

BEFORE THE VILLAGE BOARD OF THE VILLAGE OF ROUND LAKE PARK  
SITTING AS A POLLUTION CONTROL FACILITY SITING AUTHORITY

IN RE: APPLICATION FOR LOCAL SITING )  
APPROVAL FOR GROOT INDUSTRIES )  
LAKE TRANSFER STATION, ) 03-01

**NOTICE OF FILING**

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PLEASE TAKE NOTICE that on October 21, 2013, there was filed electronically  
**APPLICANT'S CLOSING BRIEF AND PROPOSED FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**, a copy of which is hereby attached and served upon you.

Dated: 10/21/2013 Groot Industries, Applicant

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BEFORE THE VILLAGE BOARD OF THE VILLAGE OF ROUND LAKE PARK SITTING  
AS POLLUTION CONTROL FACILITY SITING AUTHORITY

IN RE: APPLICATION FOR LOCAL SITING      )  
      APPROVAL FOR GROOT                      )  
      INDUSTRIES LAKE TRANSFER                )  
      STATION                                    )      03-01  
                                                  )

**APPLICANT'S CLOSING BRIEF AND PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

NOW COMES, Applicant, Groot Industries, Inc., by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its Proposed Findings of Fact and Conclusions of Law, states as follows:

**I. INTRODUCTION**

Groot Industries, Inc. filed an application on June 21, 2013 for local siting approval of the Groot Industries Lake Transfer Station on property located at 201 Porter Drive, within the corporate limits of the Village of Round Lake Park, Illinois. (Groot Exhibit 1). The proposed transfer station facility will be used for the consolidation and transfer of municipal solid waste generated in the Village of Round Lake Park and Lake County. The facility will accept only non-hazardous municipal waste, landscape waste and source separated recyclables, pursuant to permits issued by the Illinois Environmental Protection Agency and no hazardous waste will be accepted. The application included 1,275 pages addressing each of the nine (9) criteria of 415 ILCS 5/39.2 with eleven (11) sets of drawings and eighteen (18) appendices with attachments. The public hearing on the application commenced on September 23, 2013 and concluded on October 2, 2013. Written public comment will be accepted through November 1, 2013 and additional briefs to address public comment will be allowed through November 8, 2013. The

Village of Round Lake Park must make a decision on the application on or before December 18, 2013 or the application will be deemed approved.

These proceedings are governed by Section 39.2 of the Illinois Environmental Protection Act (the “Act”), which sets forth the exclusive siting procedures for pollution control facilities in Illinois. 415 ILCS 5/39.2. Local siting authorities may supplement these procedures with their own ordinances and regulations as long as they are not inconsistent with Section 39.2 of the Act. The Village of Round Lake Park has adopted a Pollution Control Facilities Siting Ordinance, Ordinance Number 12-14, which has been complied with by this application and throughout these proceedings.

The Applicant for the local siting approval is required to demonstrate compliance with each of the nine (9) siting criterion of Section 39.2(a) of the Act. Local siting approval shall be granted if the proposed facility meets each of those criterion. The siting application contained sufficient detail describing the proposed facility to demonstrate compliance with each of the nine (9) siting criterion in Section 39.2(a) of the Act as well as Ordinance Number 12-14. The first portion of this document contains a discussion of the relevant issues presented at the public hearing and via the application. The second portion of this document lists the Proposed Findings of Facts and Conclusions of Law which are supported by the record.

## **II. NOTICE**

Section 39.2(b) of the Act sets forth the notice requirements prior to filing a siting application. On the first day of the public hearing, the Applicant submitted as Exhibit 2, an Affidavit of Compliance with 415 ILCS 5/39.2(b), prepared and executed by Charles F. Helsten, one of its attorneys. This Affidavit demonstrated that the pre-filing notice conformed to all statutory requirements, that the timing and the manner of service and publication conformed to all statutory requirements, and that all individuals and entities who were entitled to notice were

served. No objection to compliance with the pre-filing notice requirements was made by any of the participants. The Applicant complied with all pre-filing notice requirements of Section 39.2(b).

Section 39.2(d) of the Act sets forth requirements for the content and service of pre-hearing notices. On the first day of the public hearing, the Applicant submitted, as Exhibit 3, the Affidavit of Compliance with 415 ILCS 5/39.2(d), prepared and executed by one of its attorneys, Charles F. Helsten, which demonstrated compliance with all pre-hearing notice requirements. This Affidavit demonstrated that the contents of the Notice were compliant with the statute, the timing of service and publication was compliant with the statute and all those persons and entities that were entitled to receive notice were served. No objections to compliance with the pre-hearing notice requirements was made by any of the participants. Accordingly, the Applicant has complied with all pre-hearing notice requirements of Section 39.2(d) of the Act.

### **III. FUNDAMENTAL FAIRNESS**

Section 40.1 of the Act and Illinois case law require that siting proceedings be conducted in accordance with the requirements of fundamental fairness. Participants in a pollution control siting hearing do not have property interests at stake, and the procedures at the local level must therefore only comport with the adjudicative due process standards of fundamental fairness. *E&E Hauling v. PCB*, 116 Ill.App.3d 586, 451 N.E.2d 555 (2<sup>nd</sup> Dist. 1983). Fundamental fairness requires the minimal standards of procedural due process, including the opportunity to be heard and the right to cross-examine adverse witnesses. *Land and Lakes Co. v. PCB*, 245 Ill.App.3d 631 (3<sup>rd</sup> Dist. 1993). Fundamental fairness also includes the right to inspect evidence. *Girot v. Keith*, 212 Ill.2d 372 (2004). A paper copy of the siting application was on file and available to the decision-makers and for public inspection and copying from the date of its filing,

June 21, 2013, and will be available through the close of the record. In addition, the Applicant provided electronic copies on disc to the Clerk of the Village of Round Lake Park and a digital copy was available at the Solid Waste Agency of Lake County website ([www.swalco.org](http://www.swalco.org)). No complaints regarding access to or availability of said application have been received.

The case law and the rulings of the Pollution Control Board have emphasized the opportunity for the public to participate in the siting process and indeed every day of these public hearings was open to the public. There was ample space to accommodate the public at every public hearing, and oral public comment periods were available throughout the entire hearing. All of those registered as participants were allowed to participate. The participants included the Village of Round Lake Park, the Solid Waste Agency of Lake County, Timber Creek Homes, Inc., the Village of Round Lake Park staff, the Village of Round Lake and one member of the general public, Mr. Brian Smith. No objections regarding participation, hearing procedures or public comment were made by any participant, would-be participant or member of the public. Every member of the public who wished to give public comment was allowed to do so.

Fundamental fairness also includes an element of substantive due process, that being fair and impartial decision-makers who base their decision solely on the evidence. *Girot v. Keith*, 212 Ill.2d at 380. There is an assumption that public officials act without bias. *Waste Management of Illinois, Inc. v. PCB*, 175 Ill.App.3d 1023 (2<sup>nd</sup> Dist. 1988), *Concerned Adjoining Owners v. PCB*, 288 Ill.App.3d 565 (3<sup>rd</sup> Dist. 1997). That presumption is not overcome merely because a member of the siting authority has previously taken a public position or expressed strong views on a related issue. *Peoria Disposal Company v. PCB and County of Peoria*, 385 Ill.App.3d 781, 896 N.E.2d 460 (3<sup>rd</sup> Dist. 2008). Pollution control facility siting proceedings are only quasi-adjudicative in nature and therefore members of the siting authority are not held to the

same standards as judges. *Southwest Energy Corp. v. Pollution Control Board*, 275 Ill.App.3d 84, 655 N.E.2d 304 (4<sup>th</sup> Dist. 1995). Objections based upon alleged bias and pre-judgment are deemed waived if not timely made, and such objections are generally deemed to be required to be made prior to the start of the public hearing on the siting application. *Peoria Disposal Company v. PCB*, 385 Ill.App.3d 781, 896 N.E.2d 460 (3<sup>rd</sup> Dist. 2008), *Fox Moraine LLC v. United City of Yorkville*, 960 N.E.2d 1144 (2<sup>nd</sup> Dist. 2011).

Prior to this proceeding, no motions regarding alleged bias or pre-judgment were made. The only reference to a purported lack of fundamental fairness was by the attorney for Timber Creek Homes, Inc., Mr. Blazer. He argued in regard to certain questioning by Mr. Sechen, the Attorney for the Village of Round Lake Park staff, that “it is apparent to us that there has been a predetermining of this application, the rules of fundamental fairness have been violated.” (TR 9/25/13B at 118).<sup>1</sup> However, Mr. Sechen does not represent the decision-makers in this case, the Board of the Village of Round Lake Park. Rather, the decision-makers were represented by Mr. Peter S. Karlovics. Mr. Karlovics responded to Mr. Blazer’s objection stating that “this Board has been committed to hear [the testimony]. And there’s no evidence whatsoever of any type of predetermination whatsoever. What you have is board members showing, listening to all evidence. They have come here with no preconceived notions, so there’s no evidence whatsoever that this Board has made any type of determination, and so we object to Mr. Blazer’s motion.”<sup>2</sup> (TR 9/25/13B at 119). It was pointed out by the attorney for the Applicant that Mr.

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<sup>1</sup> References to the hearing transcript are in the form “TR date at page number”. If the hearing began at noon, the date will have an “A” designation. If the hearing began in the afternoon, the date will have a “B” designation. If the hearing began in the evening, the date will have a “C” designation. For example, TR 9/25/13B at 120, is page 120 of the late afternoon hearing on 9/25/13.

<sup>2</sup> To further support the case that there was no predetermination, Mr. Karlovics sought leave of the hearing officer to ensure that the record contained the comings and goings of each of the officials. The following officials were recorded as having attended the listed sessions: Session #2 (TR 9/20/2013A): Mayor Linda Lucassen, Trustee Jean

Sechen was not a decision-maker and he was just an attorney and what he said during questioning was not evidence. (TR 9/25/13B at 120). The hearing officer asked Mr. Blazer if he was making a motion and Mr. Blazer stated “[t]here actually was not” any motion being made. (TR 9/25/13B at 120). The Hearing Officer stated “I would not agree with your statement [of predetermination] based on the observations I have seen.” (TR 9/25/13B at 121). The Hearing Officer explained that he had not heard the attorney for the Village staff make any statement which would identify the decision the Village Board would make. (TR 9/25/13B at 121). Furthermore, the Hearing Officer stated “what's been pretty obvious to me is that this Village Board has spent a lot of time here, and we've seen a lot of the members here over the past three days, at some probably inconvenient times for all of them, and they have been paying attention and asking for documents, in fact.” (TR 9/25/13B at 121).

