

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND RECOMMENDATIONS**

**BACKGROUND:**

This matter has come to be heard under the Village of Round Lake Park's Pollution Control Facilities Siting Ordinance and pursuant to Section 39.2 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/39.2. Pursuant thereto, on June 21, 2013, Groot Industries (the "Applicant") filed with the Village Clerk, its Application for Approval of a Pollution Control Facility, to wit, its Lake Transfer Station. (the "Application").

The Village's Siting Ordinance (Ordinance 12-14) applies to the extent that it sets out procedures and requirements that are consistent with the Illinois Environmental Protection Act (the "Act") and supplement, rather than supplant the requirements of the Act. Waste Management of Illinois v. PCB, 175 Ill. App. 3d 1023, 1036, 530 N.E.2d 682, 692-93 (2d dist. 1988), Landfill 33, Ltd. v. Effingham County Board, PCB 03-43, 03-52 (2-20-03). No other criteria or standards may be utilized by the Village Board. CDT Landfill Corporation v. City of Joliet PCB 98-60 (March 5, 1998).

The Siting Ordinance and Section 39.2 of the Act (415 ILCS 5/39.2) require the Village Board to approve or disapprove the Applicant's request for local siting. The Village Board must determine whether the Applicant has submitted sufficient details describing the proposed facility to demonstrate compliance with the statutory criteria set forth at Section 39.2(a) of the Act. Only if the Village Board finds that the Applicant has proven by a preponderance of the evidence that all applicable criteria have been met, can siting approval be granted. Hediger v. D & L Landfill, Inc., PCB 90-163, slip op. at 5 (Dec. 20, 1990), Industrial Salvage v. County of Marion, PCB 83-73 (August 2, 1984).

These criteria may be summarized as: need; public health; safety and welfare; minimization of incompatibility; floodplain; minimization of danger through the plan of operations; minimization of impact on existing traffic flows; adequacy of the emergency response plan for hazardous waste facilities; compatibility with the County Solid Waste Management Plan; and a lack of impact on regulated recharge areas. The Village Board may also consider the previous operating experience and the past record of convictions or admissions of violations of the Applicant.

However, Section 39.2(e) of the Act specifically authorizes the Village Board to "impose such conditions [on approval] as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with the regulations promulgated by the [Pollution Control] Board."

The record in this proceeding consists of the Application, the transcript of the public hearing, the exhibits and filings of the parties, and public comments. The exhibits include the Application along with errata sheets, Applicant's Exhibit 1. The public hearing commenced on September 23, 2013 and was continued from time to time concluding on October 2, 2013. The Village (Village Staff) believes that the Applicant has met its burden and thus the Applicant should be granted site location approval subject to the recommendations and conditions set forth herein.

### **PRE-HEARING ISSUES AND RELATED MATTERS**

#### **NOTICE AND JURISDICTION:**

The Applicant provided notice of its intent to file the Application at bar. Specifically, Section 39.2(b) of the Act requires that no later than 14 days prior to filing a request for location approval, a notice of the intended filing must be served upon certain

property owners within the statutory distance of the lot line of the subject property. The same notice must be served on others, including members of the General Assembly from the legislative district in which the proposed facility is located, and it must appear in a newspaper of general circulation published in the county in which the facility is proposed to be located.

Applicant's Exhibit No. 2 shows that the notices of intent to file the application were timely served and the published notice was timely published. Applicant's Exhibit No. 2 was admitted into evidence without objection.

In Bishop v. PCB, 235 Ill. App. 3d 925, 601 N.E.2d 310 (5<sup>th</sup> Dist. 1992), the Appellate Court reversed the PCB, citing its prior decision in a related matter and its previous opinion in Daubs v. PCB, 166 Ill. App. 3d 778, 520 N.E.2d 977 (5<sup>th</sup> Dist. 1988):

Generally, as long as notice is in compliance with the statute and places those potentially interested persons on inquiry, it is sufficient to confer jurisdiction on the county board. (Wabash & Lawrence Counties Taxpayers & Water Drinkers Association v. Pollution Control Board, 198 Ill. App. 3d 388, 555 N.E.2d 1081 (1990).

Accordingly, the pre-filing notices are in full compliance with both the letter of Section 39.2(b) as well as with the ideal of alerting potentially interested persons not legally entitled to notice of the filing.

The Applicant has also provided notices regarding the public hearing. Section 39.2(d) of the Act requires that:

At least one public hearing is to be held by the county board or governing body of the municipality no sooner than 90 days but no later than 120 days after the date on which it received the request for site approval. **No later than 14 days prior to such hearing, notice shall be published** in a newspaper of general circulation published in the county of the proposed site, and **delivered by certified mail to all members of the General Assembly** from the district in which the proposed site is located, to the governing

authority of **every municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located, to the county board** of the county where the proposed site is to be located, if the proposed site is located within the boundaries of a municipality, and to the Agency.    ̃ emphasis added.

Applicant's Exhibit No. 3 contains the relevant documents related to the notice of the hearing and it shows the necessary notice of the public hearing was served and published as required. Applicant's Exhibit No. 3 was admitted into evidence without objection.

**PROPOSED FINDING AND RECOMMENDATION:**

Accordingly, the Village Board should expressly find that all of the notice provisions of the Act have been complied with, giving the Village jurisdiction of the issues at bar and further that there is no credible evidence to contrary.

**THE SECTION 39.2 CRITERIA:**

As stated above, Section 39.2(a) of the Act requires the Village Board to determine whether the Applicant has submitted sufficient details describing the proposed facility to demonstrate compliance with the nine criteria set forth in the Act and Ordinance.    ̃ [L]ocal siting approval shall be granted only if the proposed facility meets the following criteria:

- (i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;
- (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (iii) 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;

- (iv) (A) 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; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed;
- (v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;
- (vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
- (vii) if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
- (viii) 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; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed; and
- (ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

In addition, Section 39.2(a) permits the Village Board to consider as evidence the previous operating experience and past record of convictions or admissions of violations of the Applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) above.

## CRITERION I

### **THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE AREA IT IS INTENDED TO SERVE**

The first criterion is whether the facility is necessary to accommodate the waste needs of the area it is intended to serve. The Applicant called Christina Seibert. Ms. Seibert was awarded a Bachelor of Environmental Science degree from the University of Iowa and has been a solid waste planning professional for the past thirteen (13) years. She has been involved in the preparation of needs assessments for 20 solid waste facilities in Illinois. (tr 9-24-13 B at 10-12) (Seibert 2)<sup>1</sup>

The Applicant has selected Lake County as its service area. It is the Applicant that selects the service area. Metropolitan Waste Systems, Inc. v. Pollution Control Board, 201 Ill. App. 3d 51, 558 N.E.2d 785 (3d Dist.1990). The siting authority does not have the power to, by itself, revise the Applicant's service area when considering Criterion I. Land and Lakes Company v. Village of Romeoville, PCB 91-7 (December 6, 1991).

Ms. Seibert conducted a Section 39.2 needs analysis, examining the disposal trends, the amount of waste disposed of by the service area, disposal capacity and economic factors. (tr 9-24-13 B at 13-14) (Seibert 4) Included in her study was an examination of the demographics, population projections. (App 1-4, Fig 1-2) Ms. Seibert determined the location of the waste centroid and examined the current and historical direct haul disposal system. (tr 9-24-13 B at 16) (Seibert 6) (App 1-6)

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<sup>1</sup> Citations to the hearing transcripts will be by date, session (designated alphabetically, for example the first session would be A). Citation to power points will be by witness name followed by the slide number. Citations to the Application will be by Section-Page (App x-x).

Ms. Seibert determined that transfer stations in other counties, primarily Cook County, with service areas that overlap portions of Lake may provide 719 tons per day of transfer capacity which she found to be insufficient. She noted that waste generation rates peaked at 7.9 pounds per capita per day and now average 7.2 pounds per capita per day. Perhaps due to the economic downturn, 2011 waste generation rates dipped to 6.1 pounds per capita per day. Improving economic conditions may lead to an increased waste generation rates and may account for the recent 10% increase in the waste intake at the Countryside Landfill. (tr 9-24-13 B at 32-35) (Seibert 13-14) (App 1-18 to 20)

With dwindling disposal capacity and an improving economy potentially driving up waste generation rates the population in the Lake County Service Area is also expected to increase by about 1% per year from 2010 to 2040 creating a 36% increase in population in that time frame. Ms. Seibert agrees with USEPA, Lake County and industry sources that, waste flows can vary hourly, daily and on a seasonal basis and that, in general, it is best to design and build transfer facilities to accommodate present and projected maximum peak flows. (tr 9-24-13 B at 26-29 ) (Seibert 10) (App 1-14 to 15)

Ms. Seibert noted that even if the lower 2011 waste generation rates persist Lake County will need to dispose of an average of approximately 2,899 tons per day of waste increasing to 3,550 tons per day in 2035. If waste generation rates return to their historical average levels while still avoiding peak levels Lake County will need to dispose of 3,422 tons per day in 2015 and 4,191 tons of waste per day in 2035. Subtracting available out-of-county transfer capacity Ms. Seibert determined that there

is a transfer capacity deficit between 2,180 to 3,472 tons per day and more if waste generation rates return to their peak levels. How long will there be in-county landfill disposal capacity available to pick up the slack? (tr 9-24-13 B at 33-34) (Seibert 14) (App 1-18 to 19) To what extent is it wise to increase the rate that a remaining landfill takes waste because of the necessity created by the other in-county landfill closing and not having sufficient transfer capacity in place to slow or eliminate that increased rate of filling at the surviving landfill?

Ms. Seibert explained that she sees the trend that she expected. The same trend that has occurred in nearby counties, the closure of in-county landfills and the development of transfer stations to transport waste to more distant landfills. The Lake County 2009 Solid Waste Management Plan Update<sup>2</sup> notes that the development of transfer stations is a potential option in meeting the County's disposal needs. In addition the Village Solid Waste Management Plan favors the development of transfer stations.<sup>3</sup> (tr 9-24-13 B at 17) (Seibert 8) (App 1-8 to 11)

Ms. Seibert explained that Lake County historically had a guarantee of disposal capacity for the entire 20 year planning window but noted in its 2004 Solid Waste Management Plan Update that it no longer has the desired 20 years of guaranteed disposal capacity. (tr 9-24-13 B at 19) There is a limited amount of capacity at the in-county landfills. If transfer stations aren't operating by 2015 we will have at best 12 years of combined capacity between the two remaining landfills. (tr 9-24-13 B at 20)

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<sup>2</sup> The 2009 Plan Update was not adopted until 2010 and is sometimes referred to as the 2010 Plan Update.

