

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) 13-01
 LAKE TRANSFER STATION)

FINDINGS AND RECOMMENDATIONS
OF THE HEARING OFFICER

I. INTRODUCTION

On June 20, 2013, Groot Industries, Inc. ("Groot" or the "Applicant") filed an application for siting approval (the "Application") for a new pollution control facility in the nature of a recycling facility and transfer station (the "Facility") proposed to be located at 201 Porter Drive, Village of Round Lake Park. The Village of Round Lake Park's ("Village") authority regarding local siting approval for such a regional pollution control facility is governed by the provisions of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/39.2, as supplemented by Village Ordinance No. 12-14, known as the Village of Round Lake Park Pollution Control Facility Siting Ordinance (the "Ordinance").

The Village Board has the authority to approve or disapprove this request for local siting approval since the property in question is located in the Village. Under the Act, the Village Board shall only approve siting if the Facility meets the following criteria:

1. The facility is necessary to accommodate the waste needs of the area it is intended to serve;
2. The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
3. The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property;

4. The facility is located outside the boundary of the 100-year flood plain or the site is flood-proofed;
5. The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents;
6. The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;
7. If the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
8. If the facility is to be located in a county where the County Board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and
9. If the facility will be located within a regulated recharge area, any applicable requirements specified by the County Board for such areas have been met.

In addition, the Village Board is authorized by the Act to "consider as evidence the previous operating experience and past record of convictions or admissions of violations of the Applicant (and any subsidiary or parent corporation) in the field of solid waste management" when considering Criteria 2 and 5. 415 ILCS 5/39.2.

The Village Mayor appointed Phillip A. Luetkehans as Hearing Officer pursuant to section 160.06(A) of the Ordinance, and a public hearing was held on the Application beginning on September 23, 2013. In addition, prior to the public hearing, a public informational meeting

was held on September 20, 2013 for the purpose of providing information concerning the hearing procedure to the public. Pursuant to section 160.06(G)(1) of the Ordinance, pre-hearing conferences were held on July 16 and September 17, 2013. Exhibits were introduced during the hearing and are part of the record. All parties at the public hearing, including Groot, the Village, the County of Lake, the Village of Round Lake, Timber Creek Homes, Inc. and other residents and citizens were given a full opportunity to present testimony and evidence and to cross-examine witnesses. At every hearing, time was set aside and the public was allowed to present their oral comments. Village Board members were present at every hearing, and the hearings were transcribed by a court reporter and are part of the record.

After the presentation of all evidence, the hearing was adjourned. Consistent with the Act and the Ordinance, an opportunity was provided to file written comments with the Village concerning the Facility not later than thirty (30) days after the date of the last public hearing. All timely-filed public comments are also part of the record herein and have been reviewed by the Hearing Officer. After the time for public comments, the parties were given seven (7) days to file any written responses to the public comments. The record has been available for public inspection during normal business hours at the office of the Village Clerk. Additionally, all of the evidence admitted at the hearing, the transcripts of the hearing and all briefs filed in this matter were made available on the Village's website (www.roundlakepark.us) and at the website www.swalco.org ("SWALCO's website").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. JURISDICTION AND PRELIMINARY MATTERS.

1. On June 21, 2013, Groot filed the Application in conformance with the requirements of section 160.04 of the Ordinance for siting approval for a new pollution control facility in the nature of a transfer station to be known as the Groot Industries Lake Transfer Station. (Groot Exhibit 1, "Application").

2. The Village Clerk took the necessary steps to comply with Section 160.05 of the Ordinance.

3. At least 14 days prior to filing the Application, Groot served written notice of its intention to file the Application in compliance with 415 ILCS 5/39.2(b). (Groot Ex. 2). Groot further complied with the public hearing notice requirements of 415 ILCS 5/39.2(d). (Groot Ex. 3).

4. The service and publication of said public hearing notice was in conformance with and satisfies the requirements of Section 39.2(d) of the Act and Section 160.06 of the Ordinance.

5. The Facility for which siting approval is sought is located at 201 Porter Drive, at the northeast corner of Illinois Route 120 (Belvidere Road) and Porter Drive, within the corporate limits of the Village, and consists of approximately 3.9 acres.

6. Groot filed the requisite fee with the Village in conformance with the provisions of Section 160.03 of the Ordinance.

7. The public hearing was held on September 23, 24, 25, 26 and 30 and October 1 and 2, 2013 pursuant to due and appropriate notice and in accordance with the requirements of Section 39.2 of the Act and Section 160.06 of the Ordinance.

8. Based upon the record, the Facility is not located within 1,000 feet from the nearest property zoned for primarily residential uses or within 1,000 feet of any dwelling. (Groot Ex. 1, Sec. 2.2). No evidence or testimony was admitted to contradict this fact.

9. One pretrial motion was filed by the attorney for Timber Creek Homes, Inc. regarding preliminary disclosures under the Ordinance. The Hearing Officer issued an Order on this motion dated September 11, 2013.

10. All disclosures, motions, Exhibits and Orders were posted on the Village's website and SWALCO's website to ensure easy access to the public.

11. In preparing these findings and making this recommendation, the Hearing Officer has reviewed all applicable statutory and case law, the public comments on file with the Clerk, the transcript of proceedings, the Exhibits entered into evidence, the Application and all the briefs filed. Because there was often testimony which conflicted, the Hearing Officer has been required to make credibility determinations about various witnesses. Accordingly and as noted herein, some witnesses' testimony have been afforded more weight than others based upon their relative credibility and experience. In addition, there were instances where witnesses were called to testify as to whether or not the Applicant had fulfilled certain criteria. In several instances, the Hearing Officer allowed witnesses to testify pursuant to the principles of fundamental fairness but determined that the witnesses' testimony was not competent or otherwise credible.

12. Given the Applicant's compliance with the pre-filing notice requirements and the compliance with the public hearing notice requirements of the Act, the Village Board has jurisdiction under Section 39.2 of the Act to approve, approve with conditions, or deny the Application.

B. SUBSTANTIVE PRELIMINARY MATTERS.

Section 40.1 of the Act requires that the procedures used during the hearing provide fundamental fairness to all parties. Timber Creek Homes, Inc. ("TCH") asserts that the hearing process violated the principle of fundamental fairness due to the participation of Glenn Sechen, an attorney who was retained to represent the Village during the hearing. The essence of TCH's argument is that Sechen's representation of the Village and participation in the hearing was unfair as he advocated approval of the Application.

