

**City of West Chicago, Illinois
Before the City Council**

Applicant's response to motion to dismiss – Notice

415 ILCS 5/39.2 (b) requires applicants for local siting approval to give timely pre-filing notice to nearby property owners. Such service must be “either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”

At issue is Applicant's service on the owner of parcel 01-32-506-001. PWC (Protecting Waste Connections) claims that Applicant failed to identify the owner of the parcel and that the manner of service was improper. Those claims are wrong. PWC's motion is supported by 5 exhibits, and the important ones are not authentic tax records of DuPage County. The owner of the subject parcel is first identified in exhibit 1, which is an old annexation record of the city of West Chicago, which proportion to show that the subject parcel in 2003 was owned by EJ&E railroad. West Chicago's old annexation records are not authentic tax records of the county, and no one could reasonably expected to search for or find this record. This is also the only exhibit attached to the motion which directly links the subject parcel to EJ&E railroad.

The tax bills referenced in Exhibit 2 and 5 do not contain the parcel number so they don't establish the link. PWC argues that the Applicant should have known that the tax bills relate to the subject parcel because they indicate that some West Chicago taxing districts are involved. There are many railroads in West Chicago, so this argument fails.

The other major exhibit relied upon in the motion is a set of records from the Illinois Department of revenue (Exhibit 3), once again not authentic tax records of the County.

Instead of looking at unrelated records, Applicant did its search in the conventional way, starting with a review of the plat maps to identify nearby parcels. This review quickly led to the “DuPage county Illinois 2022 Real Estate Tax Assessment Parcels Map” for the west half of the north east quarter of section 32 in Wayne Township. This map shows the eastern portion of the proposed Transfer Station property and the parcels immediately adjoining it. This map is identified as 1-32B-W, it is maintained by Jean Kaczmarerk, the DuPage County Clerk. It is an authentic tax record of DuPage County. It has been admitted into evidence.

The subject parcel is identified on the aforesaid tax map, and the owner is also identified, that owner being Canadian National Railway, with a parenthetical reference to EJ&E. A bit of research disclosed that EJ&E was wholly acquired by Canadian National on December 31, 2012, and that it ceased to operate as an independent entity after that date. Accordingly, the multiple statements in PWC's motion that “there is no

indication in the authentic tax records of DuPage County“ that Canadian National owns the subject parcel are wrong. Hopefully this false statement was made inadvertently and not for the purpose of misleading anyone.

Applicant chose to personally serve Canadian National at its corporate headquarters in Montreal. PWC argues that service should have been made on the EJ&E office located at 17601 S. Ashland, Homewood Illinois. A review of that address reveals it is actually not even owned by EJ&E, but is instead a local office of the Canadian National Railway. The photo evidence reveals that the building at that address has the CN logo on the side.

PWC next takes issue with the manner of service, use of UPS delivery. Despite the fact that a signed receipt of actual, personal service has been filed, PWC argues, without any legal authority or support, that this is not personal service. Section 39.2(b) does not contain any standard or guidance for how this personal service needs to be effected. Supreme Court rule 11 defines personal service as “Delivering the document to the attorney or party personally.” It does not specify the manner of the personal Delivery, and the conduct defined in this Rule is exactly what occurred here. Caselaw interpreting the service requirement of section 39.2 has held that certified mail service is deemed complete when the envelope is delivered to the post office, regardless of whether it is claimed by the intended recipient. Actual service as occurred here has to be better than the constructive service allowed in the caselaw, especially when the purpose of the statute is to make sure the nearby landowners get actual notice.

For the foregoing reasons Applicant prays that the motion to dismiss be denied.

Respectfully submitted:

Lakeshore Recycling Systems., LLC

By George Mueller, its Attorney