

City of West Chicago, Illinois
Before the City Council

Proposed Findings of Fact and Law

Applicant, Lakeshore Recycling Services, LLC, (LRS) filed its application for siting approval of a new solid waste transfer station on Sept. 16, 2022. The proposed site occupies 27.66 acres in an industrial area on the northwest side of the City and is located at 1655 Powis Road, West Chicago, DuPage County, Illinois, 60185. Pursuant to 415 ILCS 5/39.2(b) proper notice was given to all property owners within 400 feet of the subject property.

An issue was raised regarding service on the Canadian National Railway. Protect West Chicago (PWC) argued that the Canadian National Railway did not own the railroad track property adjacent on the east side to the subject site, that the owner of those tracks was the EJ&E railroad (EJ&E), and that we had failed to comply with the service requirements of the statute. In response, LRS provided explanatory testimony from John Hock, and offered applicant's Exhibit 5 and 6. Exhibit 5 is an official tax record of DuPage County, being Map page 1-32B-W of the County Clerk's official tax/plat maps. As indicated on the face of the map, these maps show the "DuPage County, Illinois, 2022 Real Estate Tax Assessment Parcels." This map affirmatively identifies the owners of two railroad track properties directly east of the subject site, one owned by Union Pacific Railroad, and the second owned by Canadian National Railway.

Applicant's research further determined that the EJ&E railroad had been purchased in its entirety about 10 years ago by Canadian National Railway.

Applicant's Exhibit 6 is a photograph of the building where PWC claims EJ&E should have been served. What that photograph reveals is that this building is actually owned by Canadian National Railway. PWC then argues that this property owner was not served by either registered mail or in person. In fact, the railroad company was personally served by parcel delivery service at its home office in Canada, and a signed receipt of service was attached to the siting application. Section 39.2(b) specifies, who must be served, but not where they must be served, or the manner of personal service. The evidence is indisputable that the property owner was correctly identified and was actually served at its home office. This satisfies both the spirit and letter of the law.

Applicant filed a written response to PWC's motion to dismiss, and the same is incorporated in its entirety by reference herein.

Finding 1 – the applicant complied with the service requirements of section 39.2(b).

Public hearing on the application, commenced on January 3, 2023, and continued for five evening and two afternoon sessions, concluding on January 19. For all sessions, there was adequate space for the participants and the public. Public comment was allowed without restriction. The parties that registered as objectors were allowed to cross-examine witnesses, and present their own evidence. The only objection about the manner in which the public hearing was conducted was that the Spanish translation was not available. The law does not require Spanish translation of these public hearings.

Finding 2 - the public hearing was conducted in a fundamentally fair manner.

John Hock, a professional engineer in Illinois, and five other states with 35 years experience in the solid waste industry, testified that the proposed facility is necessary to accommodate the waste needs of the area it is intended to serve. Initially Mr. Hock provided background on the applicant, LRS, and described the existing operations at the site. LRS is a local, privately owned company with over 2000 employees and 60 locations in the Midwest. It employs approximately 125 personnel at its West Chicago facility. Much of what the applicant proposes already occurs at the 27.66 Acre West Chicago facility. In addition to structures and services already at the site, LRS proposes to build a transfer building for solid waste and single stream stream recyclables, a building for the solidification and transfer of Hydro excavation waste, and a second scale for weighing vehicles. The facility will also continue to receive construction and demolition debris consistent with its currently permitted operations.

Mr. Hock described the transfer process where loads of incoming waste are transferred to larger vehicles for delivery to remote landfills, in this case, the Eco Hill landfill in Atkinson, Illinois. Outbound traffic would be routed north to Route 64, west to Kirk Road and south to interstate 88. This route avoids residential areas in West Chicago and Saint Charles.

Additionally, the facility would receive electronic waste at no cost from local residents.

Mr. Hock identified the service area for the proposed Transfer Station, the West DuPage RTS, which consists of the western two-thirds of DuPage County (west of I-

355), two townships in northern Will County and the eastern portion of Kane County. There are two transfer stations currently in the service area, the Dukane, Transfer Station, and the Batavia Transfer Station.