<sup>3</sup> The Village of Round Lake Park Solid Waste Management Plan of 2012 has been repealed but it was in effect at the time the Application was filed. A lengthy analysis and determination of which plan controls is not necessary because the evidence shows the proposed Lake Transfer Station is consistent with both Plans. See, Criterion 8, *infra*.



From a solid waste planning prospective, the below cited portion of Ms. Seibert's testimony is both enlightening and extremely important and deserving of being read directly from the transcript. (tr 9-24-13 B at 20 L16 - 26 L10) During this portion of her testimony, Ms. Seibert pointed out how a proper Section 39.2 needs analysis utilizing appropriate solid waste planning considerations highlights both the practical and economic benefits of the Lake Transfer Station:

(G)etting the Lake Transfer Station operational in advance of that (the projected closure of the Countryside Landfill in 2020) is going to minimize service disruptions to all of the customers that are provided service. It will minimize cost increases that you may experience if you would have to be trucking it many additional miles to the Zion Landfill and represents an approved planning approach which the county recognizes this plan by saying that we need to develop these facilities before the existing facilities will close.

(tr 9-24-13 B at 21-22)

Ms. Seibert went on to explain that landfills historically serving Lake County were from 5 to 22 miles away from the waste centroid with an average of 14 miles and noted that the aforesaid distance is convenient for direct haul, utilizing the packer vehicles that collect waste to transport the waste directly to the landfill without utilizing a transfer station. However, the replacement landfill capacity is being developed 50 or more miles from Lake County. Currently, the majority (68%) of landfill disposal capacity is located more than 50 miles from the waste centroid, more than three times the average distance to the disposal facilities historically serving Lake County. (Seibert 9) At this distance, direct haul is not practical due to the time, vehicle miles, related cost (not to mention environmental impacts) that are associated with making packer trucks travel that distance to a landfill. (tr 9-24-13 B at 25-26)

In this portion of Ms. Seibert's testimony she explained how similar transitions from in-county landfills to transfer stations progressed in other nearby counties. Of particular interest is the transition in Du Page County which Ms. Seibert characterized as most similar to that faced here in Lake County now. Ms. Seibert explained that Du Page County has only one transfer station and has recognized the need for one or more such facilities. One similarity lies in the lack of available sites which meet the Section 22.14 setback requirements, a situation which gets worse as time passes. (tr 9-24-13 B at 24)

Ms. Seibert explained that here in Lake County, the County through its solid waste management plan, left the decision to local siting authorities and private developers to develop facilities which can replace the closing landfills by saying in its plan, "(W)e are going to depend on you to determine what the market needs are and the timing when this should happen, but we do want it to happen before these facilities are closed." (tr 9-24-13 B at 23 *Emphasis added*) She added that ~~w~~e+have been working on the Lake Transfer facility since 2008 and hope to have it open by 2015. (tr 9-24-13 B at 25) The appeals promised by Timber Creek Homes could add years to that.

It is significant that it is unknown exactly when the in-county landfills will begin to close. Projections are all that we have. Likewise, it is uncertain when the Lake Transfer Station could become operational. Perhaps some time 2015 if siting is granted, no appeals are filed and the IEPA permitting process goes smoothly. That too involves a projection. We have already seen the political impact on Lake County's disposal needs when the State of Wisconsin increased disposal fees to the point that disposal at the Pheasant Run landfill is essentially off of the table, at least until it costs the citizens of

Lake County enough to dispose of waste that disposal in the State of Wisconsin becomes an attractive alternative and the State of Wisconsin does not erect any additional barrier to Lake County disposal. Accordingly, Ms. Seibert opined that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve.

## **JOHN THORSEN**

John Thorsen testified on behalf of Timber Creek Homes and testified to an opinion different from that of Ms. Seibert. Mr. Thorsen received his bachelor degree in engineering from Purdue University. Mr. Thorsen also holds a master's degree in urban and regional planning and is a registered professional engineer in Illinois and several other states.<sup>4</sup> He has been an engineer for approximately 40 years and currently practices under the name of Autumnwood ESH Consultants, LLC.

Mr. Thorsen's resume lists his Illinois municipal solid waste work and related to engineering activities at two Illinois solid waste projects, one at the ARF Landfill in the 1980s and the other at the Land and Lakes Landfill in the late 1980s or early 1990s. His resume does not contain any reference to needs analyses or transfer stations. (tr 9-25-13B at 42-43) (TCH Exhibit 1) Mr. Thorsen's resume lists his fields of Competence+but that listing does not include needs analyses. (TCH Exhibit 1) Nonetheless, Mr. Thorsen testified that he did one prior needs analysis. That for the expansion of the ARF Landfill in the late 1980s. (tr 9-25-13B at 46)

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<sup>4</sup> Mr. Thorsen's resume in shows that his master's degree was awarded by Southern Illinois University while the transcript reflects Illinois. (*Compare*, (TCH Exhibit 1) and (tr 9-25-13B at 30)

When Mr. Blazer questioned Mr. Thorson, he characterized his opinion as being based on a very %simplistic+method of analysis. (tr 9-25-13B at 41) When Mr. Blazer questioned him about the size of his report, consisting of a few sentences more than 5 pages, Mr. Thorson explained his analysis was %fairly simple+and that need is based on the amount of capacity left in the in-county landfills and the amount of waste projected to be generated. (tr 9-25-13B at 36) Mr. Thorson elaborated that he took the waste receipts, as opposed to projections, from the two landfills for 2010. 2011 and 2012 and averaged them out thereby showing that there was plenty of capacity to last to 2027. (tr 9-25-13B at 36-37)

Mr. Thorsen's opinion is not only admittedly simplistic but it is unreliable and should be ignored. Mr. Thorsen rendered a Section 39.2 opinion, but he admitted that he did not do a Section 39.2 needs analysis. He stated: %was not asked to do a full-blown needs analysis in compliance with 39.2+ (tr 9-25-13B at 115) Rather his opinion that there is no need for the Lake Transfer Station is based on his %simplistic+ mathematical analysis and also his belief, likewise without any real analysis, that it would cost less to direct haul. (tr 9-25-13B at 109-110) Lake County's transition to transfer stations will not go well if we do what Mr. Thorsen's mathematical approach suggests and wait until it is too late.

It is important to consider what need really means. The Applicant is not required to show absolute necessity in order to satisfy the need criterion. Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 551, 555 N.E.2d 1178, 1184 (3d Dist. 1990); Tate v. PCB, 188 Ill. App. 3d 994, 544 N.E.2d 1176 (4th Dist. 1989); Clutts v. Beasley, 185 Ill. App. 3d 543, 541 N.E.2d 844 (5th Dist. 1989); A.R.F. Landfill v. PCB, 174 Ill.

App. 3d 82, 528 N.E.2d 390(2d Dist.1988); WMI v. PCB, 122 Ill. App. 3d 639,461 N.E.2d 542 (3d Dist.1984). The WMI court construed "necessary" as connoting a "degree of requirement or essentiality." *Id.* 461 N.E.2d at 546.

Recently, the Appellate Court, criticized the Pollution Control Board for failing to factor the time it takes to develop a landfill and get it ready to accept waste into its analysis of need. Fox Moraine, LLC, v. United City of Yorkville, 2011Ill App 2d 100017, 960 N.E. 2d 1144 (2<sup>nd</sup> Dist, 2011). Relying on E & E Hauling, Inc. v. PCB, 116 Ill. App. 3d 586, 451 N.E.2d 555 (2d Dist. 1983), the Second District Appellate Court stated that absolute necessity was too stringent a standard and employed the terms "expedient" and "reasonably convenient" to describe the required level of proof. It defined expedient as "a means devised or used in an exigency" thereby connoting an element of urgency. Thereby, the Second District Appellate Court has adopted the Third District's construction of "necessary", with the additional requirement of an urgent need for, and the reasonable convenience of, the new facility. Waste Management v. PCB, 123 Ill. App. 3d 1075, 530 N.E.2d 682, 689 (2d Dist.1988). The First District Appellate Court has concluded that these seemingly differing terms merely evince the use of different phraseology rather than advancing substantively different definitions of need. Industrial Fuels & Resources/ Illinois, Inc. v. PCB, 227 Ill. App. 3d 533, 592 N.E.2d 148 (1st Dist. 1992).

## **PROPOSED FINDING AND RECOMMENDATION:**

Ms. Seibert opined that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. Applicant has successfully proven compliance with Criterion I.

Accordingly, the Village Board should find, without condition, that the facility is necessary to accommodate the waste needs of the area it is intended to serve and further that there is no credible evidence to the contrary.

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### **CRITERION 2**

#### **THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED THAT PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED**

The Applicant called Devin Moose to testify. Mr. Moose testified on Criterion 2, 4, 5, 7, 9 and ultimately on Criterion 8 as well. Mr. Moose is the National Director of Solid Waste Consulting for Shaw Environmental, Inc., a CB&I Company (CB&I). Mr. Moose was awarded a degree in civil engineering from the University of Missouri . Rolla. He is a licensed professional engineer in nine states, including the State of Illinois and is a Diplomat of the American Academy of Environmental Engineers. Mr. Moose has thirty years of solid waste experience and was the lead engineer on seventeen Illinois transfer station sitings and permitted twenty two transfer stations in Illinois. Mr. Moose has to his credit several award winning transfer station designs, the most recent being his design of Los Alamos, New Mexico transfer station which received the Silver Award from the Solid Waste Association of North America. (tr 9-23-13A at 41-42) (Moose 2) (App 2.1-1)

He described the proposed facility as being located on 3.9 acres of land in an industrial park on the Northeast corner of Porter Drive and Route 120 (Belvidere Road). The anticipated throughput is 750 tons per day consisting of municipal waste, landscape waste, and/or recyclables. The transfer building will be a concrete and steel structure with cast in place concrete and pre-cast concrete panels on the steel skeleton. The transfer building will be approximately 27,800 square feet and a scale house of approximately 270 square feet will also be constructed. In addition, all access drives and interior circulation routes will be paved and inbound and outbound scales will be installed. A stormwater bio-swale of approximately 370 feet in length will be constructed along the northern limits of the property to convey stormwater into a sedimentation basin prior to off-site discharge. The proposed facility is designed to be drive-thru which minimizes the number of openings to the outside. No doors will be located on the South side of the building along Route 120 or along the North side. The proposed Lake Transfer Station compares well to the Glenview Transfer Station, which Mr. Moose designed approximately 20 years ago. The Glenview Transfer Station is run by the Groot, the Applicant here. (tr 9-23.-13A at 44-48, 54 tr 9-23-13C at 43. (tr 9-24-13B at 57) (Moose 6-8, 25-26) (App 2.1-1 to 2.2-1)