A siting authority's role in the approval process is both quasi-legislative and quasi-adjudicative. *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 60, *appeal denied* 968 N.E.2d 81 (2012). "Recognizing this dual role, courts interpret the right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence." *Id.* However, "[i]t is proper to have some blend of judicial and prosecutorial function in an administrative proceeding provided that the person performing the quasi-prosecutorial function is not a member of the decision-making body." *Waste Mgmt. of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1039, 530 N.E.2d 682, 694-95 (1988). Here, Mr. Sechen plays no role in the decision-making process as that role is limited to the Village Trustees. Hence, his participation in the hearing, even if viewed as an advocate in favor of approval, does not render the proceeding fundamentally unfair. *Id.* (finding the participation of State's Attorneys on behalf of interested parties in a siting hearing did not violate fundamental fairness where they neither acted in an advisory capacity nor participated in the ultimate decision making process).

Further, the Hearing Officer does not find any actions taken by Mr. Sechen in the hearing have in any way tainted the process or created any unfairness. It is also important to note that numerous members of the Village Board attended all or parts of the hearing. The Hearing Officer also observed that the Village Board members were attentive and engaged throughout the hearing. Accordingly, the Hearing Officer finds that Mr. Sechen's involvement and questioning in the hearing did not violate the principle of fundamental fairness.

C. STATUTORY CRITERIA.

In order for a Village Board to approve a proposed municipal solid waste transfer station, the applicant must prove that it has met all nine of the criteria set forth in Section 39.2 of the Act. *A.R.F. Landfill v. The Pollution Control Board*, 174 Ill. App. 3d 82, 90 (2d Dist. 1988); 415 ILCS 5/39.2 (West 2003). In deciding on such criteria, the Village Board must consider the evidence presented and must determine by a preponderance of the evidence that the applicant satisfies the criteria before granting approval. *Waste Management of Illinois v. County Board of Kane County*, 2003 WL 21512770 (Ill. Pollution Control Bd.). It is important to note, however, that the statute does not speak in terms of guaranteeing no increase of risk concerning any of the criteria. *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 907-08, 579 N.E.2d 1228, 1236 (5th Dist. 1991).

Following hereafter are the Hearing Officer's findings and conclusion of law concerning the record as it relates to the specific criteria enumerated in the Act. The Hearing Officer finds that much of the evidence relates to more than one of the criteria and his findings should be looked at as a whole. Accordingly, the Hearing Officer has attempted, to the extent practicable, not to restate evidence that could be discussed under, or relate to, more than one criteria.

Further, the findings as to the criteria are specifically subject to the Proposed Conditions of Operation enumerated in Appendix A.

1. WHETHER THE FACILITY IS NECESSARY TO ACCOMMODATE THE WASTE NEEDS OF THE INTENDED SERVICE AREA.

“Section 39.2(a)(i) requires that the applicant establish that the site location is necessary for the area to be served.” *Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). If, within the service area of a proposed facility, there are existing facilities which are capable of servicing the service area's needs, there is no need for a new facility. *Waste Management of Illinois v. Pollution Control Board*, 122 Ill. App. 3d 639, 644-45, 461 N.E.2d 542, 546-47 (3d Dist. 1984). Although an applicant need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois v. Pollution Control Board*, 234 Ill. App. 3d 65, 69, 600 N.E.2d 55, 57 (1st Dist. 1992). Reasonable convenience requires the applicant to show more than mere convenience. *Waste Management of Illinois v. Pollution Control Board*, 123 Ill. App. 3d 1075, 1084, 468 N.E.2d 969, 976 (2d Dist. 1984). Although petitioner need not show absolute necessity, it must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing a new facility or expanding an existing landfill. The applicant must show that the landfill is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capabilities. *Fox Moraine, LLC v. The United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 110, citing *Waste Management of Illinois, Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d at 1031, 530 N.E.2d at 689.

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 1 has been met because the Facility is necessary to accommodate the waste needs of the intended service area. (TR 9/24/13C at 41). She has been an expert witness in eight local siting hearings and worked on permit applications for more than ten transfer stations in Northern Illinois. (TR 9/24/13C at 9-10). She has been a consultant to industry and government clients concerning the issue of solid waste management needs. (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).

It is the applicant that selects the service area, and the Applicant has selected Lake County as its service area. *Metropolitan Waste Systems, Inc. v. Pollution Control Board*, 201 Ill. App. 3d 51, 55, 558 N.E.2d 785, 787 (3d Dist. 1990); (TR 9/24/13C at 15). No one has objected to Lake County as the designated service area of the Facility. Ms. Seibert explained that under the Solid Waste Planning and Recycling Act, 415 ILCS 15/1 *et seq.*, the County's 2004 Solid Waste Management Plan Update sought twenty (20) years of guaranteed disposal capacity for the waste generated within its borders. (TR 9/24/13C at 18). However, it should be noted that the most recent Lake County Solid Waste Management Plan Update no longer sets forth that twenty (20) year guarantee. (TR 9/24/13C at 18). 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 14). 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 19). American Disposal's 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 Landfill 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). She testified that the Lake County landfills will not provide the needed twenty (20) years capacity and that new landfills are generally being developed farther and farther away from Lake 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 21-23). Ms. Seibert testified that there are no transfer stations currently operating in Lake County, which in her opinion results in a transfer capacity deficit far in excess of the proposed capacity of the Facility. (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 Facility is designed to accept approximately 750 tons per day. (TR 9/24/13C at 34). 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 Facility beginning its operation. However, this capacity could be exhausted much sooner than that. (TR 9/24/13C at 20). Finally, Ms. Seibert testified 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 projected 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 farther and farther away from the Chicago and the collar county area, which creates a greater need for transfer station capacity. (TR 9/24/13C at 42).

TCH called John Thorsen to testify regarding Criterion 1. Mr. Thorsen is also a professional engineer. He has decades of experience in solid waste issues and holds a masters degree in regional planning. (TR 9/25/13B at 30-31). Mr. Thorsen also has experience in Lake County dating back to the 1980's. (TR 9/25/13B at 31-33). Approximately 20-25% of Mr. Thorsen's work has involved waste issues in Lake County. (TR 9/25/13B at 33-35, 44). Mr. Thorsen has also been involved as a member of the Lake County Solid Waste Advisory Committee, a planning group that dealt with County planning for solid waste management. (9/25/13B at 34-35).

Mr. Thorsen verified the data provided by Seibert and reviewed certain other information. Mr. Thorsen did not perform a separate independent needs analysis but accepted at face value Seibert's waste generation and disposal capacity figures for the two Lake County landfills. (TR

9/25/13B at 91). Based upon his analysis, Mr. Thorsen concluded that there is current Lake County landfill capacity until 2027. (9/25/13B at 36-37, 49-51).

However, upon cross-examination, Mr. Thorsen admitted that the landfills in Lake County could reach capacity sooner than 2027. (TR 9/25/13B at 81). Further, much of the capacity that Mr. Thorsen found as available was at the Zion Landfill. (TR 9/25/13B at 81). There was no dispute that the Zion Landfill has only guaranteed capacity to Lake County for the next six (6) years. (TR 9/25/13B at 87).