The only objection that was raised on fundamental fairness was to questioning by the attorney for the Village of Round Lake Park staff. That attorney is not a decision-maker in this case and does not even represent the decision-makers. Furthermore, the record will bear out that he was merely posing questions which is not considered evidence and was in no way testifying in this case. In addition, the Objector, Timber Creek Homes, explicitly stated it was not making

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McCue, and Trustee Candace Kenyon. Session #3 (TR 9/23/2013A): Mayor Linda Lucassen, Trustee Jean McCue, Trustee Bob Cerretti, Trustee Donna Wagner, and Trustee Candace Kenyon. Session #5 (TR 9/23/2013C): Trustee Candy Kennedy. Session #6 (TR 9/24/2013A): Trustee Bob Corretti and Trustee Jean McCue. Session #7 (TR 9/24/2013B): Mayor Linda Lucassen. Session #8 (TR 9/24/2013C): Mayor Linda Lucassen, Trustee Jean McCue, Trustee Pat Williams, Trustee Rae Anne McCarty, Trustee Bob Cerretti, and Trustee Candace Kenyon. Session #9 (TR 9/25/2013A): Trustee Donna Wagner. Session #10 (TR 9/25/2013B): Mayor Linda Lucassen, Trustee Jean McCue, and Trustee Donna Wagner. Session #11 (TR 9/25/2013C): Mayor Linda Lucassen, Trustee Bob Cerretti, Trustee Jean McCue, Trustee Donna Wagner, and clerk, Karen Eggert. Session #12 (TR 9/26/2013A): Trustee Bob Cerretti and Trustee Jean McCue. Session #13 (TR 9/26/2013B): Trustee Bob Cerretti, Trustee Jean McCue, and Trustee Donna Wagner. Session #14 (TR 9/30/2013B): Mayor Linda Lucassen, Trustee Bob Cerretti, Trustee Jean McCue, Trustee Donna Wagner, and Trustee Candace Kenyon. Session #15 (TR 9/30/2013C): Trustee Pat Williams and Trustee Rae Anne McCarty. Session #16 (TR 10/1/2013A): Mayor Linda Lucassen, Trustee Jean McCue, Trustee Bob Cerretti, and Trustee Donna Wagner. Session #17 (TR 10/1/2013B): None Acknowledged. Session #18 (TR 10/2/2013A): Trustee Bob Cerretti and Trustee Jean McCue. Session #19 (TR 10/2/2013B): Mayor Linda Lucassen and Trustee Candace Kenyon.

any motion based upon bias or pre-judgment of the merits and, therefore, any objections or arguments pertaining to fundamental fairness have been forever waived. In addition to having attended the public hearings on numerous occasions the transcripts have been made available to all decision-makers via the Village of Round Lake Park website. Accordingly, the siting proceedings herein were both procedurally and substantively fundamentally fair as required by Section 40.1 of the Act.

#### **IV. THE SITING CRITERIA**

##### **A. Introduction**

The Applicant called five (5) expert witnesses who between them, addressed all nine (9) of the statutory siting criteria and concluded the proposed facility satisfies each one of those criterion. There was absolutely no opposition testimony in relation to criteria iv, v, vii, viii or ix. Furthermore, the objectors' witnesses only submitted criticisms to portions of the Applicant's expert's opinions concerning criteria i, ii, iii and vi, and none of the objectors' witnesses themselves performed a complete analysis under criteria i, ii, iii or vi. Because no expert testified that they performed their own needs analysis, a complete criterion ii compliance study, a property impact study, or a traffic study, the testimony of the well qualified experts of Groot Industries is essentially unrebutted.

In order to rule against any Applicant on any substantive criteria the decision-maker must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E.2d 148 (1<sup>st</sup> Dist. 1992). Once an Applicant makes a *prima facia* case on any criterion, the burden of proof shifts to the opponents to rebut the Applicant's case. Mere claims by opponents contrary to an Applicant's evidentiary demonstration are insufficient and, in fact, prejudicial if not supported by competent evidence. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E.2d 353 (1969). The PCB has rejected the

concept that unrebutted expert conclusions can be defeated by an opponent identifying claimed “flaws” in the evidence, absent an “expert opinion that any particular design feature or operating procedure might increase the risk of harm to the public.” *CDT Landfill Corporation v. Village of Joliet*, Ill. Pollution Control Board, 98-60 (March 5, 1998).

**B. Criterion I - The Facility is Necessary to Accommodate the Waste Needs of the Area it is Intended to Serve.**

Christina Seibert, an environmental scientist and solid waste planner with over 13 years of experience who has prepared or assisted in the preparation of solid waste needs assessments for 20 solid waste facilities in Illinois, testified that Criterion I has been met because the facility is necessary to accommodate the waste needs of the intended service area. (TR 9/24/13C). She has been an expert witness in eight (8) local siting hearings and worked on permit applications for more than ten (10) transfer stations in Northern Illinois. (TR 9/24/13C at 10). She has been a consultant to industry and government clients concerning the issue of solid waste management need. (TR 9/24/13C at 10-11). She performed a needs analysis evaluating trends in managing waste in the service area and in the Chicago metropolitan area comparing available transfer and disposal capacity with projected waste generation. (TR 9/24/13C at 13). Ms. Seibert reviewed demographic projections, data concerning the trends in the waste disposal system, data concerning the landfill and transfer station capacity generally serving Lake County, and the projections for the waste requiring disposal for the service area. (TR 9/24/13C at 13-15).

The law is clear that Applicants are entitled to designate their own service area and as such, the proposed service area consists of Lake County. (TR 9/24/13C at 15). No one has objected to Lake County as the designated service area of the proposed transfer station. Ms. Seibert explained that under the Solid Waste Planning and Recycling Act, 415 ILCS 15/1 et seq., the County has historically sought and acquired twenty (20) years of guaranteed disposal

capacity for the waste generated within its borders. (TR 9/24/13C at 19). Historically, Lake County has sent waste to Advanced Disposal's Zion Landfill, Waste Management's Countryside Landfill in Grayslake and Waste Management's Pheasant Run Landfill just outside of Kenosha, Wisconsin. (TR 9/24/13C at 19-22). Ms. Seibert explained that the Countryside Landfill will have less than five (5) years capacity remaining when the Lake Transfer Station begins operating. (TR 9/24/13C at 20). The ADS Zion Landfill's capacity commitment to Lake County will expire in 2017 and that facility is projected to close within 12 years of the Lake Transfer Station opening. (TR 9/24/13C at 20). Finally, the Pheasant Run Recycling and Disposal Facility will not provide any significant disposal capacity for Illinois because Wisconsin has dramatically increased its tipping fees making that facility economically infeasible for waste disposal. (TR 9/24/13C at 36-37).

Ms. Seibert observed upon reviewing the appropriate data that Lake County was expected to experience growth in population, the number of households, as well as employment, resulting in increased quantities of waste needing to be managed. (TR 9/24/13C at 26-27). It is undeniable that the Lake County landfills will not provide the needed twenty (20) years capacity and that new landfills are generally being developed further and further away from the County thereby necessitating the use of transfer stations. (TR 9/24/13C at 42).

Ms. Seibert testified that the Lake County Solid Waste Management Plan cited a need to develop new facilities including transfer stations and that those facilities need to be developed prior to the closing of existing facilities. (TR 9/24/13C at 23). Ms. Seibert informed the Village that there are no transfer stations currently operating in Lake County which results in a transfer capacity deficit far in excess of the proposed capacity of the Groot Lake Transfer Station. (TR 9/24/13C at 34). Specifically, using the 2011 disposal rates, the projected daily waste requiring

disposal for 2015 was 2,899 tons per day for the service area and 3,550 tons per day by 2035. (TR 9/24/13C at 29). Using the historical average rates from 1996 through 2011 the 2015 projected daily waste disposal need was 3,422 tons per day and by the year 2035 the projected waste disposal needs would be 4,191 tons per day. (TR 9/24/13C at 29-30). The Lake Transfer Station is designed to accept approximately 750 tons per day. (TR 9/24/13C at 34). It is clear that the service area is in need of between 3,550 tons per day and 4,191 tons per day of disposal capacity to meet the twenty (20) year disposal capacity needs. All of the landfill capacity servicing Lake County will be exhausted in approximately twelve (12) years of the Lake Transfer Station beginning its operation and could be much sooner than that. (TR 9/24/13C at 20). Finally, the testimony of Ms. Seibert was that each of the regional landfills in the area have taken nine (9) years or more to permit and the planning for the Lake Transfer Station began in 2008 resulting in a development time frame of seven (7) years. (TR 9/24/13C at 22, 25). In addition, there is a growing trend for landfills to be further and further away from the Chicago and the collar county area which creates a greater need for transfer station capacity. (TR 9/24/13C at 42).

The only witness who testified concerning criterion i on behalf of objectors was John W. Thorsen who was called by Timber Creek Homes. (TR 9/25/13B). Mr. Thorsen admitted that he did not perform a needs analysis himself. (TR 9/25/13B at 91). Mr. Thorsen further admitted that he had only personally been involved in one needs analysis in his entire career, and that was over twenty (20) years ago for a landfill (for which siting was initially rejected). (TR 9/25/13B at 43-44). He had no experience performing a needs analysis for transfer stations. (TR 9/25/13B at 46). He had never taught a course on needs analyses, never attended a course on needs analyses and had never presented or testified at a siting hearing concerning the need for a waste

transfer station. (TR 9/25/13B at 47). Mr. Thorsen admitted that he used and relied upon, and thus had no criticisms of, the data and analyses provided by Ms. Seibert and Shaw Environmental. (TR 9/25/13B at 49-51, 53). Mr. Thorsen also conceded that there was insufficient waste capacity to meet the twenty (20) year needs of the service area. (TR 9/25/13B at 55-57, 59).

Thorsen's only criticism was that in his opinion at the present time the landfills could meet the daily tonnage requirements in Lake County. (TR 9/25/13B at 80). However, he acknowledged that meeting existing daily tonnage requirements is not the standard in Illinois for assessing need. Both the Illinois Local Solid Waste Disposal Act, 415 ILCS 10/1 et seq. and the Solid Waste Planning and Recycling Act, 415 ILCS 15/1 et seq. specifically require that the planning for waste disposal capacity be for a term of at least twenty (20) years. Mr. Thorsen also admitted that the Countryside Landfill would be at capacity within five (5) to eight (8) years and that the Zion facility only had a six (6) year commitment to Lake County. (TR 9/25/13B at 67-68). He further admitted that Lake County landfills will be at capacity within twelve (12) years, and could reach capacity much sooner than that. (TR 9/25/13B at 55, 81). He agreed that in Illinois it takes an average of nine (9) or more years to site a landfill (which was even shorter than the 10 years it took to site the extension of the landfill for which he performed a needs assessment). (TR 9/25/13B at 59). He also admitted it can take many years to site transfer stations and the Lake Transfer Station will take at least seven (7) years from planning to commencement of operation. (TR 9/25/13B at 66). Moreover, Mr. Thorsen did not dispute that there was a need, he only objected to the "timing" of filing of the application. However, he personally could not offer a date as to when he believed an application should be filed. (TR 9/25/13B at 80-82). He stated that such a determination was not in his "wheelhouse". (TR

9/25/13B at 82). Given that Mr. Thorsen admitted that it was beyond his expertise (i.e., not in his “wheelhouse”) to offer an opinion as to when an application should be filed, his entire testimony that the “timing” of the application is too soon, is wholly incredible. By admitting that he is unqualified to offer an opinion as to the “timing” of filing an application, he has admitted he is unqualified to determine when there is a need for a new facility. Because it can take many years to site and develop transfer stations and landfills in Illinois, and there is the potential for landfills in Lake County to close even sooner than the mathematical calculation of remaining life would estimate, it is clear there is a need in Lake County. Mr. Thorsen’s opinions are unsupported, incredible, and fail to consider the legally required twenty year capacity planning need.

The “need” for a facility as that term is defined in criterion i, is established when the evidence shows that the facility is reasonably required by the waste needs of the service area. *File v. DNL Landfill*, 219 Ill.App.3d 897 (5<sup>th</sup> Dist. 1991). The needs analysis has been interpreted to merely require a showing that the facility is expedient, or reasonably convenient. *Clutts v. Beasely*, 185 Ill.App.3d 543 (5<sup>th</sup> Dist. 1989), *Fox Moraine LLC v. Pollution Control Board*, 960 N.E.2d 1144 (2<sup>nd</sup> Dist. 2011). The testimony of Ms. Seibert on need was credible and substantively unrebutted and clearly a facility is reasonably required. As a matter of fact, by the time the existing landfill capacity is exhausted, the County may need up to five (5) more transfer stations, each of which may take years to plan, site and develop. (TR 9/24/13C at 34). Accordingly, the Applicant has proven that the facility is necessary to accommodate the waste needs of the area it is intended to serve.

