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The process of siting a municipal waste transfer station or landfill

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Siting municipal or county waste transfer stations and landfills presents unusual problems for local governments. The applicable statutes seem straight-forward, but case law developed by the courts have made the process extremely technical in nature. Municipalities or county boards must exercise extreme caution and retain expensive consultants, through extremely lengthy and costly hearings, to avoid the pitfalls of reversible error.

Statutory requirements

The rules of siting landfills and municipal waste transfer stations (known as "regional pollution control facilities") are set out in section 39.2 of the Illinois Environmental Protection Act. If the siting is taking place in an unincorporated portion of a county, the Act vests jurisdiction with the county board; if the siting is taking place within the corporate limits of a municipality, the Act vests jurisdiction with the applicable municipality. The applicant submits its application with the county or municipal board. The application must have "sufficient details" describing the proposed facility and must demonstrate compliance with 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 such 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 the surrounding property;
4. The facility is located outside the boundary of the 100-year flood plain;
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, 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 Board for such areas have been met.

In addition, when considering Criteria 2 or 5, the applicable board may consider, as evidence, the previous operating experience and past record of convictions or admissions of violations of the applicant in the field of solid waste management. The Act provides that a public hearing must be conducted no sooner than 90 but no later than 120 days after the application is filed. Public notice must be given in accordance with the Act both by delivery of notice to the surrounding neighbors, appropriate General Assembly members and publication in a newspaper.

Cities and counties may adopt ordinances implementing additional or more stringent siting rules. However, the requirements of the Act must, as a minimum, be incorporated into any siting ordinance. In addition, local rules adopted by the municipality or county cannot supplement the criteria. Section 39.2 is the exclusive siting procedure to be used by the governing body in making its decision on a siting request.

Public hearings

When the county board or municipal body conducts the hearing, it is not acting in its legislative capacity. Rather, it is acting in an adjudicative capacity, also known as a "decision maker"--similar to acting like a judge. Therefore, hearings before the governing body must be "fundamentally fair," in a legal sense. This standard requires that once the application is filed, similar to a court proceeding, private board member contact with the parties is prohibited, conflicts of interest must be disclosed and avoided, and bias of the decision makers must be eliminated. Boards are presumed to act fairly and objectively. However, if, under the facts of the case a disinterested observer would conclude the board had pre-judged the facts, bias and prejudice will be found and the decision of the board will be reversed. The hearing is, in every sense, a trial, and the County Board or Municipal Board members are the judges.

Host agreements

In many situations, the applicant approaches the applicable governing board

with a proposed "host agreement." The terms of the host agreement include certain conditions of operation and payment of "host fees" in the event that the application is actually granted. Common concerns addressed in host agreements are reflected in a generic host agreement drafted for DuPage County and include the following:

1. Term of the agreement;
2. Type of waste deemed acceptable;
3. Municipal indemnification provisions;
4. Fee payments to the governing body, as well as fees imposed on facility users;
5. Recycling requirements;
6. Verification of facility usage;
7. Inspection procedures;
8. Insurance requirements; and
9. Enforcement provisions.

Case law has established the validity of these host agreements. Surprisingly, courts approve entering into these host agreements before filing of the application. A decision being made by the governing board will not result in a reversal of the board's decision later granting the application due to bias and pre-judging the case because of the pre-filing negotiation of a host agreement. Notwithstanding case law, where pre-approval of an agreement has occurred, objectors easily make public arguments that the governing board has improperly pre-judged the application in favor of the applicant. Objections can be expected that the Board is biased, can no longer be impartial, and the hearings will be labeled "fundamentally unfair." This scenario can create politically difficult and uncomfortable situations for the governing board handling the hearing process.

Local political pressure

Governing boards receiving applications for waste transfer stations and landfills cannot underestimate the power of local objectors influencing their decisions when dealing with the issue of handling garbage within their municipal limits. Everyone is familiar with the phrase NIMBY ("not in my backyard"). Although objectors may agree that a waste transfer station is needed, it will most certainly not be "needed" in the location suggested by the applicant. Objections will no doubt be made by a neighboring property owner or local governmental body. Siting landfills and transfer stations is difficult enough without having a local body, whether it be a county board or a municipality, being forced to make the difficult decision. Often today, people advocate deregulation and returning decisions to the local governments. However, because of the local pressure always exerted during the siting process by objectors who are always fervent in their positions, displaying bottles of yellow water, bags of garbage, or worse, decisions on siting waste transfer stations and landfills would be more objective if made by the Illinois Environmental Protection Agency. The General Assembly should consider amending the Act to divest siting jurisdiction from local entities, returning it to the IEPA and simply provide for-party status to the relevant local government. ■