Here, the Facility will not open until at least 2015. (TR 9/24/13C at 143). However, it is important to note that the opening date of the Facility is not set in stone. With appeals and future approvals still having to occur, the opening of the Facility in 2015 is clearly not certain. Given the strong opposition to this matter, appeals of the Village Board's decision are likely. If the Village Board were to approve the siting of this Facility, those appeals could easily delay the opening of this Facility another two to three years. While the Applicant argues that one should look at the 20-year capacity due to language in the Solid Waste Planning and Recycling Act (the "Solid Waste Act") and the previous Lake County Solid Waste Management Plan, the Hearing Officer has found no case law, nor has anyone cited any, that states that the 20-year time period discussed in the Solid Waste Act controls for the purpose of Criterion 1. On the other hand, TCH argues that 12 possible years of capacity automatically requires a finding of a lack of necessity under Criterion 1. No case law has been cited to or found by the Hearing Officer to support this conclusion either.

The cases do not set forth a bright line approach but hold that the "better approach is to provide for consideration of other relevant factors such as future development of other disposal sites, projected changes in amounts of refuse generation within the service area and expansion of

current facilities.” *Waste Management of Illinois v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1033-34, 530 N.E.2d 682, 691 (2d Dist. 1988). In essence, both experts found that with no changes in the projected amount of waste that the existing landfills would provide capacity until approximately 2027. (TR 9/24/13C at 35; TCH Ex. 2). However, both experts state that time period could change and that there is no guaranty of capacity after the next six years. (TR 9/25/13B at 81). Further, no evidence has been submitted showing that any expansions of those proposed landfills are proposed or would be allowed. There has been evidence submitted, however, that if both of the current landfills are closed in 2027, it will take approximately three to four, and maybe more, waste transfer stations of the size of this Facility to handle the waste generated by Lake County. (TR 9/24/13C at 33). The evidence also showed that waste transfer facilities can take seven or more years to site from start to finish. (TR 9/24/13C at 24). Accordingly, based upon current conditions, it appears that numerous waste transfer stations will need to be sited by 2027, if not sooner, in order to properly handle Lake County’s waste.

In this case, the Hearing Officer finds both Ms. Seibert and Mr. Thorsen credible. However, Ms. Seibert was the only expert who conducted an independent analysis of underlying generation and disposal rates in the service area. Mr. Thorsen did not dispute the fact that a need existed, he just disputed the timing of the need. (TR 9/25/13B at 80). However, he admitted that the date when a petition should be filed was not in his “wheelhouse.” (TR 9/25/13B at 82). This is not sufficient in the opinion of the Hearing Officer to counter the well reasoned and credible findings and opinions of Ms. Seibert that a need exists.

Against that backdrop and based upon the entirety of the record, the Hearing Officer finds that there is a need for the Facility to accommodate the needs of the area it intends to serve.

2. WHETHER THE FACILITY IS SO DESIGNED, LOCATED AND PROPOSED TO BE OPERATED SO THAT THE PUBLIC HEALTH, SAFETY AND WELFARE WILL BE PROTECTED.

Criterion 2 empowers the Village Board to consider all public health, safety and welfare ramifications surrounding the design, location and operation of the proposed facility. *Waste Management of Illinois v. Pollution Control Board*, 160 Ill. App. 3d 434, 438, 513 N.E.2d 592, 594 (2d Dist. 1987).

The Applicant called Mr. Devin Moose of Shaw Environmental, who planned and designed the Facility on behalf of the Applicant. Mr. Moose testified not only concerning Criterion 2, but also Criteria 4, 5, 7 and 9. (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 licensed in ten 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 on numerous transfer stations within the State of Illinois. (TR 9/23/13A at 42).

A. Design

Mr. Moose described the proposed Facility as being located on 3.9 acres of land in an industrial park on the northeast corner of Porter Drive and Route 120 (Belvidere Road). The anticipated throughput is 750 tons per day consisting of municipal waste, landscape waste, and/or recyclables. The transfer building will be a concrete and steel structure with cast-in-place concrete and pre-cast concrete panels on the steel skeleton. The transfer building will be approximately 27,800 square feet and a scale house of approximately 270 square feet will also be constructed. In addition, all access drives and interior circulation routes will be paved and inbound and outbound scales will be installed. A stormwater bio-swale of approximately 370

feet in length will be constructed along the northern limits of the property to convey stormwater into a sedimentation basin prior to off-site discharge. The proposed Facility is designed to be drive-thru which minimizes the number of openings to the outside. No doors will be located on the south side of the building along Route 120 or along the north side. The proposed Facility is similar to the Glenview Transfer Station, which Mr. Moose designed approximately 20 years ago. The Glenview Transfer Station is run by Groot, the Applicant here. (TR 9/23/13A at 44-48, 54; TR 9/23/13C at 43; TR 9/24/13B at 57; Groot Ex. 1, Sections 2.1-1 to 2.2-1).

Mr. Moose characterized the site as allowing sufficient room for stacking or queuing of trucks. (TR 9/23/12A at 59). Ingress and egress will be to and from Porter Drive. (TR 9/23/13A at 60). The exterior walls are all constructed of pre-cast concrete panels which helps to further minimize noise transmission. (TR 9/23/13A at 55). The design of the air handling system allows for air exchanges. (TR 9/23/13A at 49). Its design allows for plenty of natural light and uses skylights to help minimize electrical usage. (TR 9/23/13A at 48). The Facility's orientation minimizes the view of open doors from neighbors and Route 120. (TR 9/23/13A at 47).

Mr. Moose showed a computer animated video showing portions of the Facility in operation. Stormwater will be managed on a best management practices basis. The design of the stormwater system incorporates a bio-swale which provides filtering and the takeup of sediment and nutrients prior to the discharge of stormwater into the industrial park's stormwater system. (TR 9/23/13A at 54-62; Application 2.3) Sanitary sewer is available to the site and its use will be evaluated based on capacity. Otherwise a holding tank will be utilized. (TR 9/23/13C at 2-3).

B. Location

Mr. Moose testified that this Facility is a relatively moderately 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 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 are 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).

C. Operation

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 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 the Applicant, 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 exchanging air 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).

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 can automatically open and close as the collection transfer vehicles enter and leave the building to the extent required. (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. (TR 9/23/13A at 68-69).