Mr. Moose reviewed the relevant location standards, all of which have been met. The location standards consist of such things as Federal jurisdictional waters, floodplain, regulated recharge area, setbacks from dwellings, airports, hospitals and schools, archaeological or historic sites, wild and scenic rivers, nature areas, endangered and threatened species and groundwater quality protection. All applicable regulatory location standards are met or exceeded. All regulatory requirements

regarding wetlands will be complied with. (tr 9-23-13A at 49-53) (Moose 10-24) (App 2.2-1 to 2.2-7)

## DESIGN

Mr. Moose characterized the site as being very comfortably sized allowing sufficient room for stacking or queuing of trucks, a lot of circulation room and plenty of room for employee parking especially considering the relatively modest 750 tons per day of throughput. Ingress and egress will be to and from Porter Drive. The drive-thru design minimizes visibility, the opportunity for litter and noise transmission. The exterior walls are all constructed of pre-cast concrete panels which not only is much better looking than a metal shell but it helps to further minimize noise transmission. In addition, the drive-thru design aids the design of the air handling system which allows for air exchanges. Its design allows for plenty of natural light and uses skylights helping to minimize electrical usage and its orientation minimizes the view of open doors from neighbors and Route 120. Mr. Moose showed a computer animated video showing portions of the facility in operation. Stormwater will be managed on a best management practices basis. The design of the stormwater system incorporates a bioswale which provides filtering and the takeup of sediment and nutrients prior to the discharge of stormwater into the industrial park's stormwater system. (tr 9-23-13A at 54-62) (Moose 25-28) (App 2.3) Sanitary sewer is available to the site and its use will be evaluated based on capacity. Otherwise a holding tank will be utilized. (tr 9-23-13C at 2-3)



## OPERATIONS

The proposed facility will not be treating, storing or disposing of regulated hazardous waste. Such material will not be accepted and steps will be taken to make sure that such material is not improperly secreted in material which is accepted. The Applicant will be sure that haulers utilizing the proposed facility are aware of what material can be accepted. Most haulers do a very good job of educating their customers about what can be put in their garbage. Compliance with the educational process will be monitored by the observations of laborers, the end loader operator who pushes the waste into a pile and the grapple operator who loads the waste into a transfer trailer. In addition a Load checking program will be implemented requiring random loads of incoming waste to be discharged in an appropriate location on the tipping floor to allow it to be spread out and inspected three times a week. (tr 9-23-13A at 62-64, tr 9-23-13B at 46-48, tr 9-23-13C at 25-30) (Moose 33-36) (App 2.4-1 to 2.3-2)

Most of the time the proposed facility would operate 4:00 a.m. to 8:00 p.m. Monday through Friday and 4:00 a.m. to 12:00 p.m. on Saturdays and be closed on Sundays and six major holidays. However, the Applicant has requested the ability to operate 24 hours per day, 7 days per week in order to provide operational flexibility to accommodate overnight deliveries of waste. (tr 9-23-13A at 60) (Moose 31) (App 2.4-1 to 2.3-2) Mr. Moose testified that commercial customers may need to have their refuse collected at night and the Applicant would like the flexibility to bring that material in during off-peak hours. 24 hour operation would also assist with waste transfer during snow storms and natural disasters. (tr 9-23-13A at 62, tr 9-23-13B at 10-11, 36-37, 93, tr 9-23-13C at 41)

## COMMON OPERATIONAL CONCERNS

The design of the Lake Transfer Station as a drive-thru facility minimizes many commonly raised concerns because all operations are conducted indoors. The opportunity for noise transmission is further minimized by the use of pre-cast concrete panels to form the exterior of the building. Litter is minimized as collection vehicles will be required to be fully enclosed or covered and all waste is removed from collection vehicles, loaded into transfer trailers with those transfer trailers will be fully tarped inside the building. Similarly, the drive-thru design with concrete and steel construction assists the air handling system in performing air exchanges as well as the controlling of pests (vectors). (tr 9-23-13A at 54-55, 67) (App. 2.3-2)

Mr. Moose acknowledges that garbage has an odor and one will be able to smell it within the facility. However, Mr. Moose is confident that the Applicant can comply with the requirement that there be no noticeable odor at the facility boundary, that requirement appearing in both the Village and County Host Agreements. (tr 9-23-13A at 66-67) (App. Appendix C.1, para 11c) (App. Appendix C.2, para 11c)

Waste storage can generate odor. Accordingly, the Village's Host Agreement restricts the storage of waste on transfer trailers as follows:

Waste may be kept temporarily in transfer trailers for no more than 24 hours (except on weekends and holidays), provided that such trailers are stored indoors and suitably covered. Empty transfer trailers may be stored outdoors for no more than 24 hours (except on weekends and holidays). (App. Appendix C.1, para 11g)

In addition, here public roadways within 1500 feet of the facility and private property within 500 feet of the facility [with permission of the property owner] will be

patrolled daily and litter will be collected and removed therefrom. More specifically, the Village's Host Agreement further requires that the Applicant:

diligently patrol the Subject Property during hours of operation to collect any litter. In addition, the Company shall abide by the litter control plan approved by the Village as a result of the siting process. At a minimum the Company will diligently patrol and remove litter from the Subject Property, all property owned or controlled by the Company, and public street and corresponding right-of-way within 1500 feet of the Subject Property. In addition, the Company shall, at a minimum, patrol and remove litter from property within five hundred (500) feet of the aforesaid public streets and corresponding rights-of-way with the permission of the owner of said property, which permission the Company will diligently attempt to obtain. (App. Appendix C.1, para 11a)

The Applicant will also see that the roadways within 1,000 feet of the facility are cleaned utilizing a street sweeper. ( tr 9-23-13A at 68) More specifically, the Village's Host Agreement further requires that the Applicant:

provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Company as well as well as public roads and right-of-ways included within the roadway boundaries within, at a minimum, one thousand (1,000) feet of the Subject Property on an as needed basis, but not less frequently than daily. (App. Appendix C.1, para 11b)

The Applicant has agreed to utilize an odor neutralizer in the misting system to control odor and, along with keeping traveled surfaces clean and assist in the suppression of dust as well. The use of the first in first out system removing the first arriving waste from the facility first helps to minimize odor. Should particularly odorous waste find its way to the tipping room floor, it will be removed first in an effort to minimize odor, despite the implementation of first in first system. Further, should a particular customer provide waste that is posing a problem, that customer will be barred if a better method of managing that waste cannot be found. Housekeeping is an important item when it comes to odor and vector control. The tipping floor will be

cleaned at least daily utilizing a street sweeper and walls and push walls will be pressure washed as necessary. Further, an exterminator will be retained to be sure that vectors are properly controlled. (tr 9-23-13A at 65-67) (Moose 36-41) (App. 2.4-11to12) The Village's Host Agreement additionally and more specifically requires that the exterminator, shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

CHARLES MCGINLEY:

Charles McGinley testified on behalf of Timber Creek Homes. Mr. McGinley has a Master's Degree in Business Administration from the University of St. Thomas and was awarded a Bachelor's degree from the University of Minnesota. Mr. McGinley is a Registered Professional Engineer in the State of Minnesota but not in Illinois. While his degree is in chemical engineering as is Minnesota license, he characterizes himself as an environmental engineer specializing in the field of air quality, air toxics and odor. He was previously employed by the Minnesota Pollution Control Agency where he specialized in the odorous industries of Minnesota. Thereafter Mr. McGinley worked for the Hormel Company as an environmental equipment manager, before forming McGinley Associates and St. Croix Sensory and Odor Testing and Training Company. He has done work for several solid waste companies providing training services, management auditing and sampling related to odor. He has provided such services to Shaw Environmental and holds three US patents related to odor. (tr 9-30-13B at 10-11, 17-18) (TCH Exhibit 3)

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Mr. McGinley opined that, ~~the~~ described design and operation of the facility will not prevent odors from infringing or passing into the community specifically odors of air laden with garbage odor and that would infringe upon the public welfare. *Emphasis added.* He based his opinion on the siting application and related information that describe how air will be exhausted from the facility and how doors will be opened allowing odorous air to leave the facility. (tr 9-30-13B at 39-40) Mr. McGinley's report puts it slightly differently. Mr. McGinley wrote a report containing three (3) pages of text. There, he concludes that the Applicant has not demonstrated that that the public welfare will be protected. (TCH Exhibit 4, at Conclusions *emphasis added*)

Mr. McGinley never visited the site or Timber Creek Homes. He does not claim to have done any testing or even observation at any Illinois transfer station, including the award winning Glenview Transfer Station which Mr. Moose testified compared to that proposed here. (tr 9-23-13A at 48) Nor did Mr. McGinley point to any alleged odor or other violations at Glenview or any other such facility.

What Mr. McGinley says is that he is familiar with more effective technology specifically related to scrubbers or other methods of filtration and doors (which, as it turns out are in fact specified here) than proposed by the Applicant. (tr 9-30-13B at 57) (TCH Exhibit 4, para 9) It appears that his familiarity with what he views as more effective technology is at the heart of Mr. McGinley's opinion. That is likely why he phrased one of his opinions as ~~the~~ described design and operation of the facility will not prevent odors. *Supra* Mr. McGinley does not say that there will be odor.

Mr. McGinley failed to point to any applicable statute or regulation requiring what he believes to be necessary. He admits that in Illinois there is no statute or regulation

requiring scrubbers and while he admits that there is no such statute or regulation in his Minnesota either but claims that they are required in the permit process. Mr. McGinley believes that the doors should be kept closed at all times and points to a New Hampshire facility referenced in an article as support. Unfortunately, unlike Illinois 1000 foot residential setback requirement, residential uses can be as close as 50 feet to that New Hampshire facility and waste can remain present for up to a week. (tr 9-30-13B at 76-81)

Perhaps, most significantly, Mr. McGinley has no opinion whether there will be any odor violation at Timber Creek. Again harking back to his opinion that ~~the~~ described design and operation of the facility will not prevent odors+not meaning that odor will be created in the first place, he cannot say that there will be ANY PERCEPTIBLE ODOR at the nearest residential use or anywhere in between there and the proposed facility. (tr 9-30-13B at 128) Accordingly, it is apparent that the basis of Mr. McGinley's opinion is his familiarity with what he views as more effective technology to prevent odor just in perceptible odor is generated outside the facility boundary. In other words, he can do it better with sort of a belt and suspenders approach!