**C. Criterion ii – Facility is so Designed, Located and Proposed to be Operated that the Public Health, Safety and Welfare will be Protected.**

As to Criterion ii the Applicant called Mr. Devin Moose of Shaw Environmental, who planned and designed the facility on behalf of Groot. Mr. Moose testified not only concerning criterion ii, but also iv, v, vii, and ix. (TR 9/23/13A). Mr. Moose, is the National Director of Solid Waste Consulting for Shaw Environmental, Inc., a CB&I Company. (TR 9/23/13A at 41). He is a professional engineer in ten (10) states, including Illinois, a diplomat of the American Academy of Environmental Engineers and has over thirty (30) years of experience in solid waste engineering. (TR 9/23/13A at 41). He has been the lead engineer in relation to seventeen (17) Illinois transfer station siting proceedings representing both the public and private sectors. He has been a reviewing engineer for nine (9) Illinois transfer stations and has permitted twenty-two (22) transfer stations within the State of Illinois.

Mr. Moose testified that the proposed facility is consistent with all of the appropriate and relevant location standards governing residential setbacks, wetlands, archaeological and historic sites, endangered and threatened species, wild or scenic rivers, and the proximity of airports. (TR 9/23/13A at 49). Mr. Moose testified that this facility is a relatively moderate sized transfer station, proposing to accept approximately 750 tons per day, and that Groot owns much of the land surrounding the proposed transfer station. (TR 9/23/13A at 45). The nearest residentially zoned property is over 1,500 feet away and the nearest dwelling is over 1,000 feet west of the proposed facility thereby meeting all residential setback requirements and complying with Section 22.14 of the Illinois Environmental Protection Act. (TR 9/23/13A at 50). Mr. Moose testified any wetlands impacted would be mitigated pursuant to Illinois law. (TR 9/23/13A at 50). Furthermore, the Illinois Historic Preservation Agency has determined that there are no significant archaeological or historic sites and the Illinois Department of Natural Resources has

determined that adverse effects on endangered or threatened species is unlikely. (TR 9/23/13A at 50). Likewise, the Illinois Nature Preserves Commission has submitted a letter indicating that the proposed site does not pose a threat to a dedicated nature preserve. (TR 9/23/13A at 50). Finally, the proposed transfer station would be located more than 5,000 feet from the runway protection zone of the nearest airport thereby complying with separation distances recommended by the Federal Aviation Administration. (TR 9/23/13A at 51).

Mr. Moose testified that the facility would utilize cast-in-place concrete as well as pre-cast concrete on a steel skeleton, which would blend into the area and suppress noise from the building. (TR 9/23/13A at 46). He explained that the facility is designed to maintain a long life and utilizes a reinforced concrete tipping floor. (TR 9/23/13A at 47). The facility also uses a drive through design minimizing the number of openings to the outside and reducing the need of vehicles to back up. (TR 9/23/13A at 47). The facility will be oriented such that people traveling on the roadways will be unable to see into the facility. (TR 9/23/13A at 47). The landscaping will be placed strategically along Porter Drive to obstruct views. (TR 9/23/13A at 47-48). Mr. Moose testified that the proposed transfer station is comparable to the Glenview Transfer Station, also operated by Groot Industries, Inc., which received awards from the American Public Works Association as well as the American Consulting Council. (TR 9/23/13A at 48). The building will use an air exchange program, thereby creating negative pressure within the building and with air exchanged four (4) to six (6) times per hour. (TR 9/23/13A at 49). Mr. Moose noted that if one would stand next to a facility door and light a match, one will actually see smoke enter the transfer station, a design which facilitates odor control. (TR 9/23/13A at 49).

In addition, Mr. Moose explained that the facility will implement an Operations Plan which assures that collection vehicles would be fully enclosed and covered and the facility would be routinely patrolled for litter control. (TR 9/23/13A at 65). All waste transfer operations will be conducted within the building and the tipping floor would be cleared of waste on a daily basis. (TR 9/23/13A at 65). Waste materials will be continually transferred through the operating bay on a first-in first-out basis and any incoming waste with an unusually strong odor will be immediately transferred from the station. (TR 9/23/13A at 65-66). Customers found to habitually deliver waste with unusually strong odors will be denied access and the facility will use a non-toxic odor neutralizer in its misting system. (TR 9/23/13A at 66).

Mr. Moose described that any loaded transfer vehicles that are stored over night at the proposed facility will be fully tarped and parked within the transfer station building and removed at the beginning of the next operating day. All of the on-site equipment will be equipped with mufflers and sound suppressing devices and the facility is buffered from the neighbors by State Highway 120 and open space. (TR 9/23/13A at 68). The facility also will be equipped with high performance rubber doors which will automatically open and close as the collection transfer vehicles enter and leave the building between the hours of 4:00 and 8:00 a.m. (TR 9/23/13A at 68). Dust will be controlled by paving all access drives, parking area and storage areas and the facility will utilize a street sweeper. (TR 9/23/13A at 68). All public roads and right-of-ways within 1,000 feet of the facility will also be swept. (TR 9/23/13A at 68). Finally, a misting system will be used within the facility to help mitigate dust. (TR 9/23/13A at 68). Ultimately, it was Mr. Moose's opinion that the facility was designed, located and proposed to be operated so that the public health, safety and welfare will be protected.

Mr. Moose's testimony concerning the public health safety and welfare was largely unrebuted. The only witness who provided any testimony at all which purported to be related to Criterion ii was Charles M. McGinley. (TR 9/30/13B and TR 9/30/13C). The Applicant moved to strike Mr. McGinley's report and testimony because he was offering an opinion to the Village of Round Lake Park Board though he is not a licensed engineer in Illinois and rather he is only licensed in chemical engineering in Minnesota. (TR 9/30/13C at 36). The Illinois Professional Engineering Practice Act of 1989 provides that it is unlawful for any person to engage in professional engineering practice, which includes the evaluating of an engineering system or facility, unless such person holds an active license as a professional engineer in the State of Illinois. 225 ILCS 325/40. *Van Bremen v. Department of Professional Regulation*, 296 Ill.App.3d 363, 365-66 (2nd Dist. 1998) held that if a witness testifies as an engineer in an Illinois court of law without an Illinois engineering license he is doing so in violation of the Professional Engineering Practice Act of 1989 and the Rules of the Illinois Department of Professional Regulation. It was explained to the Hearing Officer that *Thompson v. Gordon*, held that a witness who was testifying in a court of law, as a disclosed Supreme Court Rule 213 expert, may be allowed to testify even if he is not licensed in Illinois, but the lack of that license may affect the weight of his testimony. (9/30/13C at 37). However, in this matter Mr. McGinley was not a testifying witness in a court of law, and, rather he, was asked to provide engineering advice to an Illinois Village Board, which he could not do without violating 225 ILCS 325/1 et seq. This was not a court proceeding.

The Applicant not only moved to strike McGinley's testimony because he failed to have an Illinois license, but also because he was not a professional engineer, and his analysis did not use his Minnesota chemical engineering degree in any respect whatsoever. While the Hearing

Officer ultimately allowed Mr. McGinley to testify based on the *Thompson* case, he did find that Mr. McGinley's "opinion as it relates to the broad issue of the design location and proposal of the facility is improper; however, his opinions as to odor and odor alone and how that may or may not affect Criterion ii, I do find to be proper and admissible." (9/30/13C at 41). The Hearing Officer noted that the "broad statement that Section ii is not applicable is not really within [McGinley's] area of expertise". (TR 9/30/13C at 41). Finally, the Hearing Officer noted "I do, however, find the lack of registration relevant to the weight of Mr. McGinley's testimony". (TR 9/30/13C at 41).

Putting aside Mr. McGinley's utter lack of qualifications to testify, he admitted that he did not perform any specific study, model or analysis concerning this proposed facility. (TR 9/30/13C at 20-21,33 and TR 9/30/13C at 61-62). Mr. McGinley did not even visit the proposed facility site nor any of the surrounding sites including Timber Creek Homes. (TR 9/30/13B at 49, 52). Mr. McGinley admitted that he had done no analysis or model which would in any way suggest that this facility would violate any of the Illinois Pollution Control Board regulations on air quality. Though he drafted a report which suggested that the facility should use fast moving fabric doors to improve transfer times, he admitted at the hearing that indeed Groot was already proposing to use fast moving rubber doors and he had no criticisms of those doors. (TR 9/30/13B at 59). It is apparent when one reads his report that Mr. McGinley simply did not realize that Groot was already proposing to use fast moving doors as it was the primary emphasis of his report. Once he realized the Applicant was already using the doors, he then changed his testimony to reflect that he believed those door should be shut at all times, but admitted that he did not conduct any study to corroborate such an opinion. When one reads his report it appears that he might be suggesting that other measures should be employed at the facility, including air

scrubbers or bio-filters in the exhaust system. However, Mr. McGinley stated he was actually not recommending any specific equipment and had done no study or scientific analysis as to whether such equipment was needed. (TR 9/30/13B at 55-56). Mr. McGinley did not make any effort to determine the prevailing winds at the facility, nor did he determine whether any home, residence or person would be subjected to any odors from this proposed transfer station. (TR 9/30/13B at 53).

Mr. McGinley agreed that the operating procedures employed by Groot were designed to mitigate odor, including the use of negative air exchange to keep air flowing into the facility, removing waste daily from the tipping floor, sweeping the floor daily, not storing a trailer longer than 24 hours, using fast acting doors, conducting all tipping indoors, using first-in first-out procedures, transferring odorous loads immediately, and using non-toxic odor neutralizers. (TR 9/30/13B at 59-60, 68-69, 73). Mr. McGinley even relied on a report that referred to those non-toxic odor neutralizers as being effective to completely remove extreme odors. (TR 9/30/13B at 68). Nonetheless, he continued to opine that the odor control measures were insufficient here, primarily based on his belief the doors should be closed at all times.

Mr. McGinley, admitted that his opinions were based in large part on his experiences at the Minneapolis Municipal Waste Incinerator commonly referred to as the HERC Facility (Hennepin Energy and Recovery Center). (TR 9/30/13B at 81). However, that municipal incinerator accepts substantially more waste per day and per year than the proposed transfer station and furthermore thousands of tons of waste remain on the tipping floor at the HERC at all times in order to feed the energy producing incinerator. (TR 9/30/13B at 85). The Groot facility will generally have no more than 40 tons of waste on the tipping floor at any one time and that waste will always be removed by the end of the day. Waste can remain at the HERC facility for

up to seven (7) days before it is incinerated. Furthermore, the HERC Facility is in the highly populated downtown Minneapolis area and right next door to the Minnesota Twins Baseball Stadium, where up to forty-thousand people visit on a daily basis and up to 3 million people visit annually. (TR 9/30/13B at 83-84). The HERC mega-incinerator is a completely different facility than the proposed Lake Transfer Station. It burns substantial waste; the tipping floor at the HERC has 50 times more waste (which can be up to seven (7) days old) present at all times thereby creating many more potential air quality issues than will ever be present at the proposed transfer station, and it is in a densely populated area. Since Mr. McGinley's opinions concerning closure of the doors at all times are based upon the HERC's procedures, his opinions are clearly unsupported. Mr. McGinley simply did no study to determine whether the proposed design, layout and operating procedures of the Lake Transfer Station would create any odor beyond the facility borders and he admitted to having conducted no such study. Therefore, his opinions, if any, are complete conjecture and the opinions of Mr. Moose remain substantively unrebutted that the facility is so designed, located and proposed to be operated such that the public health, safety and welfare will be protected.