It is also important to note that the Village's Host Agreement has certain requirements that the Facility would be subject to. The Village's Host Agreement restricts the storage of waste on transfer trailers as follows:

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

In addition, here public roadways within 1500 feet of the Facility and private property within 500 feet of the Facility [with permission of the property owner] will be patrolled daily and litter will be collected and removed therefrom. More specifically, the Village's Host Agreement requires that the Applicant:

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

The Applicant will also see that the roadways within 1,000 feet of the Facility are cleaned utilizing a street sweeper. (TR 9/23/13A at 68). In fact, the Village's Host Agreement requires that the Applicant:

provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the

Company as well as well as public roads and right-of-ways included within the roadway boundaries within, at a minimum, one thousand (1,000) feet of the Subject Property on an as needed basis, but not less frequently than daily. (Groot Ex. 1, Appendix C.1, ¶ 11b)

Mr. Moose's testimony concerning the public health safety and welfare was largely un rebutted. TCH raises two major arguments as to Mr. Moose's testimony. First, TCH appears to argue that none of Mr. Moose's testimony should be relied upon by the Village Board because Mr. Moose is not a credible witness. However, instead of attempting to find areas where Mr. Moose was mistaken or was deceitful in this hearing, TCH spends most of its time discussing past testimony of Mr. Moose from over 15 years ago (which evidence was not admitted into the record) or picking on minor inconsistencies that may or may not have occurred in the hearing. The Hearing Officer hereby finds that Mr. Moose was a credible witness and finds no reason to determine that his testimony in this hearing was untrue or deceitful.

Second, TCH presented its own expert, Charles McGinley, to testify as to the issue of odor control. Mr. McGinley has approximately 40 years of experience in the field of odors and odor management. (TR 9/30/13A at 18). He has provided training services to companies relating to odor management development, odor management auditing, odor sampling and investigation. *Id.* He has also provided training to companies that provide services to the waste industry. (TR 9/30/13A at 20). Mr. McGinley has also authored or contributed to scholarly materials on the subject of waste and holds three patents for devices and processes in the fields of odor management and analysis. (TR 9/30/13A at 20-22). Mr. McGinley is a registered engineer in Minnesota but is not registered to practice engineering in Illinois. (TR 9/23/13A at 11). While a motion was made to strike Mr. McGinley's testimony because he is not a registered

engineer in Illinois, the motion was denied for the reasons stated by the Hearing Officer on the record. (TR 9/30/13B at 36-42).

Mr. McGinley testified that in his opinion the Facility “will not prevent odors from infringing or passing into the community specifically odors of air laden with garbage odor and would infringe upon the public welfare.” (TR 9/30/13A at 39). While Mr. McGinley’s report discusses the possible use of additional odor filtration systems such as scrubbers, he never advised whether those systems should be implemented or not – only that they should be considered. (TCH Ex. 4). Upon cross-examination, Mr. McGinley admitted that he is not recommending scrubbers and that Illinois does not require the use of scrubbers. (TR 9/30/13 at 56). TCH further argues that the USEPA Manual lists several “requirements” in order to minimize odors and that the Facility will not implement these “requirements.” *See* TCH’s Proposed Findings and Conclusions at 27-30. However, a closer look at the USEPA Manual relied upon by TCH states that the listed items are actually “practices that an urban transfer station should consider employing to mitigate facility impacts upon the neighboring community.” *See* USEPA Manual p. 36 attached to TCH Ex. 4 (emphasis added). While the record is unclear as to whether this Facility would be considered an urban transfer station, the USEPA Manual by its own language is very clearly not stating that the items listed are requirements – only things to be considered when a waste transfer station is designed and planned.

In this case, like many of TCH’s witnesses, Mr. McGinley failed to perform his own independent analysis of the odors that would emanate from the Facility, only a review of the Application and the testimony of Mr. Moose. (TR 9/30/13A at 45). Mr. McGinley did not perform any odor testing at any other transfer stations operated by Groot in the nearby area, even

though those other stations operate with the same technology and operational standards. (TR 9/30/13A at 44, 49; 9/23/13C at 27, 42-43, 49). Mr. McGinley did not attempt to testify as to or determine whether any particular home, residence, person or industrial property would be subjected to any odors from this Facility. (TR 9/30/13A at 53, 128)

The Hearing Officer is reluctant to recommend the refusal of the Facility without some actual contradicting study showing that the Application and the expert opinions propounded by the Applicant were independently tested and proven wrong. It is easy to testify that someone made some mistake or failed to properly review every possible contingency in their analysis but the uncertainty of Mr. McGinley's testimony as to whether any actual odors would be noticeable on nearby properties negatively affects the credibility of his conclusion.

The determination of this particular Criterion is purely a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill. App. 3d 541, 552, 555 N.E. 2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the Hearing Officer's opinion, Mr. Moose's testimony was the more thorough and credible testimony on this issue.

Accordingly, the Hearing Officer finds that the Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the Conditions of Operation listed in Appendix A.

3. WHETHER THE FACILITY IS LOCATED SO AS TO MINIMIZE INCOMPATIBILITY WITH THE CHARACTER OF SURROUNDING AREAS AND TO MINIMIZE THE EFFECT ON THE VALUE OF THE SURROUNDING PROPERTY.

This criterion requires an applicant to demonstrate more than minimal efforts to reduce a facility's incompatibility. "An applicant must demonstrate that it has done or will do what is reasonably feasible to minimize incompatibility." *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 907, 579 N.E.2d 1228, 1236 (5th Dist. 1991). "As to property values and better places, the law requires only that the location minimize incompatibility and effect on property values, not guarantee that no fluctuation will result; nor does the statute require the facility to be built in the 'best' place, and rightly so for that is so subjective as to give no guidance at all to those who must decide these issues." *Clutts v. Beasley*, 185 Ill. App. 3d 543, 547, 541 N.E.2d 844, 846 (5th Dist. 1989).

A. Minimizing Incompatibility With The Surrounding Area.

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). Mr. Lannert 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 3 of Section 39.2(a). (TR 9/24/13A at 47-48). In arriving at his conclusions, Mr. Lannert 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 Facility's boundaries were protected from others by property owned by the Applicant, and that the Facility is located in an I-1 industrial district within the Village. (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 Facility. He testified that the predominant land use in the vicinity of the Facility 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 59% of the area would be for such uses within a mile of the Facility. (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 Route 120 and Porter Drive, as well as from Porter Drive looking toward the Facility. (TR 9/24/13A at 41-42). He testified that the Route 120 corridor was an appropriate land use buffer along the south property line, and that the proposed Facility 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).

TCH's main argument on this issue boils down to disagreeing with Mr. Lannert's position that "the immediate area surrounding the site has been defined by industrial uses that have been established over the years." (TCH Proposed Findings and Conclusions at 32). TCH spends pages arguing that the only relevant area includes those properties within one mile from the site and ignores that Mr. Lannert looked at three different radii: (a) 1,000 square feet; (b)

one-half mile; and (c) one mile. Mr. Lannert testified as to the total amount of residential, industrial and open space uses in all three areas. While the Hearing Officer believes that all three areas have some relevance, the most relevant areas are those nearer the Facility. In the one half mile radius, only 27% of the parcels that would be considered residential. However, in the 1,000 square foot radius of the Facility, there are no residential parcels.

The Hearing Officer finds Mr. Lannert and his testimony to be highly credible. On the other hand, no witness testified in opposition to the fact that the Facility was planned and designed in a manner that was reasonably feasible to minimize incompatibility. Accordingly, the Hearing Officer finds that the plan meets the portion of the criterion that relates to minimizing incompatibility with the surrounding area.

