023, Lakeshore Recycling Systems, LLC (“Applicant”) filed its application for local siting approval of a new municipal waste transfer station on its property within the Henson Recycling Campus (aka the HDI Subdivision) in unincorporated McLean County, Illinois. The Applicant owns the real property (the “Property”) upon which the proposed pollution control facility (“Facility”) is to be located. The Property is located within unincorporated McLean County. The County Board is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Code of Ordinances establishing rules and procedures for pollution control facility siting.

Among the procedures set forth in the Act and the Code of Ordinances is the requirement to hold a public hearing on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (i.e., February 14, 2024). The County opened the public hearing on November 30, 2023.

In accordance with the procedures and other terms and provisions of the Act and the Code of Ordinances, I reviewed the Application and initial filings. The following parties appeared at the Hearing by and through counsel:

The Applicant (“LRS”), represented by George Mueller;

Republic Services, Inc. (“RSI”) represented by Claire A. Manning of Brown, Hay + Stephens.

County of McLean/Staff (“Staff”) and Ecology Action Center (“EAC”), represented by ASA Taylor Williams; and

County of McLean/Board and Committee (“Board”), represented by ASA Trevor Sierra.

During the hearing, I admitted the Application, the Host Agreement, the Utility Agreement, the exhibits, powerpoint presentations, and testimony from witnesses called by the Applicant in support of the Application. I also admitted exhibits, powerpoint presentations, and testimony from the witness called by RSI in opposition to the Application.

As discussed below, RSI contests the jurisdiction of the County Board to consider the application due: 1) to the restrictions of 415 ILCS 5/22.14 which prohibits “establishing 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;” and 2) due to failure of the Applicant to fulfill the Notice requirements of 415 ILCS 5/39.2(b). Both of these challenges arise from a dispute over the legal boundaries and lot lines to be recognized for the proposed site and facility. The Applicant filed a response to the arguments made by RSI.

In addition to evidence and testimony, oral public comment was received throughout the hearing proceedings and written public comment has been received through (and including) January 2, 2024. “Comment” is distinguished from “testimony” in that “comment” is not

provided under oath and is not subject to cross examination and therefore entitled to less weight than testimony.

I declared the hearing closed on December 1, 2023. In accordance with the Act, written comment was then received by the County for an additional 30 days (i.e., through 11:59:59 p.m. CDST on January 2, 2024, including any written comment post-marked on or before January 2, 2024). Substantial oral public comment was received in support of the Application; and there was public comment filed from various persons both supporting and opposing the application. As indicated above, public comment is entitled to less weight because it is not subject to being tested by the opportunity for cross examination.

I received argument in favor of siting approval and proposed findings of fact and law from the Applicant and I received argument in opposition to siting approval as well as proposed findings of fact and conclusions of law from RSI.

RECOMMENDED ACTIONS

It is my recommendation that the County Board vote separately on three propositions:

- 1) Whether the proposed Facility violates 415 ILCS 5/22.14 (which prohibits locating a transfer station which is located less than 1,000 feet from any residential dwelling or from properties zoned for primarily residential uses).
- 2) Whether the notice delivered by Applicant satisfies Section 39.2(b) of the Act.
- 3) Whether the proposed Facility (with any special conditions imposed by the County) satisfies the siting criteria of Section 39.2.

RECOMMENDED FINDINGS:

For the reasons set forth below, my recommendation to the County is to find that the Facility does not violate 415 ILCS 5/22.14.

For the reasons set forth below, my recommendation to the County is to find that the notice delivered by the Applicant satisfies Section 39.2(b).

For the reasons set forth below, my recommendation to the County is to impose 3 Special Conditions (appended to my proposed Findings of Fact and Conclusions of Law) and with those Special Conditions approve the Application as satisfying the siting criteria of Section 39.2. More specifically, I find that the application as filed requires the imposition of 3 special conditions and compliance by the Applicant with those special conditions for the proposed Facility to satisfy all of the statutory criteria for local siting approval.

JURISDICTIONAL ISSUES RAISED BY REPUBLIC SERVICES, INC.

The Facility Violates 415 ILCS 5/22.14

Section 415 ILCS 5/22.14 of the Illinois Environmental Protection Act 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....” RSI asserts that the relevant boundary of the Facility for purposes of measuring the 1,000 feet is the boundary of the Henson Campus as opposed to the particular lot within the Henson Campus as defined in the Application (in part because no final plat of subdivision of the Henson Campus has yet been recorded). Because the manufactured home community is less than 1,000 feet from the Henson Campus, Section 22.14 prohibits the Applicant from establishing this transfer station.