From a purely mathematical perspective, those transfer stations are sufficient to accommodate the waste generated within the service area. However, the need analysis in this case is not based on a simplistic formula of waste generation, compared to disposal or transfer capacity. In this case need is based on competitive, economic, and environmental factors. Mr. Hock explained that the two existing transfer stations in the service area are owned by vertically, integrated national companies, which use their duopoly to drive up prices and choke off competition. He explained that as an example, Waste Connections and Republic services previously had an asset swap, the result of which is that Waste Connections does not compete with Republic east of I-355 and Republic does not compete with Waste Connections west of I-355. These companies can do this because they are vertically integrated, meaning they own hauling routes in the community, the transfer station to which that community's waste is taken, and the landfill to which the material is taken from the transfer station. Mr. Hock demonstrated by citing the decline in the number of competitors, how vertical integration has allowed the national publicly owned companies to control pricing and decrease competition.

Hauling contracts have to include the cost of ultimate disposal as a price component, so that the smaller companies, like LRS, which do not have complete vertical integration, are unable to set their own prices and are at a competitive disadvantage. These competitive disadvantages are of course, passed on to the communities and ultimately the retail customers. The merger between Waste

Management and Advanced Disposal has driven another major player out of the market and resulted in price increases to LRS. LRS has provided letters of support from 11 other waste haulers, and four municipalities decrying the reduction in competition, and the resulting increase in prices for everyone.

The first benefit of the West DuPage RTS identified by Mr. Hock is an increase in competition and transfer capacity. Mr. Hock pointed out that just the threat of increased competition has significantly lowered disposal costs for the public in West Chicago. Increased operational flexibility, including longer operating hours, are an additional benefit.

With regard to Hydro excavation waste, Mr. Hock indicated there is an actual need for additional transfer capacity closer to where the Hydro excavation waste is generated, and the West DuPage RTS would meet that need. There is an increasing need for this disposal capacity.

Mr. Hock pointed out how the proposed Transfer Station would facilitate increased recycling in the service area because of, among other things, more single stream recycling, more efficient C&D recycling, and the courtesy drop off for recyclables and electronic waste. Mr. Hock also identified multiple direct benefits to the city of West Chicago and two DuPage County. Lastly, Mr. Hock pointed out that the new Transfer Station would reduce environmental impact to the city of West Chicago and the area by decreasing the travel distance of municipal solid waste and Hydro excavation collection vehicles.

Cross examination consisted, primarily of challenging, computations, and pointing out minor inconsistencies. However, the cross examination did not even come

close to establishing the lack of necessity for the facility. Instead, objectors emphasized the fact that there appeared to be adequate physical capacity to deal with the amount of waste generated in the service area. That's a point which LRS does not dispute, but the approach of objectors misses the main argument, namely, that increased competition, and its benefits and improved environmental impacts, are sufficient to prove need. The truth is that the Transfer Station need analysis has undergone a quantum shift in the last 10 years and is no longer based on the traditional capacity versus generation analysis.

Applicant's approach here is very similar to the evidence in the Moen Transfer Station case in Rockdale.

Both the Pollution Control Board, and the appellate court affirmed the new approach, and the village's finding that need had been established. The Third District held: "The proposed facility will increase competition to the service area and increase transfer capacity. It will also provide benefits to the Village of Rockdale pursuant to the host agreement, provide benefits to Will County as more waste will be disposed at Prairie View RDF, have longer operational hours than the Joliet Transfer Station, and reduce environmental impacts." Rejecting arguments, similar to those made by the opponents here, the court further held: "Petitioners' argument that ERDS failed to meet criterion (i) because it did not conduct a transfer capacity analysis of the transfer stations is unpersuasive. Respondents do not need to show "absolute necessity" for a new facility. Rather, respondents must show an "urgent need" for the facility and a "reasonable convenience of establishing it." *Id.* Respondents have demonstrated this in

the evidence presented in the record.” Will Cnty. v. Vill. of Rockdale, 2018 IL App (3d) 160463, ¶ 59, 121 N.E.3d 468, 484

This new approach to analyzing need for transfer stations is totally consistent with the DuPage County solid waste management plan, which consistently mentions the potential benefits of more competition

Objectors’ evidence regarding the overlap of competing Transfer Station service areas was interesting, but did not make a point. It did not consider relative distances from those Transfer Stations, and it was based on very dated information. It certainly did not address the benefits of increased competition or reduced highway mileage for garbage trucks. John Lardner, who advocated this concept, admitted he did not even consider competitive factors or environmental impacts in reaching his conclusions. As such, he completely missed the point of Applicant’s presentation, and his conclusions about the proof of need have no validity.

Finding 3 - the west DuPage RTS is necessary to accommodate the waste needs of the area. It is intended to serve.

John Hock testified that the West DuPage RTS is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. Some of the proposed operations are already taking place, so this is not a revolutionary plan. This is a state of the art facility with the best available current technology to avoid or minimize potential problems. For example, odors will not be masked; instead they will be eliminated by active filtration in the ventilation system which will have multiple complete air exchanges every hour.