Compare that to Mr. Moose's testimony. The proposed facility is smaller but similar to the award winning Glenview Transfer Station which Mr. Moose designed and installed an activated carbon filter on the exhaust air stream. (tr 9-23-13A at 48, tr 9-23-13C at 29) While the number of air changes are a final design issue and have not been fully determined, drawing air in and exhausting it through roof vents is sufficient to control odor. An active carbon or other filter system can be retrofitted but it is not necessary. The active carbon filter system at Glenview has been disabled for 10 years

as it was not needed. (tr 9-23-13C at 20, 27-29) Further it is common to frequently leave the doors open at a transfer station. (tr 9-23-13C at 43) Significantly, there is no evidence of any odor issues at Glenview or any other Illinois transfer station operated with the doors open and without output air filtration. (tr 9-23-13C at 27, 42-43, 49)

Criterion 2 empowers the Village Board to review all the public health, safety and welfare ramifications surrounding design, location and operation of the proposed facility. Waste Management of Illinois v. IPCB, 160 Ill. App. 3d 427, 513 N.E. 2d 502 (2d Dist. 1987). Here, Mr. Moose's design and practical experience related to transfer stations along his status as an Illinois Registered Professional Engineer is more credible than that of Mr. McGinley. Mr. McGinley's approach makes one wonder why the record is void of complaints and violations related to other transfer stations, particularly the Glenview Transfer Station, which lack the features and operational methods Mr. McGinley claims to be necessary. While such things can be investigated should there be a problem, the properly operated Illinois transfer station here should have no different result than every other Illinois transfer station designed by Mr. Moose. This is especially true of the Glenview Transfer Station as it is most similar to what is proposed here but larger. Accordingly, the Village believes that, subject to the Special Conditions contained in this document, Criterion 2 has been satisfied.

**PROPOSED FINDING AND RECOMMENDATION:**

Mr. Moose opined that the proposed facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. With and subject to the special conditions contained in this document, there is no credible

contrary evidence. Applicant has successfully proven compliance with Criterion 2 with Special Conditions contained herein.

Accordingly, the Village Board should find, with and subject to the Special Conditions contained in this document, that the proposed facility is so designed, located and proposed to be operated so that the public health, safety and welfare will be protected and further that there is no credible evidence to the contrary.

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### **CRITERION 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 THE SURROUNDING PROPERTY**

J. Christopher Lannert and Peter J. Poletti were called by the Applicant to testify regarding Criterion 3. Mr. Lannert testified regarding the minimization of incompatibility and Mr. Poletti did so regarding the minimization of the effect on the value of surrounding property. Proposed findings regarding both portions of Criterion 3 are found at the end of the Criterion 3 analysis.

#### **CHRISTOPHER LANNERT MINIMIZATION OF INCOMPATIBILITY:**

J. Christopher Lannert is an urban planner and landscape architect. He is the president of the Lannert Group which provides planning, community consulting and landscape architect services. Mr. Lannert and his firm have won the American Planning Association Award for the master planning done in New Lenox had he has done similar work in Prairie Crossing, College Trail and Cranberry Lake, located nearby west of Hainseville Road. He is member of the American Society of Landscape Architects, the



American Planning Association and a past board member and president of the Landscape Architecture Foundation. Mr. Lannert is also a past board member and chairman of the State of Illinois Department of Professional Regulations and is currently the president elect for the Illinois Chapter of the American Society of Landscape Architects. He will become president of that organization at its national convention later this year. Mr. Lannert has provided testimony in 60 solid waste related projects. (tr 9-24-13A at 10-13) (Lannert 2)

Mr. Lannert began his testimony by describing the methodology that he utilized in his evaluation. He obtained an aerial photograph and located the site and area features, gathered regional documents and maps, reviewed zoning ordinances, verified zoning and reviewed the comprehensive plans of Grayslake, Hainesville, Round Lake and Round Lake Park. Mr. Lannert conducted a field investigation and prepared 3D models to illustrate the views of the proposed facility and prepared the report which appears in the Application. (tr 9-24-13A at 14-15) (Lannert 4) (App. 3.1-4)

Mr. Lannert utilized his site location map to point out the subject site, and the significant landholdings of the Applicant including Groot North, which extends North beyond the 1000 foot setback noted by the red and white dashed circular line on slide 4, the Eco Campus and the property being acquired by Groot located adjacent and to the East of the subject site and extending North to almost the 1000 foot setback line. Mr. Lannert agreed that those Groot holdings are significant in minimizing impacts. It appears from the site location map on slide 4 that the Applicant, Groot, owns and controls most of the land located within 1,000 feet that is North of Route 120, including the land directly

East and West of the subject site. All of this land is zoned industrial. (tr 9-24-13A at 16-17) (Lannert 5) (App. 3.1-5 to 7)

Mr. Lannert proceeded to discuss both land use and zoning in the area of the subject site utilizing his PowerPoint slides. The bottom line is that looking at zoning within the various distances from the subject site we see that the total industrially zoned property on both sides of Route 120 within 1000 feet amounts to 55% of the land area. Within one half mile industrially zoned land is 34% and within one mile industrially zoned land makes up 12% of the land area. Accordingly, as one moves toward the proposed Lake Transfer Station the industrially zoned land area jumps from 34% at one half mile to 55% within 1,000 feet and much of that is or will be owned by the Applicant. (tr 9-24-13A at 17-19, 22-28 ) (Lannert 5-10) (App. 3.1-9 to 10)

It is important to note that when considering land use, a somewhat confusing yet consistent picture is seen. Take the area within 1,000 feet of the subject property. The Eco Campus, while zoned and moving toward construction it is currently vacant. Likewise the property which the Applicant bought at auction to the East of the subject site is vacant. Accordingly, the current industrial land use within 1,000 feet of the subject property is just 25%.<sup>5</sup> (tr 9-24-13A at 25-27) (Lannert 6) (App. 3.1-6 to 7) As Mr. Lannert testified at page 28 of the transcript, the fact that industrial zoning jumps to 55% within 1,000 feet of the subject property tells Mr. Lannert is that as one moves closer the area becomes more within the control of the Round Lake Park Village Board and that subject property and the property in the area thereof has been appropriately

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<sup>5</sup> Timber Creek Homes is used for residential purposes but it is zoned industrial. While outside of Mr. Lannert's testimony, one could even argue that Timber Creek Homes will one day become an industrial use simply through market forces. The Village Board may have already seen market forces result in similar changes in land use, though likely on a much smaller scale.

zoned by the Village Board for industrial uses. (tr 9-24-13A at 26-28 *Emphasis added*)  
(Lannert 5, 7-10) (App. 3.1-7 to 10)

Mr. Lannert turned to the photographic slides and explained how natural vegetation, topography, buildings, railroad tracks and roadways naturally buffers the subject site and serves to help minimize any incompatibility that may exist. He noted that the subject site cannot really be seen from North of the tracks. (tr 9-24-13A at 30-38) (Lannert 11-12) (App. 3.1-7 to 8) Mr. Lannert, however, did not leave buffering to nature. He developed a landscape plan which includes berms, a knee wall along the South side of the property along Route 120, and vegetation to further buffer the subject site. (tr 9-24-13A at 38-49, tr 9-24-13B at 4-5) (Lannert 13) (App. 3.1-10 to 12) Mr. Lannert committed his design to 3D computer modeling which shows a well buffered facility. (tr 9-24-13A at 38-49) (Lannert 14-16) (App. 3.1-10 to 12) Mr. Lannert rendered his professional opinion that the facility is located so as to minimize the incompatibility with the character of the surrounding area and, therefore satisfies the first part of Criterion 3. Some of the bases of his opinion are the character of the immediate area having been defined by industrial uses over the past years and his view that the development of the Lake Transfer Station does not alter the land use pattern. The major land use will continue to be open space with the Route 120 corridor, which forms an appropriate land use buffer along the South property line, and with 100% of the area within a 1,00 feet radius of the proposed facility being open space and industrial. (tr 9-24-13A at 47-49) (Lannert 17-19) (App. 3.1-13)

The Village agrees with Mr. Lannert but believes that the landscaping and fencing along the North property line and on the Northwest corner of the property along

Porter Drive need to enhanced. (tr 9-24-13B at 8-11) Accordingly, a special condition is offered to accomplish that result.

**PETER POLETTI  
MINIMIZATION ON THE EFFECT ON THE  
VALUE OF THE SURROUNDING PROPERTY**

Peter J. Poletti testified to the remainder of Criterion 3. At the request of the Applicant, he conducted a study of the proposed facility and examined its potential impacts on property values. Mr. Poletti concluded that the proposed Groot Industries Lake Transfer Station is located so as to minimize the effect on the value of surrounding property. (Poletti 3)

Peter J. Poletti founded Poletti and Associates, Inc. in 1987 and serves as its president. He has been awarded Bachelor's, Master's and Doctorate degrees. He has taught at the University of Missouri at St. Louis, teaches appraisal courses for the Appraisal Institute, He has been the elected township appraiser in Collinsville Township, Madison County, Illinois since 1977. (tr 9-24-13B at 34-37) (Poletti 2) (App. 3.2-33)

Mr. Poletti has a Real Estate Appraiser for over 34 years and has participated in 30 solid waste related hearings. Among his accomplishments, he is being awarded the MAI designation and being a previous certified instructor of the Appraisal Institute and a Certified Illinois Assessing Officer. He is also a certified general appraiser in eight (8) states including, Illinois, Wisconsin, Iowa, Indiana, Missouri, Kentucky and Tennessee. *Id.*

Professor Poletti's client list includes Nation's Bank, Union Illinois Bank, the U.S. Postal Service, US Can Company, Sears Roebuck and Company, Mercantile Bank of

St. Louis, Norfolk Southern Corporation, as well as numerous municipal and governmental agencies. (App. 3.2-33) His report is contained in the Application at Section 3.2.