However, Section 39.2 (a) of the Act states: “If the facility is subject to the location restrictions in Section 22.14 of this Act, compliance with that Section shall be determined *as of the date the application for siting approval is filed.*” (emphasis added)

The Application was filed on August 18, 2023. The record discloses that at that time, the proposed Facility boundary—as defined in the Application--had been recognized by the County Board in the Preliminary Plan approved February 16, 2023 (as “Lot 3 in HDI Subdivision”) and in the Assessment Plat recorded August 17, 2023 (as Lot 1, bearing PIN 21-15-151-022). There is no dispute that the proposed Facility--as defined in the Application, as recognized in the preliminary plan, and as recognized in the recorded assessment plat--is more than 1,000 feet from any property zoned for primarily residential uses and more than 1,000 feet from any dwelling. Because the proposed Facility as defined in the Application controls, I find that Section 22.14 does not prohibit the siting of the proposed Facility as defined in the Application.

As a secondary argument under Section 22.14, RSI argues that the proposed HDI Court should be considered a part of the Facility as HDI Court is a *de facto* private drive that serves only the transfer station. However, the uncontradicted testimony of Karl Finke and Michael Werthman was that HDI Court is designed within the subdivision to serve other possible lots adjacent to the proposed HDI Court and designed to serve existing users, including the existing landscape mulching operation, and concrete operation. (Hearing Transcript 157(6)-158(7); 176(24)-177(5); 184(24)-185(4).) The County also approved the proposed HDI Court as part of the preliminary plan which carries the requirement that HDI Court be built to the County’s road standards (rather than private drive standards) and comply with all turn lane and signalization requirements attendant thereto. Therefore, I find that the proposed HDI Court is not a part of the

Facility and therefore Section 22.14 does not prohibit the siting of the proposed Facility as defined in the Application.

Notice Under Section 39.2(b)

Whether the Applicant provided proper notice under section 39.2(b) of the Act is a threshold question in the pollution control siting. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 15. Compliance with the pre-filing Notice requirements of Section 39.2 is jurisdictional and substantial compliance is not sufficient. See, *Daubs Landfill v. Pollution Control Board*, 166 Ill.App 3rd 778 (5th Dist. 1998) (however perfection is not the standard).

Section 39.2(b) requires, in relevant part, that: “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...”). RSI has challenged whether the Applicant fulfilled this requirement with respect to property owners in the nearby manufactured home community due to the definition of the Lot used by the Applicant. More specifically, RSI contends that at the relevant time that the Applicant caused the notice to be served, the controlling “lot line of the subject property” for determining the property owners entitled to Notice was the lot line of the Henson Campus and not the lot lines as defined by the metes and bounds description of the lot as set forth in the Application. As argued by RSI: If the lot line of the Henson Campus controls, then owners in

the manufactured home community were entitled to notice and, because those owners did not receive the required notice, the County is without jurisdiction to consider the application.

However, I find that RSI's argument ignores the fact that when the Applicant sent the Notice, the metes and bounds description of the lot as defined in the Application had already been recognized and approved by the County Board as "Lot 3 in HDI Subdivision" in the Preliminary Plan approved on February 16, 2023. Also relevant is the fact that same lot was subsequently recognized as "Lot 1" in the Assessment Plat recorded August 17, 2023 as document number 2023-00010925. The fact that a final plat has not yet been recorded is consistent with the County's planning process which requires the final plat substantially conform to the approved preliminary plan and which, in this case, recognizes the reality of the pending siting process as being preliminary to any such final plat. As there is no evidence in the hearing record that would require an adjustment of the lot lines as defined in the Application, the lot as defined in the Application and the Preliminary Plan should control. Accordingly, the Notice sent by the Applicant satisfies the requirements of Section 39.2.

OTHER JURISDICTION FINDINGS

The record, the statutes, and the case law discussed above establish that the Applicant owns the real property upon which the proposed pollution control facility will be located and that the property and the Facility are wholly located within McLean County.

I further find that the Applicant and the County have complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the hearing on the Application. No objections were filed concerning compliance with Section 39.2(c).

Likewise, no objections were filed concerning compliance with the County Code of Ordinances. I find that the Applicant complied with all requirements of McLean County that apply at this time.

Accordingly, I find that the County has jurisdiction to consider the statutory criteria of Section 39.2.