**D. Criterion 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.**

Criterion iii involves two separate issues. The first issue is whether the facility is located so as to minimize incompatibility with the character of the surrounding area and the second issue is whether the proposed facility is located to minimize the effects on the value of the surrounding property. The statute itself concedes and accepts that there may be some incompatibility and some impact on property values and, rather, the question is only whether the proposal will be located to minimize any potential incompatibility and effect on value. See *Fairview Area Citizens Task Force v. Illinois Pollution Control Board*, 198 Ill.App.3d 541 (3<sup>rd</sup> Dist. 1990). The

Applicant called J. Christopher Lannert, R.L.A., to testify concerning minimization of incompatibility with the character of the surrounding area and called Peter J. Poletti, Ph.D., MAI, to testify concerning minimization of any impact on property values. (TR 9/24/13A and TR 9/24/13B, respectively). Dale Kleszynski, MAI, SRA was hired by the Village of Round Lake Park staff and testified concerning his review of the Poletti Real Estate Impact Study and Timber Creek Homes called Michael MaRous, MAI, CRE. (TR 10/2/13A and TR 10/1/13A, respectively).

J. Christopher Lannert, R.L.A. is a registered landscape architect and land use planner who has provided testimony on approximately 60 solid waste related proposals. (TR 9/24/13A at 8, 12). He ultimately provided an opinion that the facility is so located as to minimize incompatibility with the character of the surrounding area and satisfies the first part of Criterion iii of Section 39.2(a). (TR 9/24/13A at 47-48). In arriving at his conclusions he reviewed regional documents and maps, aerial photographs, performed field inspections and took his own photographs, compared virtual 3D models to illustrate the proposed facility and prepared a report which was included in the application. Mr. Lannert noted that the subject site's boundaries were protected from others by property owned by Groot Industries, and that it was located in an I-1 industrial district within the Village of Round Lake Park. (TR 9/24/13A at 16, 48). The immediate area surrounding the site is defined by industrial uses which would not be altered as a result of the proposed transfer station facility. He testified that the predominant land use in the vicinity of the proposed transfer station would continue to be open space and that within a 1,000 foot radius of the proposed facility 100% of the area would be used for open space and industrial land uses. Within a half mile radius of the proposed facility, 73% of the area would be used for open space and industrial land uses, and 50% of the area would be for such uses within a mile of

the proposed transfer station. (TR 9/24/13A at 48). Mr. Lannert presented numerous photographs of the surrounding off-site uses which clearly depict industrial and undeveloped open space uses. (TR 9/24/13A at 18, 30-32).

Mr. Lannert introduced the end use and landscape plan and computer models depicting views of the facility from the intersection of Rte. 120 and Porter Drive as well as from Porter Drive looking toward the facility. (TR 9/24/13A at 41-42). He testified the Rte. 120 corridor was an appropriate land use buffer along the south property line, and that the proposed transfer station would be fully buffered and a view of it completely blocked by structures to the north, a woodland/forested area to the east, and by berms, plantings, and vegetation along roadways and frontages on the west and south. (TR 9/24/13A at 42, 48-49). Mr. Lannert testified and provided exhibits contained in the application which show that the gateway to the industrial park created by the proposed transfer station facility would improve the aesthetics, appearance and character of the industrial area. (TR 9/24/13A at 41).

There was little to no testimony contrary to Mr. Lannert's analysis and opinions concerning the compatibility with the character of surrounding area. To the contrary, that testimony was echoed and agreed to by Mr. Poletti and Mr. Kleszynski. (TR 9/24/13B and TR 10/2/13A, respectively). The only other witness who testified on the topic was Michael MaRous, called by the objector, Timber Creek Homes. (TR 10/1/13A). MaRous is not an engineer, architect, nor urban planner. Mr. MaRous did not dispute any of the factual representations in Mr. Lannert's report and testimony. He did not contradict any of Mr. Lannert's conclusions. Rather, Mr. MaRous merely ironically opined, without scientific or empirical support, that Mr. Lannert's work was insufficient to support the conclusion offered.

Despite Mr. MaRous' unsupported criticism of Mr. Lannert's report, Mr. MaRous actually agreed with Mr. Lannert on the design features which are proposed to minimize incompatibility with the character of the surrounding area. (TR 10/1/13A at 88-89). Specifically, he agreed that the proposal of using automatic doors minimizes incompatibility. (TR 10/1/13A at 87). He also agreed with Lannert's proposals concerning landscaping to minimize incompatibility to the surrounding area. (TR 10/1/13A at 88). He agreed with the design orienting the entrance to the facility in a way to be away from other developments. (TR 10/1/13A at 88). He agreed that the buffer of the Groot North facility minimized the incompatibility of the surrounding area. (TR 10/1/13A at 89). He agreed that Groot Industries owns other property adjacent to the proposed facility which can also be used to buffer the facility from surrounding land uses. (TR 10/1/13A at 89). He agreed that the area east of the proposed site was a wooded area which would also buffer the facility and minimize incompatibility. (TR 10/1/13A at 90). He agreed that the facility is not incompatible with the rail line which is nearby. (TR 10/1/13A at 91). He also agreed that immediately adjacent to the facility was State Highway Rte. 120, and that the facility was not incompatible with an adjacent state highway. (TR 10/1/13A at 91). MaRous also agreed that the state highway and the railroad generate noise. (TR 10/1/13A at 91). He agreed that the proposed operating procedures, including using a drive through facility where untarping, unloading, loading and tarping are all done indoors, would minimize the incompatibility of the character of the surrounding area. (TR 10/1/13A at 92).

Accordingly, the evidence was clear that the facility is proposed to be located so as to minimize incompatibility with the character of the surrounding area. The operative word in the statute is "minimize", and does not require that an Applicant show that there is absolutely no impact on the character of the surrounding area. *Fairview Area Citizens Task Force v. Illinois*

*Pollution Control Board*, 198 Ill.App.3d 541 (3<sup>rd</sup> Dist. 1990). Furthermore, an expert's opinion is only as valid as the bases and reasons for that opinion. *McClure v. Owens Corning Fiberglass Corp*, 181 Ill.2d 102 (1999). In this case, the overwhelming evidence was that the proposed design was compatible with the surrounding uses which are almost entirely industrial and open space uses. Furthermore, the proposed design and operating procedures have many components which are intended to minimize any incompatibility with the surrounding area. There simply is no basis for an opinion to the contrary and this part of Criterion iii has been met.

Dr. Peter J. Poletti, Ph.D., MAI testified concerning the second portion of Criterion iii and ultimately opined that the facility is proposed to be located so as to minimize the effect of the surrounding property values. (TR 9/24/13B at 59-60). Dr. Peter Poletti is a Ph.D. and certified real estate appraiser in eight (8) states and a member and instructor of the Appraisal Institute. (TR 9/24/13B at 35-37). He is a certified Illinois assessing officer, and has over 34 years of experience in real estate appraisal. (TR 9/24/13B at 35-37). He has provided expert witness testimony for over 30 solid waste related projects, and is the President of his own real estate appraisal company. (TR 9/24/13B at 34-37). In arriving at his opinions, Dr. Poletti inspected the proposed site and the surrounding area, reviewed the published literature on the subject, reviewed the publicly available property transaction data around the existing transfer station, reviewed the surrounding land use and zoning designations, reviewed the Host Community Agreement and reviewed the siting application itself. (TR 9/24/13B at 38-42). Dr. Poletti also had discussions with consultants working on the project and reviewed the proposed transfer station design. (TR 9/24/13B at 42-44). He analyzed local property transactions near existing transfer stations, and evaluated the effect of other existing transfer stations on surrounding property values. (TR 9/24/13B at 45-46).

Dr. Poletti testified that the design and operating features of the proposed transfer station minimized the effect on the values of the surrounding properties. (TR 9/24/13B at 59). He explained that the transfer station will be constructed of concrete and steel, and all activities will take place inside the building. (TR 9/24/13B at 41). He noted that the exterior and grounds have been designed to include berms, landscaping, a bio-swale and stormwater basins, which all serve to minimize the effects of the values of the surrounding property. (TR 9/24/13B at 41). Automatic rubber doors would be used in the morning hours as a precautionary measure to minimize any noise from the facility. (TR 9/24/13B at 42). He noted that significant roadway intersection improvement efforts and operating plans would be in place to reduce noise, odor and dust including offsite street sweeping and litter control. (TR 9/24/13B at 42-43). He considered the fact that the facility was buffered from surrounding residential areas by distance, intervening industrial and open space land uses, as well as vegetation. (TR 9/24/13B at 43-44). Further, he noted that there will be no residential property or dwellings located within 1,000 feet of the proposed transfer station facility. (TR 9/24/13B at 44).

Mr. Poletti conducted an extensive evaluation of similar operating transfer stations in the region, including the Glenview Transfer Station, the Elburn Transfer Station and the Bluff Cities Transfer Station. (TR 9/24/13B at 45-48). His evaluation compared the sales prices of similar target properties which are proximate to a transfer station to more distant control area properties. (TR 9/24/13B at 45-48). He determined that there was no statistically significant difference between the two averages at any of the three facilities studied. (TR 9/24/13B at 53-54, 60). Accordingly, Mr. Poletti opined that the proposal was designed to minimize impacts on surrounding property values. (TR 9/24/13B at 59).

The Village of Round Lake Park staff retained Mr. Dale Kleszynski, MAI, SRA to review the Poletti report utilizing Standard Rule 3-3 of the Uniform Standards and Professional Appraisal Practice (USPAP). (The Village of Round Lake Park Exhibit 2). (TR 10/2/13A). Mr. Kleszynski is a member of the Appraisal Institute, which is a designation acquired by real estate appraisers who have demonstrated a particular level of expertise. (TR 10/2/13A at 9). He is also a senior residential appraiser, which is a designation awarded to individuals who have demonstrated expertise in the area of residential real estate evaluation. (TR 10/2/13A at 10). He is licensed in Illinois, Indiana and Michigan. (TR 10/2/13A at 10). He has taught at the Appraisal Institute many times over the years, and is currently qualified by the Appraisal Foundation to be an instructor on complying with the Uniform Standards of Professional Appraisal Practice. (TR 10/2/13A at 10-11).

After performing his review appraisal Mr. Kleszynski ultimately rendered the opinion that the analysis of Mr. Poletti, including the data collected, the scope of work and the techniques applied were appropriate to reach a credible conclusion that the Lake Transfer Station was located to minimize the effect of the values. (TR 10/2/13A at 20-22). Mr. Kleszynski also personally inspected the site of the proposed transfer station and the surrounding area as well as the locations of the case studies used by Mr. Poletti. (TR 10/2/13A at 17). He reviewed the data used in the case studies and ultimately came to his own conclusion that the Lake Transfer Station was located to minimize the effect on the value of the surrounding property. (TR 10/2/13A at 31-32). He also ultimately agreed with the Poletti Report's conclusion that the construction and operation of the Groot Industries Lake Transfer Station would not have an adverse impact on the value of the surrounding properties. (RLP Exhibit 2, pg. 1). (TR 10/2/13A at 32).