Professor Poletti's study included a personal inspection of the subject site and the surrounding area as well the collection and review of documents including portions of the Application, land use exhibits, aerial photographs and material related to waste and recyclables management. Mr. Poletti also attended meetings, and participated in telephone conferences with the Applicant and members of its team. He also did case studies, visiting and reviewing and analyzing property sales in the areas surrounding the Glenview Transfer Station, the Elburn Transfer Station and the Bluff City Transfer Station. (tr 9-24-13B at 34-46) (Poletti 2-9) (App. 3.2-1 to 3)

### **CASE STUDIES**

Mr. Poletti's case studies of the Glenview Transfer Station, the Elburn Transfer Station and the Bluff City Transfer Station compare the sale prices of similar properties between target and control areas in the vicinity of each of these operating transfer stations. The target area is the surrounding area where property values may be impacted by proximity to the transfer station. The control area is similar to the target area, in the same vicinity but still distant enough from the transfer station that property values would not be expected to be affected. Other variables in homes are compared such as size, fireplaces, the number of bedrooms, whether there is a full, partial or no basement, brick versus frame construction and whether there is a garage. (tr 9-24-13B at 51-52)

Mr. Poletti used multiple regression modeling of the sales data for the target and control areas which statistically compares the average prices paid for properties in the target and control areas. This method isolates the effect on value of discrete property characteristics in the target and control areas. Mr. Poletti looks at the sample mean for the target and control areas and views it statistically to determine whether there is a measurable statistical difference between the mean sale price in the target area versus that in the control area. If that statistic at the 95% confidence level exceeds the standard  $t$  from the relevant table there is a statistically significant difference in the price of the house. If it doesn't, there is not a statistically significant difference in the price of the homes. (tr 9-24-13B at 47-53) (Poletti 10) (App. 3.2-4)

For all of the transfer stations studied, Elburn, Glenview and Bluff City, Mr. Poletti's analysis shows that there is no statistical difference between homes sold in the target areas (located closer to the transfer stations) and the home sold in the control areas (located in areas more removed from the transfer stations). It is noteworthy that Elburn is in upscale area known as Mill Creek which was developed after the transfer station began operating. Further, the area close to the Glenview Transfer Station is seeing redevelopment with older homes being torn down and very large homes replacing them. (tr 9-24-13B at 45-59 ) (Poletti 11-19) (App. 3.2-16 to 29)

Professor Poletti offered his expert opinion that the proposed Lake Transfer Station is located so as to minimize the effect on the value of surrounding property. Some of the bases of his opinion are, the proposed transfer station design and the numerous features and operating procedures that will minimize the effect on

surrounding property values. Mr. Poletti found that the proposed facility is buffered by intervening industrial and open space land use and vegetation. Further, Mr. Poletti's case studies of the three similar operating transfer stations show no statistical difference in sales properties for properties located near those facilities and those some distance away thus corroborating what his qualitative analysis indicated.

(tr 9-24-13B at 59-60) (Poletti 20) (App. 3.2-3 to 4)

### **MICHAEL S. MAROUS**

Timber Creek Homes called Michael S. Marous to testify. Mr. Marous is the president and owner of Marous and Company, a full service real estate appraisal firm for the past 33 years. He has a Bachelor of Science in the School of Finance with a specialization in urban land economics from the University of Illinois. Mr. Marous has been a full time appraiser since 1976 and has appraised probably \$15 billion of properties encompassing vacant land, residential, industrial, specialty uses and special land use facilities such as transfer stations. He has taught and been an MAI designated appraiser since 1980 and a CRE designated appraiser since 1999. Mr. Marous is a past board member and president of the Chicago chapter of the Appraisal Institute. (tr 10-1-13B at 14-20) (TCH Exhibit 7)

Mr. Marous prepared a report. (TCH Exhibit 8) While not a land planner, Mr. Marous extensively criticized the work done by Mr. Lannert and likewise that of Mr. Poletti. For example, Mr. Marous testified that both Mr. Lannert and Mr. Poletti's reports fail to demonstrate what they claim. (tr 10-1-13B at 48-49) Regarding Mr. Poletti's case studies of the three operating transfer stations, Mr. Marous criticized the

comparable sales utilized, the size and location of the target and control areas utilized by Mr. Poletti and was likely deliberately incorrect when referred to what Mr. Poletti's case studies as being done by matched pair analysis, a term that no one, including Mr. Poletti used.<sup>6</sup> (tr 10-1-13B at 41-47) However other than and while offering large doses of criticism, Mr. Marous did almost nothing and the criticism of Mr. Poletti is based solely on Mr. Poletti's report, not Mr. Poletti's testimony. (tr 10-1-13B at 109-110) (TCH Exhibit 8)

Mr. Marous did not testify or note in his report that he even visited any of Mr. Poletti's case study transfer stations. He admits that he did essentially nothing but offer criticism. (tr 10-1-13B at 119) He did not visit the Elburn Transfer Station which has been described as being located in an upscale neighborhood complete with golf courses which developed after the transfer station began operations. (tr 9-24-13B at 52-54) He did not visit the Bluff City Transfer Station. Significantly, he failed to visit the Glenview Transfer Station which is not only similar to the proposed Lake Transfer but which is also operated by the Applicant. If Mr. Marous did, you would think that he could have seen and documented some or all of the kinds of impacts Mr. Marous speculates about occurring at the Lake Transfer Station. If he did that, he may have been forced to admit such things as he did on cross examination by Mr. Mueller when Mr. Marous was forced to admit that despite Groot North being located within 30 feet of Timber Creek Homes, rents in Timber Creek have increased. (tr 10-1-13B at 73-75) Rather than finding Timber Creek's expert, Mr. McGinley's admission that he could not say

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<sup>6</sup> The Village of Round Lake Park's appraiser, Kleszynski, explained that what Dr. Poletti did is not a paired analysis. Such an analysis is used to extract contributory value of the contribution made to value by, for example, a two car garage. What Mr. Poletti did is called a target and control area analysis or more simply, a near and far analysis. (tr 10-2-13A at 23-24)



that there would be any perceptible odor at Timber Creek (tr 9-30-13B at 128) (See *also*, the Criterion 2 analysis above) helpful to the Applicant, Mr. Marous could have examined a similar but larger transfer station run by the Applicant in Glenview and observed for himself. (See, tr 10-2-13B at 5-6)

Perhaps even more clear is the fact that Mr. Marous could have redone Mr. Poletti's near far or target and control area analysis utilizing Mr. Poletti's data contained in the Application. He could have even obtained his own data and used whatever type of multiple regression analysis he desired. He failed to do so. Why? The answer may be as simple as doing so would show that Mr. Poletti was correct. If Mr. Marous reached a different result that did Mr. Poletti, Mr. Marous would have made his case. Mr. Marous knew better than to do that. It is far easier and less problematic to simply criticize. Mr. Marous's testimony should not be given any weight.

## **DALE KLESZYNSKI**

Mr. Kleszynski was called as an expert appraisal witness by the Village of Round Lake Park. Mr. Kleszynski received a Bachelor of Arts degree from Loyola University and has been awarded the MAI and SRA designations by the Appraisal Institute. He is the president and principal shareholder of Associated Property Counselors, Ltd. His list of clients includes RR Donnelley Company, Sherwin-Williams Company, U.S. Steel Corporation, Peoples Energy, BP International, AT&T, McDonald's Corporation, the State's Attorney's Offices of both Cook and Du Page County and many others. He is currently a licensed appraiser in Illinois, Indiana and Michigan and has taught almost every course offered by the Appraisal Institute as well as being a qualified to teach

course work related to the Uniform Standards of Professional Appraisal Practice as well as professional ethics. (tr 10-2-13A at 8-11) (RLP Exhibit 1)

Mr. Kleszynski's assignment here was to act in the capacity as a review appraiser to review the work done by Mr. Poletti and determine whether Mr. Poletti had rendered a credible opinion which is called a Standard 3 review under the Uniform Standards of Professional Appraisal Practice which is like a peer review but to a higher standard. (tr 10-2-13A at 12-14) He prepared a report related to that assignment. (RLP Exhibit 2)

Mr. Kleszynski reviewed the Criterion 3 reports in the Application, drove the subject site and the area thereof. He did the same for each of Mr. Poletti's three (3) case studies, the Elburn Transfer Station, the Bluff City Transfer Station and the Glenview Transfer Station including the target and control areas utilized by Mr. Poletti for each of them. (tr 10-2-13A at 17-18) (RLP Exhibit 2 at 6) Since Standard 3 requires a determination of whether what Mr. Poletti did was correct, he reviewed and spot checked the data and obtained and reviewed three reports referenced by Mr. Poletti and contacted three MAI appraisers to obtain their opinions on the options available to solve the valuation issues. (tr 10-2-13A at 21-22) (RLP Exhibit 2 at 6-7)

Further, Mr. Kleszynski did an analysis of the case study data utilized by Mr. Poletti and verified the mathematical accuracy of what Mr. Poletti had done and whether Mr. Poletti's conclusions were supportable. His analysis included an analysis of the target and control areas Mr. Poletti utilized. (tr 10-2-13A at 42-43) (RLP Exhibit 2 at 6-9) The Village's appraiser even had Mr. Poletti's multiple regression analysis checked by a PHD at Texas A&M University who is also an appraiser and with whom Mr.

Kleszynski sits on several committees. Mr. Poletti's multiple regression analysis was verified and found to be appropriate. (tr 10-2-13A at 21-31) Specifically regarding Mr. Poletti's multiple regression analysis found in the case studies, Mr. Kleszynski concluded that the methodology is correctly completed and the conclusion is accurate. It is noteworthy that the variables selected for the analysis are appropriate based on the style, size, age and construction of the homes in the target and control areas. (RLP Exhibit 2 at 10) It is significant, as Mr. Kleszynski explained, that the multiple regression analysis helps to purify the data and minimize the impact of differences in the properties selected and it does so without subjectivity. (tr 10-2-13A at 129-131)

Mr. Kleszynski concluded that Dr. Poletti had applied the appropriate analytical techniques and gone through steps from a professional perspective to complete his assignment in a professional manner resulting in opinions that were, in fact, credible, to determine that the Lake Transfer Station is located so as to minimize the effect on value of surrounding properties. Mr. Kleszynski concurs with Dr. Poletti that the Lake Transfer Station is so located as to minimize the effect on the value of surrounding property values. Significantly, Mr. Kleszynski adds his opinion that the Lake Transfer Station is so located as to have no effect on surrounding property values. (tr 10-2-13A at 21-22) (RLP Exhibit 2 at 10)

#### **PROPOSED FINDING AND RECOMMENDATION:**

Professor Poletti reached the opinion that the proposed facility is located so as to minimize the effect on the value of surrounding property. While there is substantial supporting testimony, there is no credible contrary evidence.

