

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

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

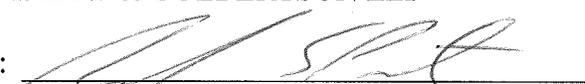
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PLEASE TAKE NOTICE that on October 8, 2013, there was filed electronically
**RENEWED MOTION TO STRIKE THE TESTIMONY AND REPORT OF BRENT
COULTER SUBMITTED BY TIMBER CREEK HOMES, INC. PURSUANT TO FOX
MORAINE v. UNITED CITY OF YORKVILLE, 960 N.E.2d 1144, 356, Ill.Dec. 21 (2d Dist.
2011)**, a copy of which is hereby attached and served upon you.

Dated: 10-9-13 Groot Industries, Applicant

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DIST. 2011)**

NOW COMES GROOT INDUSTRIES LAKE TRANSFER STATION, the Applicant,
by and through its attorneys, HINSHAW & CULBERTSON LLP, and files this Renewed
Motion to Strike the Testimony and Report of Brent Coulter Submitted by Timber Creek Homes,
Inc. pursuant to *Fox Moraine v. United City of Yorkville*, 960 N.E.2d 1144, 356 Ill.Dec. 21 (2nd
Dist. 2011).

I. INTRODUCTION

During the 415 ILCS 5/39.2 public hearing for the transfer station proposed to be sited in
the Village of Round Lake Park, Applicant, Groot Industries, objected and motioned to strike the
report and testimony of Brent Coulter, P.E. offered by Timber Creek Homes, Inc. pursuant to
Fox Moraine LLC v. United City of Yorkville, 960 N.E.2d 1144, 356 Ill.Dec. 21 (2d Dist. 2011).
(9/26/13 TR, pgs. 14-21). Hearing Officer Luetkehans gave the parties the opportunity to draft a
trial brief concerning the “effect of the *Fox-Moraine* decision on Criterion vi relating to the
extent of the traffic patterns to be considered by the Village.” 9/26/13 TR, pg. 21. That decision
clarified the prior decisions of *Tate v. Pollution Control Board*, 188 Ill.App.3d 994, 1024, (1989)
and *McHenry County Landfill, Inc. v. Environmental Protection Agency*, 154 Ill.App.3d 89
(1997) to make absolutely clear that an Applicant does not need to provide evidence of the exact
routes that will be used to and from the facility nor establish that every arterial road will not be

affected. Rather, an Applicant need only submit evidence that it designed the entrance to minimize the impact on the roadways. In this case, the Applicant, through its witness Michael Werthmann, P.E., P.T.O.E., not only provided evidence that the design of the facility was such that its entrance and exit would minimize the impact on the roadways but further provided evidence that the impacts on its traffic flows would be minimized by its proposed operation of the facility, its proximity to the Groot North Facility, certain proposed roadway improvements which the Applicant would fund, and restrictions imposed upon the location that truck traffic can access the arterial roadway and the times that left turns can be made. Because Mr. Coulter used a standard which is contrary to Criterion vi and Illinois law, his testimony should be stricken and based on the testimony of Mr. Werthmann the Village should find this criterion has been met.

DISCUSSION

The *Fox Moraine LLC v. United City of Yorkville* case involved many of the same traffic witnesses who testified in this case. In the *Fox Moraine* case the Applicants witness was Michael Werthmann, P.E., P.T.O.E., who is a professional engineer and certified professional traffic operations engineer with 23 years of experience in traffic engineering and who has provided testimony in 21 solid waste related projects. He testified on behalf of Groot in this matter.

In *Fox Moraine*, Mr. Brent Coulter testified on behalf of an objecting party that “the impact of the landfill traffic would adversely affect ‘sensitive areas’, such as downtown Yorkville and downtown Plainfield.” *Fox Moraine*, 960 N.E.2d at 356 Ill.Dec. at 58. In addition another traffic engineer testified on behalf of the Village of Plainfield that the proposed landfill would result in additional truck traffic to downtown Plainfield which was contrary to one of its goals to eliminate non-local traffic through its downtown area. *Id.* The Second District considered and rejected an Illinois Pollution Control Board decision and analysis because it

accepted Mr. Coulter's opinion. The Second District explained that "the Act does not require elimination of all traffic problems." *Id.* at 1181, 356 Ill.Dec. 58 (siting *Tate*, 188 Ill.App.3d at 1024). Furthermore, the Second District held that "nor is the Applicant required to provide evidence of exact routes, types of traffic, noise, dust, or projections of value and hours of traffic, because the Act does not require a traffic plan but rather a showing that the traffic patterns to and from the facility are designed to minimize impact on existing flows." *Id.* (emphasis added). Finally, the Second District noted that an Applicant "did not have to establish that every arterial road would not be affected, just that it designed the entrance to and from the facility to minimize the impact on roadways." *Id.* At 1182, 356 Ill.Dec. at 59. The Second District explained that because downtown Plainfield was "quite a distance from the planned landfill site (approximately 15 miles) and since [the Applicant] was not even required to submit planned traffic routes, we question the Board's analysis." Mr. Coulter's opinion should be rejected here as well as he has again offered opinions that over 60 miles of roadway routes should be identified and studied and that study must show "no impact" to any roadway when Illinois law does not require such an analysis.