SECTION 39.2 CRITERIA

These proceedings are governed by Section 39.2 of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The application (or request) must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000.) If the Applicant fails to establish any one of the criteria, the application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of law, once an Applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the Applicant’s case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2nd 353 (1969). In order to rule against an Applicant on any criterion, the decision maker (the County

Board in this case) must find competent rebuttal or impeachment evidence in the record.

Industrial Fuels and Resources v. Illinois Pollution Control Board, 227 Ill.App.3d 553, 592 N.E.2d 148 (1st Dist. 1992).

The Applicant called expert witnesses to offer evidence as to the statutory siting criteria. Counsel for RSI, as well as counsel for the County Staff and the County Board, cross-examined the witnesses. RSI also called one witnesses in rebuttal. The basis and rationale for my findings on each criterion is set forth below.

1. The Facility is necessary to accommodate the waste needs of the area it is intended to serve.

This Criterion is contested by RSI. I find that Criterion 1 is satisfied.

Criterion 1 has been the subject of litigation and the Courts have provided guidance as to its requirements. For example, to prove criterion 1, the courts have previously held the Applicant must show that the proposed Facility is reasonably required by the waste needs of the service area, taking into consideration the waste production of the area and the waste disposal capacity available to it. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). Although a petitioner need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill.App.3d 65, 69, 600 N.E.2d 55, 57 (1st Dist. 1992). The petition must show that the facility is reasonably required by the waste needs of the area it is intended to serve, including the area's waste production and disposal capabilities. *Id.*

RSI called Sherly Smith as an expert who analyzed whether there was a capacity shortfall in the intended service area by focusing on the available capacity at the ADS transfer station (and others) and direct haul disposal capacity at the Clinton Landfill for the area to be served

(including facilities outside of, but still serving, the area intended to be served). Based on Sheryl Smith's testimony, RSI argues that there is no capacity shortfall and therefore no need for the new transfer station.

However, in *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), the Appellate Court held that Criterion 1 is not determined exclusively by reference to capacity analysis. Indeed, in *Rockdale* (which affirmed the siting approval of a transfer station less than 2 miles from an existing and operating transfer station), the Applicant submitted no capacity analysis at all. Instead, the Appellate Court agreed with siting authority and the Applicant that the "waste needs of the area" could include other factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts. Accordingly, Ms. Smith's testimony and the capacity analysis is not determinative of Criterion 1.

In this case, the Applicant called John Hock from Civil and Environmental Consultants, Inc. to testify on this criterion. Mr. Hock acknowledged the existing available capacity at the ADS transfer stations and the direct haul options to the Clinton Landfill, but testified that the need for this Facility is found in the need to increase competition in the hauling market (through further vertical integration of disposal from curb-to transfer station-to landfill, this facility will increase competition for the hauling of waste in the area); in reduced environmental impacts (less diesel exhaust as a result of shorter travel distances); in increased recycling; and in operational benefits. Cross-examination focused on the available capacity and questioned the competitive impacts but did not overcome the substantive proof on the benefits to which Mr. Hock testified.

I find Criterion 1 was satisfied.

2. ***The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.***

I find that, with the Applicant's agreement to 3 special conditions, Criterion 2 is satisfied.

Like Criterion 1, Criterion 2 has been the subject of litigation and guidance is available from the Courts. To prove criterion 2, the Applicant must demonstrate that the proposed Facility is designed, located and proposed to be operated to protect the public health, safety and welfare. 415 ILCS 5/39.2 (a) (ii). This includes a demonstration that the facility is not flawed from a public safety standpoint and that its proposed operations are neither substandard nor unacceptably risky. Industrial Fuels and Resources, Inc. v. Illinois Pollution Control Board, 227 Ill.App.3rd 533, 592 N.E.2d. 148, 157 (1st Dist. 1992).

Mr. Karl Finke testified that the proposed Facility meets the location standards and also described the proposed site plan and the proposed operations. The transfer building will be a "fully enclosed" facility (which is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of "spotters," the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Finke testified as to the anticipated sources of business and the equipment that is anticipated to be used by LRS to bring that equipment to the Facility. Mr. Finke described the stormwater management plan for the proposed facility and testified that the stormwater management meets McLean County standards.

Under questioning from the County Board and Staff, and in response to the jurisdictional arguments of RSI, the Applicant agreed that a special condition requiring the Applicant to fulfill the County's requirements to record a final plat of subdivision that meets the standards of McLean County is reasonable. (Hearing Transcript, p. 30(14-16).) Accordingly, Special Condition 1 will

be to require the Applicant to prepare an acceptable final plat of subdivision and to record same before receiving any construction permit.