Mr. Lannert's professional opinion is that the facility is located so as to minimize the incompatibility with the character of the surrounding area. The Village believes that landscaping along the North property line and near the Northwest corner of the subject site needs to be improved and a special condition is offered to accomplish that. With that Special Condition, there is no credible evidence contrary to that provided by Mr. Lannert.

The Applicant has successfully proven, subject to Special Condition, compliance with Criterion 3. Accordingly, the Village Board should find that subject to the Special Conditions attached in this document below, including but not limited to Special Conditions 7 and 4, the proposed facility is located so as to minimize the incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property. Further, the Village Board should find that, with and subject to the Special Conditions as aforesaid, that there is no credible evidence to the contrary.

#### **CRITERION 4**

##### **THE FACILITY IS LOCATED OUTSIDE THE BOUNDARY OF THE 100-YEAR FLOODPLAIN**

Devin Moose testified for the Applicant regarding Criterion 4. He explained that, he reviewed the most recent FEMA flood boundary map, which is commonly reviewed and relied upon by professionals to evaluate flood hazards. Mr. Moose testified that the flood boundary map shows that there is no 100-year floodplain within the boundary of the proposed facility. (tr 9-24-13A at 51-52) (Moose 19, 20, 21, 50) (App 2.2-5, 4-1)

## **PROPOSED FINDING AND RECOMMENDATION:**

Mr. Moose offered his expert opinion that the facility is located outside the boundary of the 100-year floodplain. There is no contrary evidence.

Accordingly, the Village Board should find, without condition, that the facility is located outside the 100-year floodplain and further that there is no credible evidence to the contrary.

### **CRITERION 5**

#### **OPERATIONS FOR THE FACILITY ARE DESIGNED TO MINIMIZE THE DANGER TO THE SURROUNDING AREAS FROM FIRE, SPILLS OR OTHER OPERATIONAL ACCIDENTS**

In addition to that portion of Mr. Moose's testimony outlined under Criterion II above (which is hereby incorporated by reference), Mr. Moose offered his expert opinion that Criterion V has been satisfied. He testified that the Health and Safety Plan is intended to minimize the potential for fire, spills or other operational accidents. It also addresses fire control and prevention measures, spill control and prevention measures, accident prevention, employee training and it provides an operational contingency plan.

Mr. Moose explained that the proposed facility will be equipped with a sprinkler system and fire hydrants. Fire extinguishers will be strategically located within the facility and on every piece of rolling equipment. Employees will be trained in fire control procedures. There will be a knock box at the front gate to allow entry to emergency responders in the event the facility is unoccupied. While the facility will not accept liquids, spill control is addressed and it includes putting out a fire and fueling vehicles. A spill kit and booms that can be used to contain a spill will be on site and a remediation

contractor will be available. (tr 9-24-13A at 69-72) (Moose 43-50) (App 5-1, Appendix P.1)

Representatives of Shaw Environmental, Inc. met with Chief Maplethorpe and Deputy Chief Whitten and discussed the Lake Transfer Station and its Health and Safety Plan. Chief Maplethorpe followed up with a letter dated November 10, 2012 which stated in part, "(b) if the facility is constructed as proposed, the Fire District does not anticipate any significant threat of fire or other risk to the community". This letter is contained in Appendix P.2. (App Appendix P.2)

Unrebutted expert testimony providing a reasonable blueprint or overview of the procedures to be instituted in the case of an emergency is sufficient to satisfy Criterion Industrial Fuels & Resources v. Pollution Control Board, 227 Ill.App.3d 533, 599 N.E.2d 148 (1st Dist. 1992).

**PROPOSED FINDING AND RECOMMENDATION:**

Mr. Moose offered his expert opinion that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. No contrary evidence was presented.

Accordingly, the Village Board should find, without conditions, that the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents and further that there is no credible evidence to the contrary.

## CRITERION 6

### **THE TRAFFIC PATTERNS TO OR FROM THE FACILITY ARE SO DESIGNED AS TO MINIMIZE THE IMPACT ON EXISTING TRAFFIC FLOWS**

Michael Werthmann testified for the Applicant regarding Criterion 6. Mr. Werthmann is a professional Traffic Engineer and a principal at Kenig, Lindgren, O'Hara & Aboona in Rosemont. He is a licensed professional engineer in Illinois and Wisconsin with 22 years of experience in traffic engineering. Mr. Werthmann has a Bachelor of Science degree in Civil Engineering from Michigan State University and Master of Science degree in Management from Northwestern University's Kellogg School of Management. (tr 9-25-13A at 15-17) (Werthmann 2)

Mr. Werthmann explained that Criterion 6 acknowledges that, like any development, transfer stations generate traffic and therefore have an impact on existing roadways. Accordingly, Criterion 6 requires them to be designed as to minimize rather than eliminate the impact on existing traffic flows. (tr 9-25-13A at 18) (Werthmann 3-4) (App 6-3) Mr. Werthmann's methodology consisted of a three phase study analyzing existing conditions, facility traffic characteristics and an evaluation of the impact along with recommendations. (tr 9-25-13A at 18-19) (Werthmann 5)

Mr. Werthmann described the location of the subject site and each of the major roadways. He discussed the area with transportation officials to obtain data and information for his study. He and his firm conducted traffic counts at nine intersections and 24-hour traffic counts along Porter Drive. A gap study at the intersection of Route 120 (a Class II truck route) and Porter Drive was also conducted. (tr 9-25-13A at 19-22) (Werthmann 6-13) (App 6-3 to 6-9 )

Mr. Werthmann performed a traffic analysis and determined the level of service of various intersections in the vicinity. Level of Service A represents the best traffic flow and least delay. Level of Service E represents saturated or at-capacity conditions. Level of Service F is the lowest grade and it represents oversaturated conditions with substantial delays. Table 3 in the Application at page 6-17 shows the existing level of service at the intersections. It shows that the Route 120 at Hainseville Road intersection to be presently operating at Level of Service E during the evening peak and the intersection of Route 120 and Wildspring Road intersection to be currently operating at Level of Service F during both morning and evening roadway peaks. (tr 9-25-13A at 22-24, 33, 41-42, 54-56) (Werthmann 31) (App 6-16 to 6-17 )

Cautioning that despite the fact that Criterion 6 requires only with the minimization of impacts on existing traffic flows, Mr. Werthmann modeled conditions in 2016 with the Lake Transfer Station in operation and without IDOT AND LCDOT improvements. His model is conservative. To make it conservative, he uses 900 tons per day in waste receipts at the transfer station and takes no reduction for the trucks based at Groot North as well as a 1% per year ambient growth. The results are shown in the Application at Table 4 on page 6-118. Table 4 shows that the Route 120 at Hainseville Road intersection will be operating at Level of Service E in 2016 during the evening peak and the intersection of Route 120 and Wildspring Road intersection to be unchanged in 2016. (tr 9-25-13A at 22-24, 33, 43-44, 92-97) (Werthmann 29, 31) (App 6-18 to 6-20) While we are limited to existing traffic flows, Mr. Werthmann's model does make it apparent that the proposed impact of the Lake Transfer Station is minimal because the impacts have been minimized.



The Applicant plans to make a number of roadway improvements in the area as a part of the development of the Lake Transfer Station. These improvements were discussed in great detail at the hearing and will be summarized here. First, Route 120 will be widened at its intersection with Porter Drive to provide separate left and right turn lanes from Route 120 to Porter Drive. Second, Porter Drive will be widened at its intersection with Route 120 to provide a three lane cross section consisting of one Northbound lane and two Southbound lanes thereby allowing separate right and left turn lanes onto Route 120 from Southbound Porter Drive. Thirdly, the radii at that intersection will be increased to better accommodate turning truck traffic. Fourthly, Porter Drive in its entirety will be resurfaced. Further the Applicant proposes that it instruct truck drivers utilizing the Lake Transfer Station not to make left turns from Porter Drive to Eastbound Route 120 between 7:00 a.m. and 9:00 a.m. and between 3:00 p.m. and 5:00 p.m. The Village, Round Lake Park Village staff if you will, recommends that the Village of Round Lake Park keep control of that intersection thereby allowing it to adjust restrictions as circumstances warrant. Such a recommendation is included as part of the proposed Special Conditions below. The Village can still work with the Applicant regarding turn restrictions, especially related to transfer tractor trailers to the extent desirable and even the departure time of transfer trailers after the evening peak as outlined by Mr. Mueller. (tr 9-25-13A at 22-24, 33, tr 9-26-13A at 40) (Werthmann 14) (App 6-19 to 6-20)

Further, IDOT has received design approval to add a separate Westbound to Northbound right turn lane on Route 120 at Hainesville Road thereby providing extra capacity at that intersection. LCDOT is planning to interconnect all of the traffic signals

along Route 120 between Route 83 and Route 134 thereby greatly increasing traffic progression and flow. LCDOT is completing a phase I study to reconstruct Cedar Lake Road between Route 120 and Nippersink Road. In addition, the Route 120 Corridor Planning Council recommends improving Route 120 to a 4 lane cross section and constructing a bypass from the existing Route 120 just West of Almond Road to just east of Fish Lake Road, thus bypassing the immediate area of the Lake Transfer Station. (tr 9-25-13A at 25-26) (Werthmann 15) (App 6-20) These improvements provide some of the reasoning keeping turn restrictions from Southbound Porter Drive to Eastbound Route 120 solely in the control of the Village as those restrictions can be changed as improvements are made. Further daily peak tonnage at the proposed facility can be capped for a time thereby allowing some time for improvements to be made without running the risk of any extra-ordinary facility related truck traffic on an already strapped roadway system despite the Applicant's minimization thereof. A Special Condition is proposed below to achieve that result as well.