The *Fox Moraine* case could not be any more clear that all potential routes from, or to, a proposed facility need not be identified. Nonetheless, Mr. Coulter's report provides "the application states that all waste transfer semi-trucks will exit onto IL 120 westbound, but provides no recommended routing over the next 64 mile travel distance to the Winnebago County landfill". TCH Exhibit 5, pg. 4. Mr. Coulter asserts that "the routing of the waste transfer trucks between the proposed waste transfer station and the Winnebago Landfill should be addressed more fully, more specific route delineation, in the [Werthmann] traffic study." *Id.* He then ultimately opined "based on the findings above, it is my professional opinion that the Groot Waste Transfer Siting Application has not demonstrated that no adverse traffic impact will

be created, or it can be mitigated, in accordance with Criterion vi of Section 39.2 of the Illinois Environmental Protection Act.” *Id.* at pg. 5.

During the Section 39.2 siting hearing the Attorney for Groot, Mr. George Mueller, objected to Mr. Coulter testifying concerning his criticism that the Werthmann report only discusses the routing for a short distance west of Porter Drive when in Coulter’s opinion there should have been additional discussion of the routes taken to the Winnebago Landfill over 60 miles away. Mr. Coulter admitted that he has never done a traffic study for a 62 mile radius (9/26/13 TR pg. 30) and admitted that his report does not use the exact language of Criterion vi which only requires that the traffic patterns to and from the facility are so designed to minimize the impact of existing traffic flows. 9/26/13 TR 31-34. Furthermore, Mr. Coulter admitted that his findings were that the Groot application had not demonstrated “no adverse impact, or it can be mitigated”. 9/26/13 TR pg. 33. He explained that he believes that Criterion vi implies that no adverse impact must be shown though he admitted that it is not contained in the specific language of the criterion. 9/26/13 TR. p. 33-34.

It is clear that Mr. Coulter ignored the decision of *Fox Moraine* which explicitly held that an Applicant is not “required to provide evidence of exact routes.” He also ignored the explicit holding that an Applicant “did not have to establish that every arterial road would not be affected” and rather an Applicant need only show that “it designed the entrance to and from the facility to minimize the impact on the roadways.” Therefore, it is clear that Mr. Coulter’s testimony should have been stricken as he used a standard which does not exist in Illinois.

Regardless, even if his testimony is allowed it is clear from the testimony of Mr. Werthmann that the facility has been designed such that there will be only one access drive off of Porter Drive and that the proposed site will be next door to the Groot Industries North Facility thereby minimizing the amount of traffic on the roadway. Groot Ex. 8, 9/25/13 TR 29-35.

Furthermore, Mr. Werthmann explained there were operating restrictions on the facility including requiring truck traffic to use IL 120/Porter Drive intersection when accessing the arterial roadway system and imposing restrictions on times that trucks could make a left turn from Porter Drive to IL 120. (9/25/13 TR, pg. 32-34). Further, after considering the traffic site generation it was determined that the facility would represent at most a 1.75% increase in the traffic at any of the studied intersections including Rte.120 and Porter Drive (9/25/13 TR, pg. 44) and Groot would pay for significant improvements to that intersection such as the widening of Rte. 120 to provide a separate left turn lane and a separate right turn lane serving Porter Drive as well as the widening of Porter Drive to provide a separate left turn lane and right turn lane serving Rte. 120. (9/25/13 TR, pgs. 22-24). Furthermore, the intersection radii would be increased in order to efficiently allow for turning transfer trailers. *Id.* The facility itself would have only one inbound lane and one outbound lane and a large radius to accommodate turning truck traffic. (Groot Ex. 8, 9/25/13 TR, pg. 46).

Therefore, pursuant to the *Fox Moraine* decision the testimony of Coulter should be ignored and/or stricken as he employed an improper standard which would require an Applicant to identify all of the potential routes which packer and transfer trailer trucks might use at areas far removed from the facility which is not required by any section of the Act nor any regulation. The ever-changing and evolving roadways of Illinois including new roads, intersection changes or improvements, weight restrictions, design modifications, etc. that will occur over the next 20-30 years will dictate the routes which the vehicles using the Groot Transfer Station will use to get to the Winnebago and other landfills. The *Fox Moraine* case explicitly held that those ever-changing routes do not have to be identified nor studied by an Applicant, nor does the Applicant have to show that those remote roads will have no traffic impacts from the facility.

Furthermore, it was explained several times at the hearing that while it is the immediate intention to travel to the Winnebago Landfill that is not the only landfill which might be used in the future and thus it would be improper conjecture as to what routes might be used by vehicles traveling to the several possible landfills. Criterion vi only requires that the traffic patterns to and from the facility itself be designed to minimize the impact on traffic flow and that occurred here. The design of this facility with single wide entrances and exits as well as the improvements to the Rte. 120 and Porter Road intersection to be funded by Groot at its virtual doorstep are more than sufficient evidence of compliance with Criterion vi.

CONCLUSION

For these reasons, the testimony and report of Mr. Coulter should be stricken pursuant to *Fox Moraine* and the Village of Round Lake should determine that Criterion vi has been met.

Dated: 10/19/13 Groot Industries, Applicant

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