Under questioning from the County Board concerning the landscape buffers surrounding the building and along HDI Court, the Applicant agreed that a special condition requiring the Applicant/Operator of the Transfer Station to maintain that landscaping to provide the intended buffer would be reasonable. (Hearing Transcript pp. 172(15)-173(24).) Accordingly, Special Condition 2 will be to require the Applicant to undertake the maintenance of the landscaping buffers proposed for the Facility, including but not limited to maintaining the landscaping proposed along HDI Court (as such maintenance activities are approved by the highway authority with jurisdiction over HDI Court) and the landscaping buffers on the Facility proper.

Under questioning from RSI and the County Board concerning HDI Court, the Applicant agreed that HDI Court would be a publicly dedicated road as part of the subdivision process. (Hearing Transcript 157(6)-158(7); 176(24)-177(5); 184(24)-185(4).) Accordingly, Special Condition 3 will be to require that the Applicant construct and dedicate HDI Court, and all intersection connections of HDI Court, to the standards of McLean County and any other authority with jurisdiction over the traffic movements.

The application, modeling evidence, and testimony – with the special conditions in place -- demonstrated that the Facility could safely handle the proposed waste and operations.

**3. *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 Surrounding Property.***

I find that Criterion 3 is satisfied. The Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area. Applicant called Dale Kleszynski, a licensed Illinois real estate appraiser and member of the Appraisal Institute.

He testified to the historical use of the subject property and surrounding area--which includes current and historical uses related to recycling and other industrial operations.

In addition to concluding that the location minimizes incompatibility with uses in the surrounding area, Mr. Kleszynski also concluded that the Facility is located to minimize the effect on the value of surrounding property. Mr. Kleszynski submitted a highest and best use analysis of the subject property for purposes of analyzing impact on the values of surrounding property. He opined that this highest and best use analysis is related to the statutory siting criterion in that highest and best use of property is the use which would, by definition, minimize any deleterious effect on the values of the surrounding property. After reviewing the traditional criteria used to analyze highest and best use, he testified that development as a solid waste transfer station would fit within the highest and best use of the property.

Although RSI asked a few questions of Mr. Kleszynski, there was no substantial contest of this criterion.

4. *The Facility is located outside the Boundary of the 100 Year Floodplain.*

I find that the Applicant demonstrated that the Facility meets Criterion 4.

The testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this Criterion. No challenge to this Criterion has been filed.

5. *The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.*

I find that the testimony of Mr. Finke and the Application information demonstrated that the Facility meets Criterion 5. No formal challenge to this Criterion has been filed.

6. *The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.*

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6.

The Applicant called Michael Werthmann, a registered professional engineer and certified professional traffic operations engineer, with more than 25 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann testified that he used standard methodology used by transportation planning officials. Mr. Werthmann testified he studied traffic volumes, distributions and movements at the site entrance and the potentially affected intersections. He described the local roadway system and detailed present and future improvements on that system. He testified that the location, existing operations, and proposed route for the transfer trailers all minimized the impact on existing traffic flows. Although RSI asked Mr. Werthman questions, no substantial challenge to this Criterion has been filed.

7. *Hazardous Waste Emergency Plan*

Per the Application and the Testimony of Mr. Finke, the Facility will not be treating, storing or disposing of Hazardous Waste. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

8. *If the Facility is to be Located in a County Where The County Board has adopted a Solid Waste Management Plan Consistent With The Planning Requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, The Facility is Consistent with that Plan.*

John Hock reviewed the contents of the McLean County Solid Waste Management Plan from its adoption to its most recent update. He reviewed the provisions concerning pollution control facilities in that plan including the recognized need for additional transfer stations,

additional recycling and additional competition. Mr. Hock also testified as to the host agreement executed between LRS and McLean County in which the County stated the proposed Facility is consistent with the County's plan. (Hearing Transcript pp. 83-87)

I find the PCB decision in *Rockdale* is again instructive. As in this case, both the PCB (and the court) in *Rockdale* found that the very existence of a host agreement approved by the County weighs heavily in favor of a finding that Facility is consistent with the County's plan (as it is the County's plan to interpret and administer).

I find the proposal to be consistent with the County's plan.