The facility proposes to handle a maximum of 1950 tons per day of material, of which no more than 650 tons per day will be municipal solid waste, no more than 300 tons per day will be hydro excavation waste, no more than 750 tons per day will be construction or demolition debris (C&D), and no more than 250 tons per day will be single stream recyclables. The facility will not accept hazardous waste. Much of that material is already being hauled by LRS. The C&D is being handled at the existing site which is permitted as a C&D recycling and transfer facility. Much of the municipal solid waste is being hauled outside the service area.

The comparatively large size of the site and the large size of the transfer building allows comfortable and safe handling of the anticipated material volumes. Objectors used video evidence from other transfer stations to dispute the speed at which garbage trucks could be unloaded, but LRS's own video evidence, submitted in rebuttal, demonstrated that unloading could occur even faster than the conservative numbers offered by the applicant.

Much of the cross examination on this criterion involved objectors' use of early pre-filing review comments from a third-party engineering firm that had been retained by the City of West Chicago (city). The only thing objectors demonstrated with this cross examination was their fundamental lack of understanding of the pre-filing review process. Mr. Hock explained that pre-filing review is intended to be a dialogue where different opinions are frequently exchanged, good ideas are accepted and bad ideas are discarded. The point of the pre-filing review is to improve the final product, which is filed with the city. Early comments by pre-filing reviewers should be given no weight in evaluating the final product.

Mr. Hock testified that the proposed site met all relevant location standards, including the statutory thousand foot setback requirement from residential land uses. At issue are the railroad tracks immediately east of the site. 415 ILCS 5/22.14 states: “No person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling,..”

The western railroad property is currently owned by the Union Pacific Railroad and the eastern railroad property is currently owned by Canadian National Railway. The railroads have been present for over seventy years, and remain active today. The properties are each approximately 100 feet wide, have steep banks that rise up approximately 10 feet above surrounding grade, and have no nearby vehicle access. The lot requirements for a residence in an ER-1 district include the following:

- Minimum lot area: 40,000 square feet;
- Minimum lot width: 100 feet at front, lot line and 200 feet at building line; and
- Minimum setbacks:
 - o Front yard: 50 feet;
 - o Corner side yard: 50 feet;
 - o Side yard: 30 feet;
 - o Rear yard: 50 feet; and
 - o Maximum lot coverage: 30%

The physical features of the property, the lack of access, and the above lot requirements make it physically impossible to construct a residence on the railroad property. Accordingly, this zoning classification on an active rail right of way seems to

make no sense. The City of West Chicago previously explained this apparent contradiction and confirmed the impossibility of residential development when they stated in a recent letter:

“Both the Union Pacific Railroad and the Canadian National Railroad operate parallel tracks on land running northwest to southeast, east of and adjacent to the subject property. The right-of-way for these rail lines carries a remnant zoning classification of Estate Residential, which is the classification assigned upon annexation. No effort was made to reclassify the property. As an active rail corridor, there can be no residential development. Furthermore, there is insufficient room to construct homes on one-acre minimum lots and no convenient way to access what would be a narrow string of properties. Residential development on this property is physically impossible. As such, the City concludes that the 1,000-foot setback requirement in 415 ILCS 5/22.14(a) is not applicable.”

Applicants have filed a detailed legal memorandum on this issue, demonstrating that legal and physical impossibility of residential development render the residential zoning setback requirement inapplicable in this case. The Pollution Control Board and Appellate Courts have agreed.

Joe Abel, a longtime planner in DuPage County, testified on behalf of PWC the siting Application does not meet the residential setback requirement. However, the substance of his testimony actually supported Mr. Hock’s conclusion. Abel admitted that with current conditions the railroad property at issue can never be developed into residential use. In order for residential development to occur, the railroad would have to

abandon the tracks, AND adjacent real estate would also need to be rezoned for residential purposes. The City Council's decision must be based on current zoning and current conditions, and not on speculation on what might occur in the distant future.

Regardless, LRS has submitted, as part of post hearing public comment, a letter from Canadian National Railway confirming the railroad's commitment to continue to use this very busy rail line. Parenthetically, this letter also confirms the Canadian National's previous acquisition of EJ&E and the fact that Canadian National received notice of the pending siting proceeding and they have not commented regarding the proposed West DuPage RTS.

Finding 4 – The siting application is consistent with the setback requirements of 415 ILCS 5/22.14.