However, the Hearing Officer does find that based upon the evidence before him that certain conditions should be imposed to alleviate any possible concerns in this regard. Those conditions are set forth in the Proposed Conditions of Operation found in Appendix A.

B. Minimization of Impact on Property Values.

Three credible MAI appraisers testified as to this issue. Peter Poletti testified that he conducted a study of the Facility and examined its potential impacts on property values. Michael MaRous, while not doing his own independent analysis, testified that the analysis performed by Dr. Poletti was flawed. Dale Kleskynski testified that he likewise did not perform his own independent analysis but that he also reviewed Dr. Poletti's analysis and supported his analysis and findings.

Dr. Peter J. Poletti testified concerning the second portion of Criterion 3 and ultimately opined that the Facility is proposed to be located so as to minimize its effect on the surrounding

property values. (TR 9/24/13B at 59-60). Dr. Poletti is a Ph.D. and certified real estate appraiser in five 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. (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 Agreement and reviewed the Application itself. (TR 9/24/13B at 38-42). Dr. Poletti also had discussions with consultants working on the project and reviewed the proposed Facility 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 understood 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 during certain hours as a precautionary measure to minimize any noise from the Facility. (TR 9/24/13B at 42). He understood 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 Facility. (TR 9/24/13B at 44).

Dr. 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, Dr. Poletti opined that the proposal was designed to minimize impacts on surrounding property values. (TR 9/24/13B at 59). However, Dr. Poletti did admit that those other facilities did not operate 24 hours a day. (TR 9/24/13B at 65).

The Village 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"). (Village Ex. 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 and is currently qualified by the Appraisal Institute to be an instructor relating to complying with USPAP. (TR 10/2/13A at 10-11).

After performing his review appraisal, Mr. Kleszynski ultimately rendered the opinion that the analysis of Dr. Poletti, including the data collected, the scope of work and the techniques applied, were appropriate to reach a credible conclusion that the Facility was located to minimize the effect on neighboring property values. (TR 10/2/13A at 20-22). Mr. Kleszynski also personally inspected the site of the Facility and the surrounding area, as well as the locations of the case studies used by Dr. 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 Facility 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 Facility would not adversely impact the value of the surrounding properties. (Village Ex. 2, pg. 1; TR 10/2/13A at 32).

TCH called Michael MaRous ("MaRous") as a witness with respect to Criterion 3. Mr. MaRous is a highly qualified real estate appraiser with almost 40 years of experience. He is highly regarded in his field, and has received a number of honors and advanced designations. Mr. MaRous has vast experience, including over 1,000 projects in Lake County with a combined value of over \$1 billion. He has also worked for well over 40 units of government, including a number in Lake County. Mr. MaRous has been qualified as an expert witness over 300 times in various settings and forums. (TR 10/01/13A at 14-19). Mr. MaRous has also done numerous market impact studies, including several involving waste facilities. This includes work for owners and operators of waste facilities. (TR 10/01/13A at 19-20).

Regarding the character of the surrounding area, Mr. MaRous confirmed that the Timber Creek community is well established in the area. It is a well-developed residential community with approximately 240 residential units and over 700 residents. Timber Creek has

been in existence for over 40 years. It is attractive, has mature landscaping and it is well maintained. (TR 10/01/13A at 24-27). In contrast, Mr. MaRous described a transfer station as a “very heavy industrial use”. (TR 10/01/13A at 27). Mr. MaRous further explained that in his opinion a garbage transfer station is a heavy industrial use because of its characteristics – it generates heavy truck traffic, with vehicles weighing over 40,000 pounds, with doors open potentially 20 hours per day. (TR 10/01/13A at 81). It is not common for heavy industrial uses to be co-located with residential uses. Instead, heavy industrial uses are generally concentrated with other heavy industrial uses. (TR 10/01/13A at 27-28). Mr. MaRous explained that a light industrial use generally includes office, light distribution, warehouse and light assembly. Heavy industrial uses, like a waste transfer station, are much more intensive uses, such as heavy manufacturing, cranes, forges, etc. (TR 10/01/13A at 79).

During the cross-examination of Mr. MaRous by the Applicant, the Applicant’s attorney asked certain questions in an attempt to attack his credibility based upon a lack of knowledge of certain underlying facts. This effort involved three main topics:

1. Whether the McCook Landfill actually exists;
2. Whether a quarry operation in the vicinity of the Bluff City Transfer Station is currently being mined; and
3. Whether a fuel storage tank exist in the area of the Elburn Waste Transfer Station.

The Applicant failed to provide any factual evidence in the hearing to back up this attempted impeachment. At the end of the Public Comment period, TCH filed a Motion to Strike and For Negative Inference Instruction as to the above topics. The Applicant filed a response, and the Hearing Officer has reviewed the testimony in this regard. The Hearing Officer finds that the Applicant has not supported its cross-examination on these topics with any actual evidence.

Accordingly, the Hearing Officer hereby strikes the cross-examination questions and answers related to these three topics. TCH has also requested that the Hearing Officer offer a “negative reference instruction” to the Village Board on these three topics. While it is questionable whether the Hearing Officer has the authority to grant such an instruction, it is the opinion of the Hearing Officer that the Village Board (and its able attorney) is intelligent enough to ignore these questions in its deliberation without any further instruction by the Hearing Officer. Accordingly, the Hearing Officer refuses to issue such an instruction.

TCH bases much of its Criterion 3 argument upon Dr. Poletti’s and Mr. Kleszynski’s alleged improper reliance on what TCH sees as Mr. Lannert’s mischaracterization of the area. As shown above, the Hearing Officer does not find this underlying testimony by Mr. Lannert to be a mischaracterization at all. Accordingly, this argument must fail.

All three appraisers are highly qualified and were very credible witnesses. The Hearing Officer must note that he is placing little if any reliance on the limited testimony of Mr. Kleszynski. However, given the fact that Dr. Poletti performed the more thorough analysis and was not impeached in any meaningful manner, the Hearing Officer finds his testimony and opinions have greater weight than do those of the other appraisers. The Hearing Officer would have been very interested in hearing Mr. MaRous’s opinion as to whether this Facility would negatively affect property values in the area. However, Mr. MaRous was not asked and did not offer any opinion on this underlying and important issue. Without that evidence however, the Hearing Officer must find that the Applicant has demonstrated that the Facility has been located to minimize the effect on surrounding land values.

Against that backdrop, the Hearing Officer finds that Criterion 3 has been met by the Applicant, provided that the Applicant agrees to operate the Facility in accordance with the Proposed Conditions of Operation set forth in Appendix A.

4. WHETHER THE FACILITY IS LOCATED OUTSIDE THE 100 YEAR FLOODPLAIN OR IS THE SITE FLOOD-PROOFED.

The uncontradicted evidence establishes that the Facility is not located within the 100 year floodplain. (TR 9/23/13A at 51-52). Accordingly, the Hearing Officer is of the opinion that this Criterion 4 has been met.