9. *Recharge Area*

Per the Application and the testimony of Mr. Finke, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

10. *Consideration of Previous Operating Experience*

The Act permits the Corporate Authorities to consider the previous operating experience of an Applicant. Specifically, the Act permits the County to consider the "past record of convictions or admissions of violations of the Applicant...". Here, RSI raised the issue of an open and pending notice of violation issued by the IEPA to Henson concerning current recycling operations (not operations of a transfer station). Mr. Hock testified as to the disagreement that the Applicant has with the IEPA over the allegations in the notice concerning the site and the recycling operations.

I find that the proposed transfer station operation, in a fully enclosed building, is different in kind from the allegation set forth in the NOV issued to Henson and therefore do not find that

the NOV issued to Henson is a sufficient basis to find the proposed Facility does not satisfy the criteria of Section 39.2.

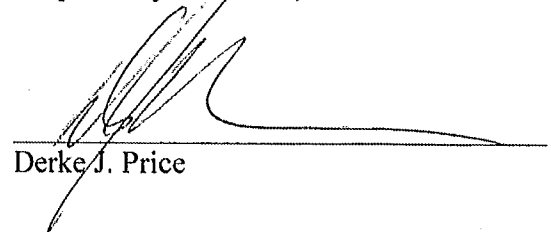
PUBLIC COMMENTS

In addition to the public comment (oral and written) received during the Hearing, the County Clerk received written public comments after the hearing closed. The public comment supporting the Application focused on the benefits that the Facility would bring to the County while the public comment opposing the Application focused primarily on traffic impacts. I found that the public comment, while important to understand the context of the application, was not focused on the statutory criteria in a relevant and “probative” way or, alternatively, lacked sufficient evidence about the sources cited (i.e., an evidentiary foundation) as required by the statute and case law and therefore the comment, neither singly nor collectively, caused any change in how I weighed the evidence received from the Application, the admitted exhibits, and the admitted testimony.

PROPOSED FINDINGS OF FACT

My proposed findings of fact are attached.

Respectfully submitted,



Derke J. Price

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4828-0676-7394, v. 1

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On August 18, 2023, Lakeshore Recycling Systems, LLC (“Applicant”) applied to the County of McLean (“County”) for local siting approval of a new municipal waste transfer station on its property in unincorporated in McLean County, Illinois as legally described in the application and hereafter referred to as the “Property”).
2. The Applicant owns the Property upon which the proposed pollution control facility (“Facility”) is to be located.
3. The Applicant has negotiated a Host Agreement with the County and the Host Agreement is a part of the Application. The Applicant has also negotiated a utility agreement with the City of Bloomington that is a part of the Application.
4. The County has jurisdiction to consider the Application.
5. The public hearing on the application was opened on November 30, 2023; the hearing closed on December 1, 2023.
6. In accordance with the Act, written comment was then received by the County for an additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on January 2, 2024, including any written comment post-marked on or before January 2, 2024).
7. Based upon a finding and legal conclusion that the legal description of the Facility as set forth in the Application (and recognized in the preliminary plan approved by the County) controls, the Applicant fulfilled the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request 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 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...”).
8. Concerning 415 ILCS 5/22.14 (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”): As of the date of the application and based upon the legal description of the Facility set forth in the application—which at that time had been recognized in the approved preliminary plan and also recognized in the recorded Assessment plat--the Facility is not located within 1000 feet of any dwelling and not located within 1000 feet of any properties zoned for primarily residential uses.
9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness.

11. Based on the understanding 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*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....”

12. In demonstrating that the Facility--as proposed in the Application-- meets Criterion 2, the Applicant agreed to the imposition of 3 special conditions to remove any doubt that: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.” The 3 special conditions are:

Special Condition 1: the Applicant shall prepare an acceptable final plat of subdivision and to record same before receiving any construction permit.

Special Condition 2: the Applicant shall be responsible for the maintenance of the landscaping buffers proposed for the Facility, including but not limited to maintaining the landscaping proposed along HDI Court (as such maintenance activities are approved by the highway authority with jurisdiction over HDI Court) and the landscaping buffers on the Facility proper.

Special Condition 3: the Applicant shall construct and dedicate HDI Court, and construct all intersection connections with HDI Court, to the standards set by McLean County and any other authority with jurisdiction over the traffic movements or road design.

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: “the facility is so 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;”

14. The Applicant demonstrated that the proposed Facility meets Criterion 4; “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”

15. The Applicant demonstrated that the Facility meets Criterion 5: “the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

17. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.

18. Based on the analysis of Criterion 8 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*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: “...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ...”

19. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.

20. The Applicant’s operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly.

21. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards.

22. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Agreement.

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the County should grant siting approval.

Respectfully submitted,



Derke J. Price