The proposed site is across Powis Rd from the DuPage Airport. This proximity got the objectors' attention, and there was extensive cross examination on the subject, with the innuendo that this is a safety issue. Mr. Hock testified that LRS and the DuPage Airport Authority (airport authority) had previously entered into an agreement wherein the airport authority requires LRS to take a number of actions to mitigate potential wildlife hazards to air operations, and the airport authority found that the Transfer Station would not pose a threat and could operate safely despite the proximity. These conclusions were reviewed and approved for the airport authority by an outside engineering firm.

Both parties focused on FAA Advisory Circular 150/5200-33C. This circular finds that fully enclosed waste transfer stations can operate safely in close proximity to airports. The far western portion of the proposed site, where there will be no buildings

or active transfer operations, is within the airport runway protection zone. Despite this, the airport authority still found that it could safely coexist with the Transfer Station. It should also be noted that the FAA circular states at the beginning that it is not mandatory and not a regulation.

Objectors then challenged whether the proposed transfer station would be fully enclosed. The facility will be equipped with fast opening doors, which will only open when vehicles are entering or leaving. Incoming trucks will discharge indoors and transfer trailers will tarp indoors, using an automatic system. In a vain attempt to make their point objectors presented video of operations at older LRS transfer stations which have completely different designs, including an LRS facility on California Avenue in Chicago. This Chicago facility admittedly, is a three sided facility, so therefore always open. Objectors were not able to successfully challenge Mr. Hock's conclusions.

The remainder of LRS's design and operations plan was not seriously challenged. The stormwater management plan and features have been previously approved by DuPage County and West Chicago as part of the recent PUD amendment process. In summary, Mr. Hock concluded that the proposed operations will allow for improved recycling of C&D, more efficient management and transportation of recyclables to a MRF, additional capacity and more efficient transportation of hydro excavation waste, and additional capacity and more efficient transportation of municipal solid waste to a final disposal facility.

Finding 5 – The West DuPage RTS Is so located, designed and proposed to be operated that the public health safety and welfare will be protected.

Dale Kleszynski, a certified real estate appraiser and longtime member of the appraisal institute testified that 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. He used historic analysis and photographs to confirm that the property is located in an industrial area on the northwest side of West Chicago. Zoning in the area is primarily industrial and open space. The property is naturally buffered by the DuPage airport on the west, a large multilane roadway (Rte. 64) on the north, and the railroad right of way on the east. This is consistent with Mr. Hock's testimony that the transfer building will not even be visible from Powis Road. This project constitutes an industrial use in a historically industrial area, and nobody seriously disputed that conclusion.

Mr. Kleszynski also testified that developing the property as a solid waste Transfer station is the highest and best use of the property. The property meets the four pronged test of highest and best use: legal permissibility, physical possibility, financial feasibility, and maximum productivity. He opined that developing property to its highest and best use generally does not negatively impact the value of surrounding properties.

This conclusion was challenged by Kurt Kielisch, who testified on behalf of PWC, that he does not agree with the idea that the value of surrounding properties will not be negatively impacted by highest and best use development. His suggestion that sales history would help support a conclusion about property value impact is impossible in this case because a competing Transfer Station located nearby has been present for over 20 years. Kielisch had no opinion about compatibility with the surrounding area, and he

frankly undermined his credibility by stating he is not an expert in compatibility with surrounding areas, and its affect on the value of other properties. He similarly did not opine that the proposed transfer station would negatively impact the value of surrounding properties.

Mr. Kleszynski has submitted a letter in post hearing public comment which refutes the conclusions and methodology of Kielisch.

Finding 6 - the West DuPage RTS 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.

John Hock testified that 0.05 acres of the subject property in the north east portion is in the floodplain. However, the site will be adequately flood proofed by constructing buildings with floor elevations that are approximately 4 feet higher than the base flood elevation. DuPage County has already issued a stormwater certification for the site. No one took issue with this conclusion.

Finding 7 - the West DuPage RTS is located outside the boundary of the 100 year flood plain, or is flood proofed.

Mr. Hock described how the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. This plan includes both prevention of accidents and response. In the event they occur, there will be a safety officer on site at all times. All employees will be trained in accident prevention and response. All buildings will be equipped with wet or dry pipe fire suppression systems. A water source is located on site, and site access has been designed so as to accommodate emergency services, including fire trucks.

These conclusions were not challenged.