The only testimony offered by any objector was on behalf of Timber Creek Homes by Mr. MaRous. (TR 10/1/13A). Mr. MaRous admitted that he personally did not conduct his own study as to whether Criterion iii had been met, and did not perform his own appraisal to determine whether the proposed transfer station would have an impact on property values. (TR 10/1/13B at 23). Ultimately, Mr. MaRous only testified that in his opinion the Poletti Report was unreliable, primarily because he believed it failed to discuss the hours of operation and the alleged increased traffic expected on local streets and the arterial roadways. (TR 10/1/13A at 76-77). In order to come to these criticisms, Mr. MaRous assumed that the facility would be operating 24 hours per day, seven (7) days per week with the doors open 20 hours per day. (TR 10/1/13A at 81-82). However, the Applicant did not state that it will normally operate 24 hours per day with doors open 20 hours per day, rather that is the maximum that the facility will ever be operated on infrequent occasions. (TR 9/23/13B at 10-11). Furthermore, Mr. MaRous' opinion seems to be heavily weighted on an opinion that this facility will generate significant truck traffic, but did not provide any testimony or evidence to support that opinion, and admits that he did not do any traffic analysis himself. (TR 10/1/13A 103-05). Mr. MaRous' opinion was reliant upon his belief that there would be a significant negative impact on area intersections, but Timber Creek's traffic witness, Brent Coulter, admitted that he did not study the intersection impacts and that he "might have missed" the fact that the impacts were in fact minuscule as reported by the applicant's expert. (TR 9/26/18A at 43-44). Therefore, Mr. MaRous failed to adequately consider the traffic experts of both the applicant and his own client. Ultimately, Mr. MaRous admitted that he does not have any opinion as to whether Criterion iii has been met, or not, and therefore his opinion does not impeach the credible and thorough analyses of Mr.

Lannert, Mr. Poletti and Mr. Kleszynski. Accordingly, the overwhelming evidence in this case establishes that Criterion iii has been met.

**E. Criterion iv – The Facility is Located Outside the Boundary of the 100-Year Flood Plain.**

Mr. Devin Moose testified that the proposed expansion is located outside the 100-year flood plain and used the Federal Emergency Management Agency Flood Plain boundary maps to come to that conclusion. (TR 9/23/13A at 51-52). No one testified contrary to Mr. Moose's testimony and there simply is no issue related to this criterion. The evidence is undisputed that Criterion iv has been met.

**F. Criterion v – The Plan of Operations of the Facility is Designed to Minimize the Danger to the Surrounding Area from Fire, Spills and Other Operational Accidents.**

This criterion was discussed during Mr. Moose's initial presentation and is contained in Section 5 of the application. In his testimony Devin Moose discussed the various aspects of the facility's plan of operations and that Section 5 of the application references the Health and Safety Plan which is summarized in Appendix P.1. of the application. (TR 9/23/13A at 69-71). Ultimately, Mr. Moose concluded that, in his expert opinion, the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills and other operational accidents. His testimony was not rebutted and no evidence was submitted to the contrary and accordingly this criterion has been met.

**G. Criterion vi – The Traffic Patterns to and from the Facility are So Designed as to Minimize the Impact on Existing Traffic Flows.**

Michael Werthmann, P.E., P.T.O.E., a registered Professional Engineer and certified Professional Traffics Operation Engineer with 23 years of experience in traffic engineering for both the public and private sectors, testified on this criterion. (TR 9/25/13A at 17). He performed a three phase traffic study, where he first examined the existing physical and

operational characteristics of the nearby road system. He then determined the type and volume of traffic to be generated by the facility and the travel routes for that traffic into and exiting the facility and he, lastly, evaluated the impact of the proposed facilities traffic on the nearby existing roadway system and made recommendations to minimize the same. (TR 9/25/13A at 18-19).

Mr. Werthmann conducted peak period and daily traffic counts to establish baseline traffic volumes. (TR 9/25/13A at 27-28). He evaluated the nearby existing roadway network including IL Rte. 120, IL Rte. 134, Hainesville Road, Cedar Lake Road, and Porter Drive. The proposed transfer station facility was designed with only one access drive located on Porter Drive, to minimize impacts on existing traffic flows. (TR 9/25/13A at 29). Mr. Werthmann testified that at his recommendation several roadway improvements are proposed, including the widening of IL Rte. 120 to provide a separate left turn lane and separate right turn lane serving Porter Drive. (TR 9/25/13A at 23). Furthermore, Porter Drive is also proposed to be widened to provide separate left turn and right turn lanes serving IL Rte. 120. (TR 9/25/13A at 23). Porter Drive will also be enhanced with a complete resurfacing and the intersection radius will be increased to efficiently accommodate turning transfer trailers. (TR 9/24/13A at 23-24).

Mr. Werthmann explained that peak traffic periods of the transfer station will occur during the late morning or early afternoon outside of the critical commuter peak hours. (TR 9/24/13A at 29-30). Furthermore, there will be operating restrictions on truck traffic to minimize the impact on traffic flows including directing all transfer station truck traffic to use the IL Rte. 120/Porter Drive intersection when accessing the arterial roadway system and prohibiting transfer station truck traffic from making a left turn from Porter Drive on to IL Rte. 120 between the hours of 7 a.m. and 9 a.m. and 3 p.m. to 5 p.m. (TR 9/24/13A at 32-33). In addition, this

facility is proposed to be proximate to the Groot North facility, which further minimizes its impact on the area roadways. (TR 9/24/13A at 30-31). The existing Groot North facility is a storage and maintenance yard for approximately 65 to 70 vehicles. (TR 9/24/13A at 30-31). Those vehicles are already on the area roadways, and therefore the transfer station will not result in a substantial increase of vehicular traffic that is not already present. (TR 9/24/13A at 30-31). Furthermore, after delivering waste to the proposed transfer station any Groot collection vehicles will only traverse Porter Drive as they return to the Groot North facility. (TR 9/24/13A at 30-31). The recommended design features, roadway improvements, and truck restrictions result in a negligible impact on existing roadway system and approximately 1.75% or less of an increase in traffic at any of the studied area intersections. (TR 9/24/13A at 44). Therefore, Mr. Werthmann ultimately opined that the traffic patterns to and from the facility were so designed as to minimize the impact on existing traffic flows to satisfy criterion vi.

The only testimony offered by any objector concerning criterion vi was that of Brent Coulter, P.E., P.T.O.E., on behalf of Timber Creek Homes, Inc. Mr. Coulter actually admitted that he agreed with much of Mr. Werthmann's report, including his conclusion of no need for a left or right turn lane at the access at Porter Drive and that he further agreed with the recommended off-site improvements at Rte. 120 and Porter Drive, including an east bound left turn lane and a west bound turn lane. (TR 9/26/13A at 13). He also agreed with the operating procedures to be employed, including prohibiting left turns for the morning peak period and afternoon peak period. (TR 9/26/13A at 14). Ultimately, Coulter's testimony revolves primarily around his criticism that there was no discussion in the application of all of the arterial routes that might be used by transfer trailers traveling to the Winnebago County Landfill. (TR 9/26/13A at 15, 36).

First, it was explained on numerous occasions that while the initial plan is for the transfer trailers to travel to the Winnebago County Landfill, that would not necessarily be the case for the entire life of this facility. (TR 9/26/13A at 35). Furthermore, the law is clear that there is no duty to study all potential impacts to remote arterial roads. It was pointed out at the hearing that Mr. Coulter's testimony should be stricken pursuant to the case of *Fox Moraine v. United City of Yorkville*, 960 N.E.2d 1144, 356 Ill.Dec. (2<sup>nd</sup> Dist. 2011), because Mr. Coulter was improperly opining that there should be no impact allowed from the facility or that such impacts had to be entirely mitigated which is not the standard in Illinois and he was also improperly opining that all of the arterial roadways, in the over 60 miles to the Winnebago Landfill, had to be studied. (TR 9/26/13A at 15-21). Ultimately, the Hearing Officer allowed Mr. Coulter to testify, but asked for additional briefs on this topic which were filed on October 9, 2013 and the Applicant hereby incorporates as though stated verbatim herein its "Renewed Motion to Strike the Testimony and Report of Brent Coulter submitted by Timber Creek Homes, Inc. pursuant to *Fox Moraine v. United City of Yorkville*, 960 N.E.2d 1144, 356 Ill.Dec. 21 (2<sup>nd</sup> Dist. 2011)." The *Fox Moraine* Court explicitly rejected Mr. Coulter's testimony in that case as well. *Id.* at 1181-1182, 356 Ill.Dec. 58-59. In response to Mr. Coulter's testimony in that case that the impact of a proposed landfill would adversely affect sensitive areas such as downtown Yorkville and downtown Plainfield, the court held that "the Act does not require elimination of all traffic problems." *Id.* at 1181, 356 Ill.Dec. 58. "Nor is the Applicant required to provide evidence of exact routes, types of traffic, noise, dust, or projections of volume and hours of traffic, because the Act does not require a traffic plan but rather a showing the traffic patterns to and from the facility are designed to minimize impact on existing flows." *Id.* (Emphasis added). The Second District noted that the Applicant "did not have to establish that every arterial road would not be affected, just that it

designed the entrance to and from the facility to minimize the impact on roadways.” *Id.* at 1182, 356 Ill.Dec. at 59.

In his report Mr. Coulter explicitly opined that he believed the routing of waste transfer trucks between the proposed transfer station and the Winnebago Landfill should be addressed more fully, and that the transfer station application had “not demonstrated that no adverse traffic impact will be created, or it could be mitigated, in accordance with Criterion vi of Section 39.2 of the Illinois Environmental Protection Act.” (TCH Exhibit 5, pgs. 4-5). Mr. Coulter explained that he believes that Criterion vi implies that there must be a showing of no adverse impact. (TR 9/26/13 at 33-34). However, Mr. Coulter has ignored the very case that criticized his opinion, and which held that an Applicant did not have to establish that every arterial roadway would be unaffected and held that “the Act does not require elimination of all traffic problems.” *Id.* at 1181-1182. The Applicant need only show that it designed the entrance to and from the facility to minimize the impact on roadways.

In this case it is indisputable that Mr. Werthmann and the Applicant designed the facility such that there would only be one access drive off of Porter Drive and that it will be near the Groot Industries North facility thereby minimizing the amount of traffic on the roadway. Furthermore, the proposed operating restrictions and roadway improvements will result in a minimal impact on the nearby intersections and roadway traffic. Accordingly, the evidence is clear that Criterion vi has been met.

**H. Criterion vii – The Facility Will Not Be Treating, Storing or Disposing of Hazardous Waste so this Criterion is Not Applicable.**

Mr. Moose testified that the facility will not treat, store or dispose of hazardous waste. (TR 9/23/13A at 62). Mr. Brian Smith asked about what happens if such waste is brought to the facility, Mr. Moose explained that any such waste is handled under Criterion v and the Health

and Safety Plan contained in Appendix P1. (TR 9/30/13B at 47). Because the facility will not seek permitting concerning hazardous wastes, Criterion vii has been met.

**I. Criterion 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 Recycling Act, the Facility is Consistent with that Plan.**

Mr. Moose testified that the facility is consistent with the Lake County Solid Waste Management Plan. That Plan explicitly provided that Lake County “needs to start seriously considering long term options for managing its waste requiring disposal.” (TR 9/25/13A at 124, siting *SWALCO* 2010 Plan, pg. 41). The *SWALCO* 2010 Plan explicitly identified a desire to “manage as much of the Lake County waste requiring disposal as feasible within the borders of Lake County.” (TR 9/25/13A at 124). The *SWALCO* 2010 Plan identified three options for consideration including landfilling, transfer stations and alternative technologies. (TR 9/25/13A at 124). Mr. Moose testified that the Plan identified one of its primary purposes was to make sure that new facilities and programs were in place prior to existing facilities closing. (TR 9/25/13A at 124). The Plan also provided that solid waste transfer stations which were developed in accordance with the applicable requirements of certain recommendations T-2 through T-6 would be considered consistent with the Plan. Mr. Moose showed how this proposal was consistent with each of the Plan Recommendations concerning transfer stations. (TR 9/25/13A at 126-31). No witnesses rebutted the testimony of Mr. Moose on this topic. Accordingly, it is clear that the evidence supports a finding of consistency with the County Plan and that Criterion viii has been met.