5. WHETHER THE PLAN OF OPERATIONS OF THE FACILITY IS DESIGNED TO MINIMIZE THE DANGER TO THE SURROUNDING AREA FROM FIRE, SPILLS OR OTHER OPERATIONAL ACCIDENTS.

To meet this criterion, the applicant must show that there is a plan of operation designed to minimize the danger. As in any industrial setting, the potential exists for harm both to the environment and the residents. *Industrial Fuels & Resources v. Illinois Pollution Control Board*, 227 Ill. App. 3d 533, 547, 592 N.E.2d 148, 157-58 (1st Dist. 1992). The key to this criterion is minimization. *Id.*, citing *Wabash and Lawrence Counties Taxpayers and Water Drinkers Assoc.*, 198 Ill. App. 3d 388, 394, 555 N.E.2d 1081, 1086 (5th Dist. 1990). "There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems. *Id.* Guaranteeing an accident-proof facility is not required." *Industrial Fuel*, 227 Ill. App. 3d at 547, 592 N.E.2d at 157-58.

In Mr. Moose's testimony, he 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. (Exhibit 1; TR 9/23/13A at 69-71). Ultimately, Mr. Moose concluded that, in his 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. Accordingly, the Hearing Officer is of the opinion that Criterion 5 has been met.

6. WHETHER THE TRAFFIC PATTERNS TO OR FROM THE FACILITY ARE SO DESIGNED AS TO MINIMIZE THE IMPACT ON EXISTING TRAFFIC FLOWS.

This criterion does not relate to traffic noise or dust, nor does it relate to the possible negligence of truck drivers. *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 908, 579 N.E.2d 1228, 1236 (5th Dist. 1991). "The operative word is 'minimize' and it is recognized that it is impossible to eliminate all problems." *Id.*

Michael Werthmann, a registered Professional Engineer and certified Professional Traffic Engineer with 23 years of experience in traffic engineering for both the public and private sectors, testified on Criterion 6. (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, evaluated the impact of the Facility's 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 Illinois Route 120, Illinois Route 134, Hainesville Road, Cedar Lake Road, and Porter Drive. (TR 9/25/13A at 28). The proposed transfer station Facility was designed with only one access drive located on Porter Drive. (TR 9/25/13A at 29). Mr. Werthmann testified that at his

recommendation several roadway improvements are proposed, including the widening of Illinois Route 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 Illinois Route 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 9/25/13A 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 Illinois Route 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 Illinois Route 120 between the hours of 7 a.m. and 9 a.m. and 3 p.m. to 5 p.m. (TR 9/25/13A 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 9/25/13A at 30-31). The existing Groot North facility is a storage and maintenance yard for approximately 65 to 70 vehicles. (TR 9/25/13A at 30-31). Furthermore, after delivering waste to the Facility on their last stop of the day, any Groot collection vehicles will only traverse Porter Drive as they return to the Groot North facility. (TR 9/25/13A at 30-31).

The recommended design features, roadway improvements, and truck restrictions result in a negligible impact on the existing roadway system and approximately 1.75% or less of an increase in traffic at any of the studied area intersections. (TR 9/25/13A at 44). Mr. Werthmann testified that the actual increase in use would be more in the 1% range. *Id.* Route 120 currently

has a daily traffic amount of about 18,000 vehicles per day – approximately 4.5% of which are trucks. (TR 9/25/13A at 20). 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 6.

Mr. Werthmann's examination of the existing roadway system involved a field investigation aimed at defining and quantifying that system's physical and operating characteristics. (TR 9/25/13A at 19-20). The analysis also included a determination of the Facility's characteristics. Mr. Werthmann acknowledged that this is important in order to determine "the type and volume of traffic that will be generated and the routes that they will be using to get to the Facility." (TR 9/25/13A at 28). That data is analyzed in order to determine "what the impact is on the roadway system". (TR 09/25/13A at 28-29). Mr. Werthmann also conducted a capacity analysis to determine the ability of the intersections that will be used by the transfer station traffic to accommodate the traffic flow. (09/25/13A at 40-42, 53; Groot Ex. 8, Slide 31). The area of the study included "the Illinois 120 corridor from Hainesville Road on the east to Cedar Lake Road on the west" and the "Illinois 134 corridor from Illinois 120 to Porter Drive," and also included Porter Drive. (TR 9/25/13A at 22).

Mr. Werthmann admitted that 100% of the 24-ton transfer trailers and 35% of the collection vehicles would travel to and from the proposed Facility via Illinois Route 120, west of Cedar Lake Road – the transfer trailers to and from the Winnebago landfill and the collection vehicles from parts unknown. (TR 09/25/13A at 31-32, 33, 35, 65-67; 68-69; Groot Ex. 1, pp. 6-10; Groot Ex. 8, Slide 21, 23) Based on the number of truck trips identified by Mr. Werthmann (Groot Ex. 8, Slide 25), those percentages reflect a total of 64 to 76 round trips by transfer trailers, and 78 to 94 round trips by collection vehicles.

Mr. Werthmann also admitted that the specific routes being used are themselves one of the ways in which impacts to existing traffic flows are intended to be minimized. (TR 09/25/13A at 32). However, Mr. Werthmann's analysis to the west of the proposed Facility stopped at the intersection of Cedar Lake Road and Route 120. (TR 09/25/13A at 21-22, 35, 55; Groot Ex. 1, pp. 6-16 to 6-22; Groot Ex. 8, Slides 13, 26, 29). Indeed, Mr. Werthmann does not know what routes will be used by the transfer trailers to go to and come from the ultimate landfill, whether that be the Winnebago Landfill or some other landfill. (TR 09/25/13A at 70-72). Nor, for that matter, did Mr. Werthmann provide any information of any kind regarding what routes any of the transfer station traffic would use west of Cedar Lake Road.

However, Mr. Werthmann's testimony showed that Illinois Route 120 is a Class II Truck Route. (TR 9/25/13A at 20). After traveling Illinois Route 120, the trucks would disperse. (TR 9/25/13A at 68-72). There was no testimony that the trucks could not get where they would need to go without staying on roads that were made to handle these types of trucks.

The only testimony offered by any objector concerning this criterion was that of Brent Coulter on behalf of TCH. 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 Illinois Route 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, Mr. 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 end landfill, including Winnebago County Landfill. (TR 9/26/13A at 15, 36).

Mr. Coulter's conclusion that Groot has not satisfied Criterion 6 is based on the absence of routing information beyond the immediate vicinity of the proposed transfer station. Mr. Coulter concluded that the absence of any information beyond Route 120, and how the impact from that traffic had been considered and minimized, did not meet the requirements of Criterion 6. (TR 09/26/13A at 21-22, 24-25, 34-35, 48, 68; TCH Ex. 6, p. 4). However, at no time during the hearing did Mr. Coulter provide any evaluation of these factors or locations himself.