In addition to the limitation on left turns from Southbound Porter Drive to Eastbound Route 120, Mr. Werthmann testified to some of the other ways that traffic impacts are minimized. The traffic generated by the proposed transfer station is generally distributed throughout the day and, significantly, peak periods at the transfer station will occur outside the morning and evening roadway peaks. 55 to 60 Groot trucks each day based at Groot North will be utilizing the Lake Transfer Station and thus are already on the roadway system utilizing intersection of Porter Drive and Route 120 currently. The applicant will prohibit its trucks from traveling North on Porter Drive beyond the Groot North facility and routing transfer tractor trailers West on Route 120,

requiring trucks to access the proposed facility from the South by way of the Route 120 and Porter Drive intersection as opposed to entering by way of Route 134 and Porter Drive. (tr 9-25-13A at 29-34) (Werthmann 20-27) (App 7-13)

Accordingly, Mr. Werthmann opined that in his professional opinion the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows. Some of the bases of his opinion are: the operation of the facility<sup>7</sup>, the proximity of the proposed facility to Groot North<sup>8</sup>, the proposed roadway improvements<sup>9</sup> and the routes serving the proposed facility.<sup>10</sup>

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<sup>7</sup> The volume of traffic generated in any one time period is limited as the proposed transfer station traffic will be distributed throughout the day.

. The peak traffic periods of the transfer station will occur during the late morning and early afternoon, outside of the critical commuter peak hours.

<sup>8</sup> Many of the transfer station collection trucks are already on the area roadway system and generated by the Groot North Facility.

. After delivering waste to the proposed transfer station, many collection trucks will only traverse Porter Drive as they will be parked at the Groot North Facility.

<sup>9</sup> IL 120 with Porter Drive is proposed to be improved with exclusive turn lanes and increased radiuses.

. Porter Drive will be resurfaced between IL 120 and IL 134.

<sup>7</sup>Truck Restrictions

. Truck traffic generated by the proposed transfer station will be directed to use the IL 120/Porter Drive intersection when accessing the arterial roadway system.

. Between the hours of 7:00-9:00 A.M. and 3:00-5:00 P.M., facility truck traffic will be prohibited from making a left turn from Porter Drive to IL 120.

<sup>10</sup> Truck traffic will travel to/from the facility via the arterial roadway system.

. Higher classification type roads that have been designed to accommodate truck traffic.

<sup>7</sup>Design of the Access Drive

. One access drive located on Porter Drive.

. Access drive has been designed to serve the facility and will ensure efficient and orderly access.

<sup>7</sup>Minimal Impact on Roadway Operations

. The facility traffic represents an approximate 1.75 percent or less increase in traffic at any of the studied area intersections.

## BRENT COULTER

Brent Coulter testified for Timber Creek Homes. Mr. Coulter is a traffic engineer with a degree in civil engineering from Vanderbilt University and a master's degree in Urban and Regional Planning with a certificate in transportation planning from the University of Iowa. He is a registered professional engineer in Illinois and a professional traffic operations engineer. Mr. Coulter is a member of the Institute of Transportation Engineers. He has been employed by the Regional Planning Commission in Birmingham, Alabama, as a transportation planner by Du Page County, and by the Du Page County Highway Department leaving there as Superintendent of Highways. After a time with Cemon Engineering he founded Coulter Transportation. (tr 9-26-13A at 5-8) (TCH Exhibit 5)

Mr. Coulter reviewed Mr. Werthmann's report and he opined that Mr. Werthmann has, ~~not~~ demonstrated in the traffic report that the traffic patterns or impacts have been minimized. Mr. Coulter generated a slightly over four (4) page report concluding that the Application ~~has~~ not demonstrated that no adverse traffic impact will be created.<sup>11</sup> (tr 9-26-13A at 13 *Emphasis added*) (TCH Exhibit at 5)

Mr. Coulter went on to testify that since the Applicant may, at least initially, use the Winnebago County Landfill for disposal, he was looking to find the transfer tractor trailer routing all the way, approximately 64 miles to that landfill but could not find it in the Application. Accordingly Mr. Coulter felt that Criterion is not adequately addressed

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. With recommended IL 120/Porter Drive intersection improvements and truck restrictions the intersection capacity analyses have shown that the traffic generated by the proposed transfer station will have a negligible impact on the existing roadway system.

<sup>11</sup> Criterion 6 requires that the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows. *Emphasis added*

in the by Mr. Werthmann's study.<sup>12</sup> This triggered another long and repeated discussion about the Fox Moraine case. Thereafter, Mr. Coulter assumed that transfer tractor trailers, would use Cedar Lake Road and objected because he claims that Cedar Lake Road is not a truck route. However, no one except Mr. Coulter ever said those vehicles would leave Route 120 which is a Class II Truck Route illegally. Nonetheless, Mr. Coulter's opinion is also based at least in part on this misconception. (tr 9-26-13A at 21-25) (TCH Exhibit at 4)

Virtually the entirety of Mr. Coulter's testimony concerned the route taken all the way to the Winnebago Landfill by transfer tractor trailers. Mr. Coulter went on and stated that if there is a possibility that other landfills could be used, the entire routing to each landfill MUST be set out in the Application and, apparently, approved by the Village Board. Apparently realizing that he was creating an impossible task, when Mr. Coulter was asked about the possibility of using a dozen landfills, he made up . . . out of thin air . . . that only three or four that could accept the waste need be identified and completing routing be supplied. (tr 9-26-13A at 63-68) When asked where the limitation to three or four landfills was in Criterion 6, Mr. Coulter was forced to admit that there was no such language in Criterion 6 but refused to admit that he had just made that up. Instead, Mr. Coulter said, "I think without ballooning this into an exercise involving 10s, 20s of landfills, that we can identify 3 or 4 likely to be served by this waste transfer station". In other words he did just make up a limitation that is not in Criterion 6.

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<sup>12</sup> If Mr. Coulter and Mr. Blazer are correct and if siting is granted, TCH will undoubtedly attempt to have the matter reversed on appeal. The Village believes that they are not correct as will be addressed *infra*. The Village Board should consider consulting its counsel regarding the status of the law and/or review any order issued by the Hearing Officer thereon. If siting is granted, this issue will undoubtedly be decided by the Pollution Control Board and Appellate Court as Mr. Cohen threatened.

(tr 9-26-13A at 68-69) For all of these reasons, Mr. Coulter is not credible and it must be ignored.

The courts have previously construed this criterion to require an applicant to show that it has minimized traffic impact -- not that it will eliminate any additional traffic impact. See, e.g., Tate v. IPCB, 188 Ill. App. 3d. 994, 544 N.E. 2d 1176, 1196 (4th Dist. 1989). The Board has also made it clear that the statute does not refer to or require an applicant to present a specific traffic plan; rather, the applicant must show that traffic patterns to or from the facility are so designed as to minimize the impact on the existing traffic flows. CDT Landfill Corporation v. City of Joliet, PCB 98-60 (March 5, 1998) (Slip. OP. at 50-52). In Fox Moraine, LLC, v. United City of Yorkville, 2011 Ill App 2d 100017, 960 N.E. 2d 1144 (2<sup>nd</sup> Dist, 2011) the Appellate Court's discussion regarding downtown Plainfield is more than broad enough to cover the situation at bar:

Downtown Plainfield is quite a distance from the planned landfill site (approximately 15 miles), and since Fox Moraine was not even required to submit planned traffic routes, we question the Board's analysis that Fox Moraine failed to demonstrate that the traffic patterns to and from the facility were designed to minimize the impact on the traffic flow around it.

TCH seeks to carve an exception out of this clear position because one of the landfills that the Lake Transfer Station may use is the Winnebago Landfill. The holding that Fox Moraine does not have to submit planned traffic routes is completely consistent with prior case law and it leaves no room to argue that an exception exists if the destination is known. Mr. Coulter's testimony in Fox Moraine is similar to his testimony here and must meet with a result that is consistent with the Appellate Court's opinions.

## **PROPOSED FINDING AND RECOMMENDATION:**

Mr. Werthmann opined that the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. The Applicant has successfully proven compliance with Criterion 6 subject to Special Conditions.

Accordingly, the Village Board should find that subject to the Special Conditions attached in this document below, including but not limited to Special Conditions 1, 2 and 8, the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows. Further, the Village Board should find that, with and subject to the Special Conditions as aforesaid, that there is no credible evidence to the contrary.

### **CRITERION 7**

#### **IF THE FACILITY WILL BE TREATING, STORING OR DISPOSING OF HAZARDOUS WASTE, AN EMERGENCY RESPONSE PLAN EXISTS FOR THE FACILITY WHICH INCLUDES NOTIFICATION, CONTAINMENT AND EVACUATION PROCEDURES TO BE USED IN CASE OF AN ACCIDENTAL RELEASE**

The proposed facility will not be treating, storing, or disposing of hazardous waste. Mr. Moose testified that hazardous waste will not be accepted. The summary of Mr. Moose's background and experience and the analysis under Criterion 2 related to measures, such as load checking, that will be implemented to be confident that such material is not allowed to be processed is hereby incorporated by reference herein. (tr 9-23-13A at 62-64, tr 9-30-13C at 47-49) (Moose 5, 32-35) (App 7-1) Accordingly, and as Mr. Moose testified, this criterion is inapplicable and is accordingly satisfied.

**PROPOSED FINDING AND RECOMMENDATION:**

The Village Board should find that Criterion VII is inapplicable and has been satisfied as the proposed facility will not be treating, storing or disposing of hazardous waste and further that there is no credible evidence to the contrary.

**CRITERION 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**

Devin Moose testified regarding Criterion 8, plan consistency. Mr. Moose has 30 years of experience in all aspects of solid waste and has participated in a number of planning efforts. (tr 9-25-13A at 122-123) (Moose 8-2) The summary of Mr. Moose's background and experience above under the analysis of Criterion 2 is incorporated by reference herein.