**J. Criterion ix – The Facility is Not Located in a Regulated Recharge Area, so this Criterion is Not Applicable.**

Mr. Moose testified that this facility is not located in a regulated recharge area and at the present time there is only one such area and it is in Peoria County. (TR 9/23/13A at 52-53). No one refuted or rebutted this testimony and accordingly Criterion ix has been met.

**K. Special Conditions.**

It is well established that a siting authority is not free to disregard the unrebutted testimony on the substantive siting criteria. *Industrial Fuels, supra*. Accordingly, based on the absence of competent rebuttal testimony from any objector, the Village Board must approve the application. The Act, however, allows “[i]n granting approval for a site, the County Board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this section and as are not inconsistent with the regulations promulgated by the Board.” 415 ILCS 5/39.2(e) (2006) (emphasis added).

The finding of whether a special condition is both reasonable and necessary must, like the approval, be based on the evidence. *Peoria Disposal Company v. Peoria County Board*, PCB, 06-184, slip opinion at 6 (December 7, 2006). There is no evidence in this record to support any special condition. It is possible that one of the participants might argue that there should be a special condition imposed on the hours of operation in the Groot facility, or requiring the facility doors to be closed at all times except when vehicles are entering or leaving the facility, or that bio-filters, scrubbers or other such special equipment be attached to the transfer station airflow system. However, there was no credible testimony offered by any witness to support any such conditions. First, there was no study at all which would support a finding that limiting the hours of operation are in any way necessary. Second, there was no evidence that the proposed hours of operation would cause any unreasonable noise or nuisance to any neighboring property.

Furthermore, there is no evidence of any study being done requiring the doors to be closed at all times or that bio-filters, scrubbers or other such material would result in any improvement of odor control. Indeed, no expert analysis, model or study was performed which would in any way support any conditions.

Special conditions not supported by the evidence will not be upheld on appeal. The Pollution Control Board has the authority to modify the conditions imposed by a local siting authority to the extent they are not supported by the record or are inconsistent with the purposes of the Act. See *Browning Ferris Industries of Illinois v. Lake County Board Supervisors and IEPA*, PCB 82-101, slip opinion at 14-15 (December 2, 1982). In addition, the Village Board is limited to imposing conditions only which would accomplish the purposes of Section 39.2 of the Act. There must be affirmative evidence in support of a particular condition and one cannot simply arbitrarily impose conditions. See *City of Rochelle v. PCB*, 07-113, Order (November 19, 2009). The imposition of any conditions on the above-mentioned issues would be completely arbitrary as there was no evidence to support the imposition of such. The Applicant here has proposed a facility which is designed, located and proposed to be operated such that the public health, safety and welfare will be protected and the impact on surrounding properties will be minimized. There is no basis, nor reason, to impose any conditions and at the hearing no specific conditions were ever actually proposed by any of the participants.

WHEREFORE, for the foregoing reasons the application of Groot Industries, Inc. to site the proposed transfer station should be approved and the following Proposed Findings of Fact and Conclusions of Law should be entered.

## **V. PROPOSED FINDINGS OF FACT**

**A. The Applicant for local siting approval submitted sufficient details describing the proposed facility to demonstrate compliance with each of the nine criteria of 415 ILCS 5/39.2 and submitted sufficient evidence of previous operating experience and past record in the field of solid waste management.**

1. The Applicant filed a 1215 page application on June 21, 2013 with drawings and appendices which extensively describe the proposed location of the transfer station, its design and operating procedures and provide discussion, analysis and evidentiary support addressing each of the nine criteria of 415 ILCS 5/39.2.
2. In addition to the application filed herein the Applicant presented testimony in support of its application at the public hearings which were held from September 23, 2013 through October 2, 2013 and were duly recorded and transcribed and made available to the Village of Round Lake Park Trustees and the public.
3. The property location of the proposed transfer station facility is 201 Porter Drive, in the northeast corner of Illinois Route 120 (Belvidere Road) and Porter Drive within the corporate limits of the Village of Round Lake Park. (TR 9/23/13A at 45).
4. The proposed facility size is 3.9 acres. (TR 9/23/13A at 45).
5. The anticipated throughput of the facility is approximately 750 tons per day of municipal solid waste, landscape waste, and/or recyclables. (TR 9/23/13A at 45).

**B. Pursuant to 415 ILCS 5/39.2(a)(i) the proposed transfer station facility is necessary to accommodate the waste needs of the area it is intended to serve.**

1. The intended service area is Lake County. (TR 9/24/13C at 15).
2. The current waste management system in Lake County is a landfill-based system, with landfills located within 22 miles of the center of the county. Landfills are local and are primarily accessed by direct haul from Lake County. (TR 9/24/13C at 15-16).
3. Consistent with the requirements of the Solid Waste Planning and Recycling Act, Lake County has historically sought and acquired 20 years of guaranteed disposal capacity for waste generated within its borders and has sent waste to landfills including Advanced Disposal's Zion Landfill, Waste Management's Countryside Landfill in Grayslake, and Waste Management's Pheasant Run Landfill just outside Kenosha, Wisconsin. (TR 9/24/13C at 19).
4. Advanced Disposal's Zion Landfill has committed to provide a maximum six years of guaranteed disposal capacity to Lake County, through 2017. (TR 9/24/13C at 20).
5. The disposal commitments of Waste Management's Countryside Landfill have been exhausted. (TR 9/24/13C at 20).

6. Waste Management's Pheasant Run Landfill will not provide significant disposal capacity for Lake County because Wisconsin has dramatically increased its tipping fees making the facility economically infeasible for waste disposal. (TR 9/24/13C at 36-37).
7. Capacity at in-county, regional landfills is limited, with only twelve (12) years of life or less remaining when the transfer station begins operations. (TR 9/24/13C at 20).
8. The Lake County Solid Waste Management Plan identifies the need to develop facilities to replace in-County landfills. The Plan expressly recognizes transfer stations as an option for its long-term waste management system and explicitly urges the development of new facilities prior to closure of existing facilities. (TR 9/24/13C at 23).
9. While landfills historically utilized by Lake County were located an average of 14 miles from the centroid of the service area, the majority (68%) of landfill capacity is located more than 50 miles from the centroid, more than three times the average distance to the disposal facilities historically serving Lake County. (TR 9/24/13C at 24-25).
10. Lake County is expected to experience substantial growth in terms of both population and total number of households, both anticipated to grow by 36% by 2040, as well as employment, which will result in increased quantities of waste for Lake County to manage. (TR 9/24/13C at 26-27).
11. New landfills are generally being developed at greater distances from population centers such as Lake County, thereby necessitating the utilization of transfer stations. (TR 9/24/13C at 42).
12. There is a trend in Northern Illinois away from direct landfilling and toward increasing the utilization of transfer stations. (TR 9/24/13C at 17-18).
13. Based upon 2011 data, the projected daily waste disposal for 2015 is 2,899 tons per day and by year 2035 3,550 tons per day. Based upon historical data, the projected daily waste disposal rate for 2015 is 3,422 tons per day and by year 2035 4,191 tons per day. (TR 9/24/13C at 29).
14. Only a portion of Lake County's waste needs can be served by existing out-of-County transfer stations.
15. There are no transfer stations currently operating in Lake County which results in a transfer capacity deficit in excess of the proposed capacity of the proposed Groot Industries transfer station. (TR 9/24/13C at 34).
16. Economic benefits will result from the operation of the proposed transfer station from increased efficiency of the collection and disposal system and enhanced competition for transfer and disposal services. (TR 9/24/13C at 37-41).
17. The facility will be located near waste generators, which will minimize travel time from the point of collection to the transfer station. This convenient location will result in long-

term cost savings to residents and businesses because collection will be more efficient. (TR 9/24/13C at 42-43).

18. Transfer hauling waste reduces system costs compared to direct haul because transfer vehicles are more fuel efficient and can accommodate larger payloads than collection vehicles, transfer vehicles are less expensive than collection vehicles, and fleet maintenance costs are reduced for transfer vehicles. (TR 9/24/13C at 39-40).
19. Waste management services in Lake County are almost exclusively provided by the public sector. An additional facility will promote lower, competitive prices and higher quality service. (TR 9/24/13C at 41).
20. Mr. Thorsen did not perform a need analysis himself and did not ultimately deny that there was a need. His opinions were based upon unjustified assumptions and was not credible

**C. Pursuant to 415 ILCS 5/39.2(a)(ii) the proposed transfer station facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected.**

1. The proposed design of the transfer station facility is comparable to the Glenview Transfer Station, which has received awards from the American Public Works Association as well as the American Consulting Council. (TR 9/23/13A at 48).
2. The transfer building itself will be a 27,800 square foot concrete and steel structure with an eave height of approximately 40 feet. It will have 16-foot high, 18-inch thick reinforced concrete push walls. Loading bays and a tarping station will be located along the northern wall. (TR 9/23/13A at 46-47).
3. The building design is intended to blend in with the area and suppress any noise which may come from inside the building. (TR 9/23/13A at 46).
4. The building will have a 21,960 square foot, 12-inch thick reinforced concrete tipping floor which will be gently sloped to a series of trench drains to collect incidental liquids. The drains will be routed to a triple-trap oil/water/grit separator prior to discharge to sanitary sewer or holding tank. (TR 9/23/13A at 47).
5. The facility is designed as a drive through facility such that when a single door opens, a single truck drives inside the building and tips its waste, and then that truck can drive out of the building, minimizing the number of openings to the outside and reducing the need for trucks to backup within the building. (TR 9/23/13A at 47).
6. The facility has skylights facing toward the south to allow natural light to filter through the building, thus minimizing energy use and keeping the building well lit. (TR 9/23/13A at 48).

7. The facility utilizes roof vents with a negative air exchange program that will create a negative pressure within the building. The air within the building will be exchanged four to six times each hour which will facilitate odor control. (TR 9/23/13A at 49).
8. Groot Industries and its consultants have considered residential setbacks, potential issues pertaining to wetlands, potential nearby archeological and historical sites, potential impacts to endangered species, potential nearby wild or scenic rivers, proximity to airports, the location of the flood plain, and regulated recharge areas with relation to the location of the proposed transfer station facility. (TR 9/23/13A at 49).
9. Groot Industries owns much of the land surrounding the proposed transfer station, and the proposed facility is located within an area zoned for industrial activities. (TR 9/23/13A at 22).
10. The nearest residentially zoned property is greater than 1,500 feet from the proposed transfer station and the nearest dwelling is greater than 1,000 feet from the proposed facility. (TR 9/23/13A at 50).
11. The facility is oriented to minimize sight lines into the facility, and as such, along both Route 120 and the northern side of the building there are no doors. (TR 9/23/13A at 47).
12. Although none of the waste loading activities are visible from public roadways, landscaping is proposed in strategic locations along Porter Drive to obstruct views into the facility. (TR 9/23/13A at 47-48).
13. One 0.25 acre wetland area was delineated within the Site boundary. It is anticipated that transfer station development will disturb 0.16 acre of this wetland. (TR 9/23/13A at 50).
  - i. A Watershed Development Permit will be obtained from the Lake County Stormwater Management Commission prior to filling.
  - ii. The affected wetlands will be mitigated at a 1.5:1 ratio, resulting in a replacement of approximately 0.24 acre of wetland.
14. The Illinois Historic Preservation Agency has determined that no significant archeological, architectural, or historic sites are located within the proposed transfer station area. (TR 9/23/13A at 50).
15. The Illinois Nature Preserves Commission has determined that there are no endangered or threatened species, Illinois Natural Areas Inventory sites, or dedicated nature preserves present in the area that would be negatively impacted by development of the transfer station. (TR 9/23/13A at 50).
16. The Illinois Department of Natural Resources has determined that because there are no nature preserves in the indicated area, the site does not pose a threat to a dedicated nature preserve. (TR 9/23/13A at 50).