In sum, TCH, and its expert Brent Coulter, argue that the Act and proper traffic planning require that the traffic routes beyond the immediate vicinity must be analyzed. However, no line of demarcation appears to have been set by the courts, or even suggested by Mr. Coulter. The Hearing Officer recognizes that Mr. Coulter has the necessary expertise to render such an opinion related to a possible line of demarcation and an analysis of the possible traffic routes. However, Mr. Coulter never provided any testimony of specific areas where this Facility was not designed to minimize the traffic impact or would cause a problem on the traffic system.

While Mr. Coulter states that the applicant failed to meet its burden, he never showed any particular road or intersection that should be handled in a different manner or that could not handle the additional traffic. Mr. Coulter testified that the evidence provided by the applicant "was not adequate to assess whether or not the travel patterns minimized impact." (TR 9/26/13A at 22). Mr. Coulter has not analyzed whether there is any place on any Class II truck routes east of the Porter Drive, Rt. 120 intersection that would be negatively impacted by an additional 1 to 3 transfer trucks per day. (TR 9/26/13A at. 56). While admitting that there are several ways to get from the site to Winnebago County using all Class II truck routes (TR 9/26/13A at. 55), he

was not aware of any Class II truck routes that would lie between the subject site and any landfill to the west that has existing poor levels of service at any intersection. (TR 9/26/13A at 55-56).

No one from any governmental agencies – or more importantly Mr. Coulter – actually testified that the plan did not minimize the impact on existing traffic flows. The argument that someone else did not meet the burden without showing where the plan actually fails to meet that standard is more speculative than fact in the Hearing Officer’s opinion. Further, while the evidence showed that the landfill which is planned to be used today is the Winnebago County landfill, we do not know what will happen throughout the life of the Facility. Waste could go to any existing landfill or new landfills that may be sited in the future. Hence, to ask the traffic engineers to provide every possible route to every possible future landfill is unrealistic and cannot be what the statute intended. In fact, *Fox Moraine* specifically states 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 the roadways.” 2011 IL App (2d) 100017, ¶ 116 (emphasis added).

Here, that is what was done. Werthmann testified as to the improvements being built at the intersection and the minimization of the impact on the traffic flows at that entrance and the immediate surrounding area. In particular, he looked at the first intersection on each side of Route 120. (TR 9/25/13A at 96).

Against that backdrop, the Hearing Officer finds that Criterion 6 has been met, provided that the Applicant agrees to operate the Facility accordance with the Conditions of Operation set forth in Appendix A.

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

The Facility will not treat, store or dispose of hazardous waste. (TR 9/23/13A at 62). No one even attempted to rebut or contradict Mr. Moose's testimony as to this issue. Accordingly, the Hearing Officer is of the opinion that Criterion 7 has been met.

8. IF THE FACILITY IS TO BE LOCATED IN A COUNTY WHERE THE COUNTY BOARD HAS ADOPTED A SOLID WASTE MANAGEMENT PLAN CONSISTENT WITH THE PLANNING REQUIREMENTS OF THE LOCAL SOLID WASTE DISPOSAL ACT OR THE SOLID WASTE PLANNING AND RECYCLING ACT, WHETHER THE FACILITY IS CONSISTENT WITH THAT PLAN.

Mr. Moose testified that the Facility is consistent with the Lake County Solid Waste Management Plan. (TR 9/25/13A at 131). Lake County's Solid Waste Management 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, citing *SWALCO* 2010 Plan, p. 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 Lake County Solid Waste Management 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 125). The Lake County Solid Waste Management 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 Lake County Solid

Waste Management Plan. Mr. Moose showed how this proposal was consistent with each of the Lake County Solid Waste Management Plan Recommendations concerning transfer stations. (TR 9/25/13A at 126-31).

No witnesses rebutted the testimony of Mr. Moose on this topic. However, TCH now argues that two possible inconsistencies with the Lake County Solid Waste Management Plan exist: (1) whether the sending of waste to landfills outside the County complies with the Lake County Solid Waste Management Plan's intent "to continue to manage as much as Lake County waste requiring disposal as feasible within the borders of Lake County....," and (2) the need for a host agreement between Lake County and the owner of the end disposal landfill.

The first argument raised without any real explanation or follow up. However, it is important to note that the Lake County Solid Waste Management Plan itself suggests that transfer stations be built in Lake County. (TCH Ex. 27 at 4-10 to 4-12). The Application does not have to follow the Lake County Solid Waste Management Plan to the letter, just not be inapposite of it. Given the fact that the Application and the Facility meet a specific goal of the Lake County Solid Waste Management Plan (that being the development of a transfer station), the Hearing Officer believes the Application and Facility are consistent with the Lake County Solid Waste Management Plan in this regard.

As for the second argument made by TCH, that of the need for a landfill host agreement, it is important to note that the language relied upon by TCH is not in the section related to transfer stations but in the section entitled "Landfilling." (TCH Ex. 27 at 4-9). Despite the vociferous and continued arguments of TCH, it is not clear to the Hearing Officer based on the record that any end disposal landfill is certain at this time. Given the fact that the Facility has not

yet been sited, there is plenty of time to enter into a Host Agreement, if necessary, with whatever the end disposal landfill is that may be utilized by the Applicant.

TCH also re-raises the arguments it provided relating to Criterion 2. The Hearing Officer's opinion as to Criterion 2 is hereby reincorporated as to this Criterion 8. Accordingly, it is the Hearing Officer's opinion that the evidence supports a finding of consistency with the Lake County Solid Waste Management Plan and that Criterion 8 has been met.

9. IF THE FACILITY IS LOCATED WITHIN A REGULATED RECHARGE AREA, HAVE ANY APPLICABLE REQUIREMENTS SPECIFIED BY THE BOARD FOR SUCH AREAS BEEN MET.

Mr. Moose testified that the Facility will not be located within a regulated recharge area. (TR 9/23/13A at 52-53). No evidence was submitted contradicting this position. Accordingly, the Hearing Officer is of the opinion that Criterion 9 has been met.

IV. RECOMMENDATION

Against that backdrop, the Hearing Officer finds that the Applicant has met its burden of proof as to each of the nine statutory criteria if the Conditions of Operation set forth in Appendix A are met and followed.



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APPENDIX A

Proposed Conditions of Operation

The following conditions are recommended by the Hearing Officer to be imposed on the Facility as conditions to obtaining siting approval. The Village Board is free to accept these conditions, in whole or in part, or to the extent reasonable, supported by the record and consistent with the Act and the Illinois Pollution Control Board ("IPCB"), impose additional conditions. Should the Village Board determine to approve the Application subject to conditions, the following conditions have been suggested by the Participants and have been agreed to by the Applicant:

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

2. The Applicant shall place a solid fence along the northern boundary the site. This fence shall be placed from the northeast property corner to the eastern edge of the stilling basin located in the northwest corner of the site.