Finding 8 - the plan of operations for the West DuPage RTS is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

Michael Werthmann, a traffic engineer with over 33 years experience in traffic engineering for both the public and private sector, who has testified on over 25 solid waste related projects, reviewed traffic patterns to, and from the facility. First he looked at existing conditions, including physical and operating characteristics of the roadway system. Secondly, he looked at facility traffic characteristics, and determined the type and volume of traffic generation by the facility. Then he analyzed the impact of the facility generated traffic on the roadway system.

Next, Mr. Werthmann conducted traffic counts at the relevant intersections near the proposed facility, including counts for the turning movements. Traffic counts were conducted in 2019, and post pandemic counts were conducted in 2022. To get a worst case analysis, he used the 2019 counts which showed more traffic. He also factored in future growth in background traffic.

Mr. Werthmann observed that a large percentage of the traffic generated by the west DuPage RTS will consist of LRS trucks and containers that are already traversing the area roadway system. When reviewing the impact of site generated traffic on the local roadway system, he used the morning and afternoon peak hours. He concluded that the key intersections, which currently operate at a good level of service will continue to do so after development of the Transfer Station. The only road improvements needed for this project are planned improvements at the access drives to

the facility. He concluded that the traffic patterns to and from the facility are so designed as to minimize the impact on existing traffic flows.

Cross examination minimally challenged the witness's observations regarding the growth in projected background traffic on North Avenue. Mr. Werthmann responded that his conclusions are so conservative, all the projected growth on North Avenue is effectively factored in.

The only other evidence presented by objectors on this criterion related to diesel fumes being generally unhealthy, especially if you are standing in the roadway, where they are being generated. This testimony obviously didn't have any numbers or other specifics. It may or may not be true, but it is certainly not relevant in this case, particularly since most of these vehicles are already on the roadway system.

Finding 9 – The traffic patterns to, and from the West DuPage RTS are so designed as to minimize the impact on existing traffic flows.

Mr. Hock testified that the facility will not be receiving, storing or transferring, hazardous waste. In fact, he went into significant detail about how hazardous and other unacceptable wastes will be screened out, identified and removed. His conclusions were not challenged.

Finding 10 – the facility will not be treating storing or disposing of hazardous waste.

John Hock testified that the proposed facility is consistent with the DuPage County solid waste management plan. He first reviewed the history of solid waste management planning in DuPage County, including the various five year updates, especially as they related to the possibility of developing Transfer Stations in the county.

The solid waste management plan aggressively encourages recycling, and for all the reasons previously identified, the proposed west DuPage RTS will promote more recycling, both of construction and demolition debris, but also other materials, including electronics and single stream recyclables.

There is only one active Transfer Station in DuPage County, and the solid waste management plan consistently has recognized the need for more transfer stations. While the 2007 Plan update suggested the southern portion of the County as a location for an additional Transfer Station, more recent updates, have dropped that location recommendation, even though they continue to suggest the need for additional transfer stations in the county.

Most notably, DuPage County has executed a secondary host agreement with LRS, and they have found that the proposed West DuPage RTS appears to be consistent with the county solid waste management plan.

In response, John Lardner offered the ridiculous testimony for PWC that the phrase ‘appears to be consistent’ is not equivalent to a finding of consistency and therefore he concludes that the proposed site is not consistent with the solid waste management plan. Lardner, who also testified for PWC on need acknowledged that the Plan repeatedly mentions the NEED for and benefits of more competition in the waste disposal sector, and he also admitted that the 2007 plan update, on which he relied so heavily, also recommends as many as 3 to 5 additional transfer stations in DuPage County.

Finding 11 - the proposed West DuPage RTS is consistent with the DuPage County solid waste management plan as amended.

John Hock testified that there are no regulated recharge areas in the vicinity of the proposed site and, therefore, this criterion is not applicable. His conclusions were not challenged.

Finding 12 - the facility will not be located within a regulated recharge area.

Post hearing public comments did not present new matters that require a response. The comments were opposed to the project, but the comments generally suggested that their authors had not attended the hearing or carefully reviewed the application. Many of the comments used the same form letter. It is no secret that pollution control facilities, no matter how well designed, are often locally unpopular land uses, which is why the PCB and the Courts have emphasized that decisions must be based solely on the evidence.

LRS has seen proposed special conditions of approval prepared by the City Staff. While LRS believes that the evidence justifies an unconditional approval, LRS does not feel any of the proposed special conditions are patently unreasonable or excessively burdensome. Accordingly, LRS represents that it will not appeal from the imposition of any of the contemplated special conditions which it has reviewed.

For the foregoing reasons, LRS respectfully prays that the West Chicago City Council approve the siting application as submitted.

Respectfully submitted:
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