17. There are no rivers designated for protection under the National Wild and Scenic Rivers Act within the proposed facility watershed. (TR 9/23/13A at 50-51).
18. The proposed transfer station facility is greater than 5,000 feet from the nearest airport, Campbell Airport, and is located outside of the Runway Protection Zone of this airport, which complies with all pertinent FAA guidance. (TR 9/23/13A at 51).
  - i. The proposed transfer station is not considered incompatible with safe operation of Campbell Airport.
  - ii. Prior to commencing operations, Campbell Airport, the FAA, and the Illinois Department of Aviation will be notified.
19. The proposed transfer station facility is of relatively moderate size, and will accept approximately 750 tons per day. (TR 9/23/13A at 45).
20. Generally, there will be no more than 40 tons of waste on the tipping floor at any given time, and waste will always be removed from the tipping floor at the end of each day. (TR 9/23/13A at 114).
21. The operating plan ensures that all collection vehicles will be fully enclosed and covered until positioned within the building and all transfer operations will occur completely within the transfer station building. (TR 9/23/13A at 65).
22. Groot will routinely patrol and remove litter from the facility, all public roadway rights-of-way within 1,500 feet of the facility, and from private property within 500 feet of these roads, with the permission of the property owners. (TR 9/23/13A at 65).
23. In order to control odor:
  - i. All waste transfer operations will be conducted within the building;
  - ii. The tipping floor will be cleared of waste on a daily basis and the transfer building and tipping floor will routinely be cleaned;
  - iii. Waste materials will be continually transferred throughout the operating day, generally, on a first-in first-out basis;
  - iv. Incoming waste which exhibits unusually strong odors will immediately be transferred from the station;
  - v. Customers found to habitually deliver waste with unusually strong odors will be denied access; and
  - vi. Non-toxic odor neutralizers will be provided in the facility misting system, as necessary. (TR 9/23/13A at 65-67)
24. In order to control pests and vectors:

- i. All exposed waste will be contained within the transfer station building;
- ii. Waste materials will be continually transferred throughout the operating day, generally, on a first-in first-out basis;
- iii. The tipping floor will be free of waste materials on a daily basis;
- iv. Any loaded collection transfer vehicles that are stored overnight at the facility will be fully tarped, parked within the closed building, and will leave the building at the beginning of the next operating day; and
- v. A professional exterminator will inspect the proposed transfer station on a monthly basis, at a minimum, and will employ exterminating measures, if necessary. (TR 9/23/13A at 65-67)

25. In order to control noise:

- i. The proposed transfer station is located within an industrially zoned area;
- ii. The waste tipping and transferring operations will be conducted within the transfer station building;
- iii. All on-site equipment will be equipped with mufflers and other sound suppressing devices, as required;
- iv. An industrial buffer exists to the north and west, by a forested area to the east, and by State Highway 120 and open space to the north; and
- v. The transfer station will be equipped with fast moving, high performance rubber doors what will automatically open and close as collection transfer vehicles enter and exit the building between the hours of 4:00 am and 8:00 am. (TR 9/23/13A at 65-68).

26. In order to control dust:

- i. All access drives, parking areas, storage areas, and vehicle-maneuvering areas within the facility will be paved;
- ii. Mud and dust tracked onto the property will be removed with a street sweeper on a routine basis;
- iii. A street sweeper will sweep public roads and right of ways within 1,000 feet of the proposed facility at least once each operating day; and
- iv. A misting system will be provided to help mitigate dust inside the transfer building. (TR 9/23/13A at 66, 68).

27. Mr. McGinley did not perform his own complete analysis under this criterion and based his opinions on improper assumptions and thus his opinion was not credible.

**D. Pursuant to 415 ILCS 5/39.2(a)(iii) the proposed transfer station facility is located so as to minimize incompatibility with the character of the surrounding area.**

1. The subject site's boundaries are protected with property owned by Groot Industries. (TR 9/24/13A at 16).
2. The subject site is located in I-1 Industrial District within the Village of Round Lake Park and the immediate area surrounding the site has been defined by established industrial uses which will not be altered as a result of the proposed transfer station facility. (TR 9/24/13A at 48).
3. The predominant land use in the vicinity of the proposed transfer station will continue to be open space. (TR 9/24/13A at 48).
  - i. Open space and industrial land uses account for 100% of the area within a 1,000 foot radius of the proposed transfer station facility. (TR 9/24/13A at 48).
  - ii. Open space and industrial land uses account for 73% of the area within a half-mile radius of the proposed transfer station facility. (TR 9/24/13A at 48).
  - iii. Open space and industrial land uses account for 59% of the area within a mile radius of the proposed transfer station facility. (TR 9/24/13A at 48).
4. The Route 120 corridor is an appropriate land use buffer along the south property line. (TR 9/24/13A at 42).
5. The proposed transfer station facility will be fully buffered and the view will be blocked by structures to the north, a woodland/forested area to the east, and by berms, plantings, and vegetation along roadways and frontages on the west and south. (TR 9/24/13A at 48-49).
6. The gateway to the industrial park created by the proposed transfer station facility will improve the aesthetic, appearance, and character of the industrial area. (TR 9/24/13A at 41).
7. The testimony of Mr. MaRous did not offer any contrary conclusion, and his opinion that the conclusions in the Lannert report were not sufficiently supported is not credible.

**E. Pursuant to 415 ILCS 5/39.2(a)(iii) the proposed transfer station facility is located so as to minimize the effect on the value of the surrounding property.**

1. The proposed transfer station facility will be constructed of concrete and steel and all activities will take place inside the building. (TR 9/24/13B at 41).
2. The exterior and grounds have been designed to include berms, landscaping, a bio-swale, and stormwater basins which serve to minimize any effects on the value of surrounding property. (TR 9/24/13B at 41-42).

3. Automatic rubber doors will be used in the morning hours as a precautionary measure to assume minimization of noise from the facility. (TR 9/24/13B at 42).
4. Significant roadway and intersection improvements proposed by and to be funded by Groot Industries are a part of the proposed transfer station facility. (TR 9/24/13B at 42).
5. The proposed transfer station has a comprehensive Operating Plan that details waste acceptance and handling procedures, nuisance control procedures, staffing and equipment requirements, and cleaning procedures. (TR 9/24/13B at 42-43).
6. Noise, odor, and dust minimization procedures, as well as offsite sweeping and litter control are proposed within the operating plan and host agreements. (TR 9/24/13B at 43).
7. The proposed facility is buffered from surrounding residential areas by distance, intervening industrial and open space land uses, and vegetation. (TR 9/24/13B at 43-44).
8. There is no residential property or dwellings located within 1,000 feet of the proposed transfer station facility, as mandated by State law. (TR 9/24/13B at 44).
9. An extensive evaluation of similar operating transfer station facilities in the region (Glenview Transfer Station, Glenview; Elburn Transfer Station, Elburn; and Bluff City Transfer Station, Elgin) concerning property values surrounding those facilities was performed. This evaluation compared sale prices of similar properties between a Target Area, a surrounding area where property values may be affected by proximity to a transfer station, and a Control Area, a distant area where property values are not affected by proximity to a transfer station. (TR 9/24/13B at 45-48).
  - i. Comparing averages in sales prices from the Target and Control areas concluded that there was no statistically significant difference between the two averages at a 95 % confidence interval at any of the three facilities studied. (TR 9/24/13B at 54).
  - ii. Performing a regression analysis of the sales prices concluded that the presence of a transfer station had no statistically measurable effect on property values at any of the three facilities studied. (TR 9/24/13B at 53, 60).
10. Mr. MaRous' critique of the Poletti report was based on factual errors and unjustified assumptions, and thus was not credible

**F. Pursuant to 415 ILCS 5/39.2(a)(iv) the proposed transfer station facility is located outside the boundary of the 100 year flood plain. (TR 9/23/13A at 51-52)**

**G. Pursuant to 415 ILCS 5/39.2(a)(v) the plan of operations for the proposed transfer station facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.**

1. The transfer station will be serviced by the municipal water supply and the Greater Round Lake Fire Protection District.
2. The transfer station building and scale house will be constructed of concrete and steel, will be equipped with a sprinkler system, and will be directly connected to the Greater Round Lake Fire Protection District. (TR 9/23/13A at 69).
3. A Knox Box located near the entrance will contain all keys necessary for property access so that emergency responders will have access to the facility. (TR 9/23/13A at 69-70).
4. Fire hydrants are located strategically around the facility. (TR 9/23/13A at 69-70).
5. Fire extinguishers will be located within each piece of mobile equipment on site as well as at various locations within the building. (TR 9/23/13A at 69-70).
6. The transfer station building is accessible from maneuvering areas present on all sides.
7. Heavy equipment will be fitted with heat shields to minimize the threat of fire.
8. Employees will be trained in fire response measures and emergency phone numbers will be located at the facility telephones. (TR 9/23/13A at 69).
9. The local fire department has reviewed the proposed fire protection plan and Groot Industries has received a statement from the local fire protection district that if the facility were to be constructed as proposed, the fire protection district does not anticipate any significant threat or other risk to the community. (TR 9/23/13A at 70).
10. The proposed transfer station facility will not accept liquids, special waste, or hazardous waste, and as such, spills and other operational accidents with the potential to cause danger to the surrounding area are not anticipated. (TR 9/23/13A at 70).
11. All operations personnel will receive regular training, at a minimum in the areas of operational procedures; health and safety procedures; lockout-tagout procedures; fire control and prevention; emergency first aid; detection, identification, and handling of any unauthorized wastes; and emergency evacuation to ensure that the facility is operated in accordance with regulations and in a safe and environmentally sound manner. (TR 9/23/13A at 71).

**H. Pursuant to 415 ILCS 5/39.2(a)(vi) the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows.**

1. Several roadway improvements are proposed as a part of the proposed transfer station facility: (TR 9/25/13A at 22-24).

- i. IL 120 is proposed to be widened to provide a separate left-turn lane and a separate right-turn lane serving Porter Drive. (TR 9/25/13A at 23).
  - ii. Porter Drive approach to IL 120 is proposed to be widened to provide separate left-turn and right-turn lanes serving IL 120. (TR 9/25/13A at 23).
  - iii. Porter Drive will be enhanced with a complete resurfacing. (TR 9/25/13A at 24).
  - iv. The intersection radius is proposed to be increased in order to efficiently accommodate turning transfer trailers. (TR 9/25/13A at 23-24).
2. The proposed transfer station facility was designed with only one access drive, located on Porter Drive, in order to minimize impacts on existing traffic flows. (TR 9/25/13A at 29).
3. The volume of traffic generated at any one time period is limited as the proposed transfer station traffic will be distributed throughout the day. (TR 9/25/13A at 29).
4. The peak traffic periods of the transfer station will occur during the late morning and early afternoon, outside of the critical commuter peak hours. (TR 9/25/13A at 29-30).
5. The site of the proposed transfer station is proximate to the Groot North Facility, which minimizes its impact on the area roadways. (TR 9/25/13A at 30-31).
  - i. The existing Groot Industries North Facility is a storage and maintenance yard for approximately 65 to 70 trucks and containers that will support the proposed transfer station. (TR 9/25/13A at 30).
  - ii. These trucks are already on the area roadways with mobilization from Groot North, collection, direct haul to regional landfills, and returning to Groot North. (TR 9/25/13A at 30).
  - iii. 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. (TR 9/25/13A at 30-31).
6. Truck traffic will travel to and from the proposed transfer station via the arterial roadway system. (TR 9/25/13A at 31-32).
7. Transfer station truck traffic will be directed to use the IL120/Porter Drive intersection when accessing the arterial roadway system. (TR 9/25/13A at 32-33).
8. Transfer station truck traffic will be prohibited from making a left turn from Porter Drive onto IL 120 between the hours of 7:00 am to 9:00 am and 3:00 pm to 5:00 pm. (TR 9/25/13A at 32-33).
9. The facility traffic represents an approximate 1.75% or less increase in traffic at any of the studied area intersections. (TR 9/25/13A at 44).