3. The Applicant agrees to use its best efforts to minimize incoming and outgoing traffic during the hours referenced below. The Village shall maintain control of turns at the intersection of Porter Drive and Route 120. The Village should to initially prohibit left turns from Porter Drive to Route 120 from 7:00 a.m. to 9:00 a.m. and 3:00 p.m. to 5 p.m. at a minimum at all times the transfer facility is operating. The Village may, by resolution, modify or eliminate any restrictions at the aforesaid intersection as

circumstances, traffic or roadway conditions warrant. The Applicant shall cooperate with the Village to keep traffic impacts minimized.

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

5. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Facility. The Applicant shall use its best efforts to assure that vehicles hauling waste to, or removing waste from, the Facility shall be suitably *covered* so as to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Facility during hours of operation to collect any litter. In addition, the Applicant shall abide by the litter control plan approved by the Village as a result of the siting process. At a minimum, the Applicant will diligently patrol and remove litter from the Subject Property, all property owned or controlled by the Applicant, and public street and corresponding right-of-way within 1,500 feet of the Subject Property. In addition, the Applicant shall, at a minimum, patrol and remove litter from property within five hundred (500) feet of the aforesaid public streets and corresponding rights-of-way with the permission of the owner of said property, which permission the Applicant will diligently attempt to obtain.

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

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

8. The Applicant shall not be allowed to accept in or ship out municipal waste, recyclables or landscape waste/food scraps via rail at the Facility

9. The transfer station building must maintain a negative air pressure inside of the facility at all times during the operating hours.

10. All plants and trees installed per the landscaping plan shall be replaced in a reasonable amount of time if they die, and shall be of the same approximate size of the deceased plant or tree.

11. If the Applicant obtains control of ownership of the parcel to the east of the subject site, and if it decides to remove the deciduous trees on that parcel such that the natural barrier provided by the trees is no longer sufficient, then the Applicant must install appropriate landscaping along the eastern border of the property that is consistent with the other existing landscaping and screening at the Facility.

12. All transfer trailers must enter the facility eastbound from Route 120 and must exit the facility westbound on Route 120.

13. The Applicant shall be required to contact Lake County Department of Transportation within three months of local siting approval being granted and coordinate with and keep informed Lake County Department of Transportation regarding its roadway improvements.

14. The Applicant must keep the truck doors to the Facility closed, except to allow trucks to enter and exit the Facility during the following hours:

Sunday	12:00AM – 11:59PM
Monday	Before 8:00AM and after 6:00PM
Tuesday	Before 8:00AM and after 6:00PM
Wednesday	Before 8:00AM and after 6:00PM
Thursday	Before 8:00AM and after 6:00PM
Friday	Before 8:00AM and after 6:00PM
Saturday	12:00AM – 8:00AM and 12:00PM – 11:59PM

The Village may, by Resolution, modify the requirement to keep the doors to the Facility closed as circumstances warrant.

15. The Applicant shall limit the annual transfer station throughput on average to 750 tons per day (assuming 280 working days per year = 5.5 days per week x 52 weeks - 6 holidays) with the peak daily amount not to exceed 900 tons per day for a total amount of 210,000 tons in any 12 month period. However, the Applicant can request authorization to increase these limits, and the Village of Round Lake Park may increase these limits by Resolution.

16. All equipment utilized for operations shall be equipped with mufflers or other sound suppressing devices required for compliance with applicable State statutes and regulations.

17. The Applicant shall be required to request that all the Special Conditions imposed by the Village be included as part of the operating permit from IEPA.

The determination of a special condition is reasonable and is necessary must be supported by evidence in the record. *Peoria Disposal*, PCB 06-184, slip op. at 6; *Rochelle Waste Disposal, LLC v. City of Rochelle*, PCB 07-113, slip op. at 21, 27 (January 24, 2008). Further, in granting approval for a site, the siting authority “may impose such conditions as may be reasonable and necessary to accomplish the purposes of section 39.2 and as are not inconsistent with regulations promulgated by the Pollution Control Board (PCB).” 415 ILCS 5/39.2(e); *Stop the Mega-Dump v. County Bd. of DeKalb County*, 2012 IL App (2d) 110579; *Peoria Disposal Company v. Peoria County Board*, PCB 06-184, slip op. at 6 (December 7, 2006). With that in mind, the following conditions are not agreed to by the Applicant, either in whole or in part; however, in the opinion of the Hearing Officer these conditions are supported by the evidence and are reasonable, necessary to accomplish the purposes of Section 39.2 and are not inconsistent with the regulations promulgated by the Pollution Control Board:

1. The operating hours shall be initially limited to 4 a.m. to 8 p.m. Monday through Friday and 4 a.m. to noon on Saturday. It shall be closed on Sundays. The Village shall designate a contact person who can authorize temporary operation outside those hours where Groot is able to justify the need to have extended hours due to *force majeure* events or as circumstances dictate. Once the temporary need for extended hours has been

exhausted, the Facility shall go back to its standard operating hours. However, the Village may, by Resolution, extend the operating hours as circumstances, including but not limited to the operating record, traffic and roadway conditions warrant.

[Based upon the testimony in the record, the Hearing Officer finds that imposing a condition limiting the night time operational hours of the Facility is reasonable given the lack of a showing of any documentary evidence that was provided by the Applicant for the need to operate during the late evening/early morning hours, as well as the fact that limiting noise during the prohibited hours would ensure the minimization of effect on the surrounding area and property values in the surrounding area. Further, the testimony was that the facilities that the experts compared the Facility to did not operate 24 hours a day. (TR 9/24/13B at 65).]

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

[The Applicant has objected to this Condition based on the argument that the Host Agreement (Sections 13 and 16) already addresses these issues. The Hearing Officer does not read the Host Agreement with the Village to already cover these issue. Section 13 of the Host Agreement covers inspections and Section 16 only covers indemnification for personal injury. Accordingly, the Hearing Officer finds it is a reasonable Condition due to the testimony of TCH's witness Mr. McGinley and the lack of conclusive evidence in the record that no such noise or odor emissions will be noticeable beyond the boundaries of the Facility.]

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

[The Applicant has objected to this Condition based on the argument that the Host Agreement (Section 25) already addresses this issue. The Hearing Officer does not read the Host Agreement with the Village to already cover this issue. Section 25 only relates to the replenishment of costs and fees related to the Village's cooperation with the Applicant's efforts to obtain approvals and permits. This Condition seeks the reimbursement of funds beyond those in the Host Agreement but is limited to allow reimbursement only to those circumstances created by actions by the Applicant based upon the Conditions set forth herein, such as the ability of the Applicant to request longer hours or additional tonnage. Accordingly, the Hearing Officer finds it is a reasonable Condition based upon the record.]

Dated: December 2, 2013