Mr. Moose explained that Lake County adopted its Solid Waste Management Plan (SWMP) in 1989 and has updated it every five years since. In addition the Village of Round Lake Park adopted the Lake County SWMP by reference on August 6, 2013. The Village of Round Lake Park previously adopted a SWMP consistent with the requirements of the Local Solid Waste Disposal Act. The Round Lake Park SWMP was in effect when the Application was filed. As opined in the Application, the proposed Lake Transfer Station is consistent with both the Lake County SWMP and the Round Lake Park SWMP. (tr 9-25-13A at 123) (Moose 8-3 to 8-5) (App 8-1)



Mr. Moose testified that Lake County and its municipalities historically relied on in-County and locally available landfills. In its SWMP 2010 update Lake County states that it needs to start seriously considering long-term disposal options.<sup>13</sup> It identifies landfills, transfer stations or alternative technologies. The 2010 update does not identify a preferred option and it leaves the determination of the technology and location to the private sector but it does state that it needs to make sure that new facilities and/or programs are in place prior to existing facilities closing. (tr 9-25-13A at 124-125) (Moose 8-5) (App 8-1)

Mr. Moose's opinion is that the County is essentially asking developers to select and make operational the selected facilities prior to the existing facilities closing. The 2010 SWMP update recommendation T2 - 6 states that if transfer stations should be large enough to manage anticipated waste volume, provide adequate buffering, screening, storm water management, safe traffic flow and other proposed functions, all of which the proposed Lake Transfer Station meets. (tr 9-25-13A at 126-130) (Moose 8-8 to 8-15) (App 8-5 to 8-12)

Mr. Moose opined that the proposed Lake Transfer Station is consistent with the Lake County Solid Waste Management Plan. (tr 9-25-13A at 131) (Moose 8-16) (App 8-5 to 8-15) Mr. Moose also opined that the proposed Lake Transfer Station is consistent with the Round Lake Park SWMP which was repealed as that it is consistent in all material aspects with the Lake County SWMP (tr 9-25-13A at 131) (App 8-12 to 8-15) Accordingly which SWMP controls is not significant because the proposed Lake Transfer Station is consistent with all of them.

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<sup>13</sup> The 2010 SWMP update is sometimes referred to as the 2009 SWMP update as it became available in 2009 but was not adopted until 2010.

Mr. Blazer attempts to conjure up some inconsistency with the Lake County SWMP by claiming that the Lake County SWMP requires the Winnebago Landfill to have a host agreement with Lake County, which in turn would require that the Winnebago County landfill pay Lake County a host fee and guarantee Lake County capacity. (tr 9-25-13B at 6-9) %N] ot my knowledge+was Mr. Moose\$ answer to both the host fee and guaranteed capacity issue. Even if Mr. Moose claimed that he knew, his answer would be hearsay and not entitled to much weight. Importantly, the Lake Transfer Station can utilize any disposal facility, even those having host agreements with Lake County. Nonetheless, this claimed requirement is not significant and compliance need not be construed as compliance to the letter.

A facility is consistent with a Solid Waste Management Plan so long as it is not in opposition of that plan. City of Geneva v. Waste Management, PCB No. 94-58 (July 21, 1994), reversed on other grounds in County of Kane v. PCB, 2-96-0652 and 2-96-0676 (consolidated) (2nd Dist., September 29, 1997). Consistency does not require that a Solid Waste Management Plan be followed to the letter. Cure v. BFI, PCB No. 96-238 (September 19, 1996).

It is notable, however, that the repealed Village of Round Lake Park SWMP was in effect at the time this Application was filed and it has no requirement for a disposal facility to provide capacity or enter into a host agreement with the Village, as silly as that concept seems.

**PROPOSED FINDING AND RECOMMENDATION:**

Devin Moose opined that proposed facility is consistent with the Lake County Solid Waste Management Plan and also that the proposed facility is consistent with the recently repealed Village of Round Lake Park Solid Waste Management Plan.

The Village Board should find, without condition, that the proposed facility is consistent with the Lake County Solid Waste Management Plan and also that the proposed facility is consistent with the recently repealed Village of Round Lake Park Solid Waste Management Plan and further that there is no credible evidence contrary to either finding of consistency.

**CRITERION 9**

**IF THE FACILITY WILL BE LOCATED WITHIN A REGULATED RECHARGE AREA, ANY APPLICABLE REQUIREMENTS SPECIFIED BY THE BOARD FOR SUCH AREAS HAVE BEEN MET**

This criterion does not apply to the proposed facility. Devin Moose's background and experience outlined under Criterion 2 is incorporated by reference herein. He testified without contradiction that the proposed facility is not located within a regulated recharge area. Mr. Moose explained that the proposed facility is not located in a regulated recharge area. The only regulated recharge area is in Peoria County. (tr9-23-13A at 52) (Moose 5, 22-24) (App E-5, 9-1) Accordingly, Criterion 9 is inapplicable to the proposed facility.

**PROPOSED FINDING AND RECOMMENDATION:**

The Village Board should find that Criterion 9 is inapplicable and has been satisfied by reason of its inapplicability because the proposed facility will not be located

within a regulated recharge area and that further there is no credible evidence to the contrary.

### **SPECIAL CONDITIONS:**

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1. The operating hours shall be initially limited to 4 a.m. to 9 p.m. Monday through Friday and 4 a.m. to noon on Saturday. The Village shall designate a contact person who can authorize temporary operation outside those hours as circumstances dictate. The Village may, by resolution, extend the operating hours as circumstances, including but not limited to the operating record, traffic and roadway conditions warrant.

2. The Applicant shall not exceed a maximum daily tonnage of 500 tons for the first two years of operation. The Village shall designate a contact person who can authorize temporary operation in excess of the daily maximum tonnage as circumstances dictate. Village may, by resolution, increase the maximum daily tonnage as circumstances, including but not limited to the operating record, traffic and roadway conditions warrant.

3. The Applicant must keep the doors to the facility closed between the hours of 4:00 a.m. and 8:00 a.m. In addition the Applicant must keep the doors to the facility closed from 6:00 p.m. to 4:00 a.m. on weekdays and from 11:00 a.m. on Saturdays until 4:00 a.m. on Mondays. The Village may, by resolution, modify the requirement to keep the doors to the facility closed from 6:00 p.m. to 4:00 a.m. on weekdays and from 11:00 a.m. on Saturdays until 4:00 a.m. on Mondays as circumstances, including but not

limited to, the operating record, noise emissions, odor emissions, traffic and roadway conditions warrant.

4. Should a special condition hereof be violated, should noise emissions be noticeable over ambient or odor emissions be noticeable at or beyond the facility boundary, the Village may, in its discretion and at the expense of the Applicant, retain experts, retain counsel, investigate the violation and/or emissions and further in the sole discretion of the Village take legal action or such other action against the Applicant as it deems appropriate at the Applicant's sole expense.

5. Any action permitted herein that may be taken in whole or in part at the expense of the Applicant shall be funded by the Applicant in accordance with the then existing applicable provisions of Chapter 158 of the Village Code entitled "ESCROW OF FUNDS" governing the provision of security of payment of professional fees and other costs incurred by the Village for Private Developers.

6. The applicant shall serve the proposed facility by utilizing the public sewer system unless same becomes unavailable. If unavailable, the Applicant shall utilize the public sewer system when it becomes available.

7. The Applicant shall place additional landscaping and utilize a solid fence at or near the North side property line and at the Northwest corner of the facility. A plan to do so shall be submitted to the Village and be approved or rejected in the building permit process.

8. The Applicant agrees to use its best efforts to minimize incoming and outgoing traffic during the hours referenced below. The Village shall maintain control of turns at the intersection of Porter Drive and Route 120. The Village agrees to initially

prohibit left turns from Porter Drive to Route 120 from 7:00 a.m. to 9:00 a.m. and 3:00 p.m. to 5 p.m. at a minimum at all times the transfer facility is operating. The Village may, by resolution, modify or eliminate any restrictions at the aforesaid intersection as circumstances, traffic or roadway conditions warrant. The Applicant shall cooperate with the Village to keep traffic impacts minimized.

9. Storage. The tipping floor shall be cleaned and free of waste at least once each day the facility operates. No waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the facility is not operating. Waste may be kept temporarily in transfer trailers for no more than 24 hours (except on weekends and holidays), provided that such trailers are stored indoors and suitably covered. Empty transfer trailers may be stored outdoors for no more than 24 hours (except on weekends and holidays).

10. Noise Control. All equipment utilized for operations shall be equipped with mufflers or other sound suppressing devices required for compliance with applicable State statutes and regulations. The Village may require the use of available alternatives to backup beepers.

11. Litter Control. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. The Applicant shall use its best efforts to assure that vehicles hauling waste to, or removing waste from the Transfer Facility shall be suitably *covered* so as to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. In addition, the Applicant shall abide by the litter control

plan approved by the Village as a result of the siting process. At a minimum the Applicant will diligently patrol and remove litter from the Subject Property, all property owned or controlled by the Applicant, and public street and corresponding right-of-way within 1500 feet of the Subject Property. In addition, the Applicant shall, at a minimum, patrol and remove litter from property within five hundred (500) feet of the aforesaid public streets and corresponding rights-of-way with the permission of the owner of said property, which permission the Applicant will diligently attempt to obtain.

12. The Applicant shall **provide** a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as well as public roads and right-of-ways included within the roadway boundaries within, at a minimum, one thousand (1,000) feet of the Subject Property on an as needed basis, but not less frequently than daily.

13. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors, whereby such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

### **CONCLUSION:**

The Applicant has, subject to Special Conditions, successfully proven that it meets all of the statutory Criteria to be granted siting. The Village recommends that the Village Board adopt the Findings and Recommendations including the Special Conditions herein.

An analysis of the testimony of the witnesses for Timber Creek Homes (~~TC~~CH) actually helps the Applicant as it highlights the strength of the Applicant's case points to

TCH's shortcomings. We have seen %Experts+who draft 3, 4 and 5 page reports, want to require equipment not used by other transfer stations in Illinois and at the same time cannot say that there will be ANY perceptible odor. %Experts+who don't even visit the subject site or, in one case, fail to visit the sites of the case studies authored by the Applicant's expert but criticized them nonetheless. None of them could offer evidence of violations or issues similar to what they predict here for any other transfer station, not even the similar but larger transfer station operated by this Applicant in Glenview.

Fortunately, the Village had retained Dale Kleszynski to do an enhanced peer review of Mr. Poletti's report called a Standard 3 Review. When Mr. Marousq involvement came to light it was easy to see that he had done essentially nothing, but was not shy in offering criticism. Mere criticism forms a difficult basis for cross examination as there is really no substance to delve into. That is likely why Mr. Marous failed to do a Standard 3 Review of Mr. Poletti's work himself. He would be forced to verify and confirm what Mr. Poletti had done or refute it, step by step. He knew better.

The participation of Timber Creek Homes, the Village of Round Lake and Lake County did, in part, form the basis of Special Conditions which the Village believes to be very helpful and which should be adopted should the Village Board grant siting. The Village thanks all who participated and thanks the Hearing Officer and Village Board for its attendance at the hearings.

Respectfully Submitted:

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