10. With the 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. (TR 9/25/13A at 44-45).
11. Mr. Coulter's critiques were based on a fundamental misunderstanding of the criterion and therefore given no weight.
  - I. **Pursuant to 415 ILCS 5/39.2(a)(vii) the proposed transfer station facility will not be treating, storing, or disposing of hazardous waste. (TR 9/23/13A at 62).**
  - J. **Pursuant to 415 ILCS 5/39.2(a)(viii) the Lake County Board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act and the Solid Waste Planning and Recycling Act. The proposed transfer station is consistent with that plan.**

1. Lake County adopted the Fourth Five Year Update to its Solid Waste Management Plan in April 2010. (TR 9/25/13A at 123).
2. The Village of Round Lake Park adopted the updated Lake County Solid Waste Management Plan by reference on August 6, 2013. (TR 9/25/13A at 123).
3. Lake County and its municipalities have historically relied upon in-County and other locally-available landfills to manage waste. These landfills are nearing capacity and will not provide long-term disposal capacity to Lake County. (TR 9/25/13A at 123-124).
4. The Lake County Solid Waste Management Plan explicitly provides that "Lake County needs to start seriously considering long-term options for managing its waste requiring disposal." (TR 9/25/13A at 124).
5. The Lake County Solid Waste Management Plan identifies the need to consider alternatives to in-county landfill disposal for the long-term management of the County's waste, yet identified a desire to "...manage as much Lake County waste requiring disposal as feasible within the borders of Lake County..." (TR 9/25/13A at 124).
6. The Lake County Solid Waste Management Plan does not contain a definitive recommendation for the type of facility or facilities that should be developed within the county; however, in order to meet these aspirations, the Lake County Solid Waste Management Plan identifies three options for consideration: (1) landfills, (2) transfer stations, and (3) alternative technologies. (TR 9/25/13A at 124-125).
7. The Lake County Solid Waste Management Plan does not put forth a schedule for implementation other than providing that it is the primary purpose of the planning process "to make sure new facilities and/or programs are in place prior to existing facilities closing." (TR 9/25/13A at 125).

8. Solid waste transfer stations, if developed in accordance with the applicable requirements of Recommendations T.2 through T.6 of the Lake County Solid Waste Management Plan, are considered consistent with the Plan. (TR 9/25/13A at 125-126).
9. The proposed Lake Transfer Station is compliant with the requirements of Recommendations T.2 through T.6 of the Lake County Solid Waste Management Plan. (TR 9/25/13A at 126-131).

**K. The proposed transfer station facility is not located within a regulated recharge area. (TR 9/23/13A at 52-53).**

## **VI. PROPOSED CONCLUSIONS OF LAW**

**A. Groot Industries, Inc., applicant for local siting approval of a solid waste transfer station, has submitted sufficient details describing the proposed facility to demonstrate compliance with 415 ILCS 5/39.2.**

1. Groot Industries, Inc., applicant for local siting approval of a solid waste transfer station, meets the requisite criteria of Section 39.2(a) for the granting of local siting approval.
2. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act.
3. The Applicant complied with all pre-hearing notice requirements of Section 39.2(c) of the Act.
4. No complaints regarding access to and availability of the site application were received.
5. No objections regarding participation, hearing procedures or public comment were made by any participant, would-be participant or member of the public.
6. There is no evidence of alleged bias or pre-judgment of the merits by the Village of Round Lake Park Board of Trustees.
7. The siting proceedings herein, both procedurally and substantively, comply with the requirements of fundamental fairness.
8. The *Fox Moraine LLC v. United City of Yorkville*, 960 N.E.2d 1144, 356 Ill.Dec. 21 (2d Dist. 2011) decision clarified the prior decisions of *Tate v. Pollution Control Board*, 188 Ill.App.3d 994, 1024, (1989) and *McHenry County Landfill, Inc. v. Environmental Protection Agency*, 154 Ill.App.3d 89 (1997) to make absolutely clear that an Applicant is not required to provide evidence of exact routes, types of traffic, noise, dust, or projections of volume and hours of traffic, because the Act does not require a traffic plan. Further, the Applicant need not show that there will be no impact on traffic flows. Rather, an Applicant need only submit evidence showing that the traffic patterns to and from the facility are designed to minimize impact on existing flows. In short, an Applicant does not have to establish that every arterial road would not be affected; just that it designed the entrance to and from the facility to minimize the impact on roadways.

Because Mr. Brent Coulter, witness presented by the opposition, used a standard which is contrary to Criterion vi and Illinois law, his testimony is hereby stricken.

**B. The Site complies with Section 22.14 of the Illinois Environmental Protection Act.**

**C. Notice conforming to the requirements of Section 39.2(b) was prepared and served as follows:**

1. Groot Industries, Inc. and/or its agents identified the names and addresses of all members of the General Assembly from the legislative district in which the proposed facility is located by using information publically maintained and available on the Illinois General Assembly internet website ([www.ilga.gov](http://www.ilga.gov)). Groot Exhibit 2.
2. Groot Industries, Inc. and/or its agents spoke with Sheila Dvorak, Deputy for the Lake County Treasurer's Office. She confirmed on May 24, 2013 that the Treasurer's Office of Lake County maintains the "authentic tax records" for Lake County, and that those records are the basis upon which the real estate tax bills are prepared and sent. She also verified the following: 1) the Treasurer's Office receives its information from deeds recorded by the Lake County Recorder's Office, which are checked by the Lake County Mapping Department of the Recorder's Office and then placed into the computer system so that transfer information is available to the Treasurer's Office for updating its authentic tax record, and 2) if a taxpayer desires to change information concerning the address to which a tax bill is to be sent, the taxpayer must prove their ownership interest of the real property. Groot Exhibit 2.
3. On May 31, 2013, Groot Industries, Inc. and/or its agents caused a copy of the Notice to be published in the Lake County News Sun, a newspaper of general circulation in the county in which the application is pending. Groot Exhibit 2.
4. On May 7, 2013, Groot Industries, Inc. and/or its agents caused a search to be performed by Chicago Title Agency on the authentic computerized tax records of Lake County to ascertain the names and addresses of all owners of property within 400 feet, in every direction of the location of the subject property and reflected on the official tax maps, as most currently revised, excluding all public roads, streets, alleys and other public ways. Groot Exhibit 2.
5. On May 29, 2013, Groot Industries, Inc. and/or its agents sent by certified mail notices to all owners of property and members of the General Assembly who were entitled to notice. Groot Exhibit 2.
6. On May 29, 2013, in addition to the certified notice, Groot Industries, Inc. and/or its agents sent by regular mail notices to all owners of property and members of the General Assembly who were entitled to notice. Groot Exhibit 2.
7. On June 6, 2013, Groot Industries, Inc. and/or its agents caused the authentic computerized tax records of Lake County, to be searched again to verify that no changes or additions had occurred since the May 7, 2013 search. Groot Exhibit 2.

8. Additionally, on June 6, 2013 Groot Industries, Inc. and/or its agents caused a search of the last deeds of record on file with the Lake County Recorder of Deeds to check for property ownership changes which may have occurred since May 7, 2013. Groot Exhibit 2.
9. In accordance 415 ILCS 5/39.2(b), and based upon the further due diligence engaged in as set forth in paragraphs (7) and (8) above, an additional certified mail Notice was sent on June 6, 2013 to those individuals and businesses which had not already returned a signed certified receipt based on the address which appeared from the authentic tax records of Lake County and for whom, on further research Groot Industries, Inc. and/or its agents was able to identify an additional address. Groot Exhibit 2.

**D. On June 21, 2013, in accordance with Section 39.2(c), Groot Industries, Inc. filed a copy of its request with the Mayor and Village Clerk of the Village of Round Lake Park. The request included (1) the substance of Groot Industries' proposal, and (2) all documents submitted as of June 21, 2013 to the Illinois Environmental Protection Agency pertaining to the proposed facility. All such documents and other materials on file with the Village of Round Lake Park were made available for public inspection and for copying upon payment of the actual cost of production. Groot Application dated June 21, 2013.**

**E. Notice conforming to the requirements of Section 39.2(d) and Section 160.06(F) of the Village of Round Lake Park Pollution Control Facilities Siting Ordinance was prepared and served as follows:**

1. Groot Industries, Inc. and/or its agents identified the names and addresses of all members of the General Assembly from the legislative district in which the proposed facility is located by using information publically maintained and available on the Illinois General Assembly internet website ([www.ilga.gov](http://www.ilga.gov)). Groot Exhibit 3.
2. Groot Industries, Inc. and/or its agents researched and identified those other persons, parties, or entities entitled to notice (i.e., adjacent municipalities, the County and the Illinois Environmental Protection Agency). The municipalities were determined by researching the Lake County map showing municipality boundaries. This information was further verified by phone calls to the City Clerk and Mayor's office for each of these municipalities, as well as to the County Board Chairman of Lake County and the Lake County State's Attorney to identify the current Mayor, City Clerk, County Board Chairman, and State's Attorney and confirm their current business address. These phone calls were made on August 20 and 21, 2013. Groot Exhibit 3.
3. On August 29, 2013, Groot Industries, Inc. and/or its agents caused a search to be performed verifying that there had been no changes within the adjacent municipalities for either the office of Mayor or City Clerk, County Board Chairman or State's Attorney and again confirm their mailing address. Groot Exhibit 3.

4. On August 30, 2013, Groot Industries, Inc. and/or its agents caused a copy of the Notice to be published in the Lake County News Sun, a newspaper of general circulation in the county in which the Application is pending. Groot Exhibit 3.
5. On August 29, 2013, certified mail Notices were sent to all City Clerks, Mayors, County Board Chairman, State's Attorney, Illinois Environmental Protection Agency, and members of the General Assembly who were entitled to Notice. Groot Exhibit 3.
6. On August 29, 2013, in addition to the certified notice, regular mail Notices were sent to all City Clerks, Mayors, County Board Chairman, State's Attorney, Illinois Environmental Protection Agency, and members of the General Assembly who were entitled to Notice. Groot Exhibit 3.

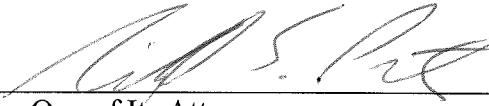
**F. Groot Industries, Inc.'s request for local siting approval of the Lake Transfer Station should be approved by the Village Board of the Village of Round Lake Park sitting as a pollution control facility siting authority.**

**G. The evidence has demonstrated Applicant's compliance with each of the nine (9) siting Criteria in Section 39.2(a) of the Act.**

**H. The evidence has demonstrated Applicant's compliance with the Village of Round Lake Park Pollution Control Facilities Siting Ordinance 12-14.**

Dated: 10-21-13 Groot Industries, Applicant

HINSHAW & CULBERTSON LLP

By:   
One of Its Attorneys

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