November 17, 2009

Orange County Board of Commissioners
200 S. Cameron St.
Hillsborough, NC 27278

Dear Commissioners:

The Center for Civil Rights has been working with residents of the Rogers, Millhouse and Eubanks Roads on a number of environmental justice issues, including the county’s recent consideration of siting the solid waste transfer station on the Paydarfar site on Millhouse Road. We appreciate that the decision as to where to locate the WTS is a difficult and critical one for the Board. However, pursuing the Paydarfar site violates the intent, spirit and letter of the detailed and deliberate selection process you designed; disregards the extensive public input establishing the criteria as well as the county’s purported commitment to such input; and ignores the overwhelming racial and socio-economic disparate impacts of this site. In fact, consideration of the Paydarfar site expressly elevates the fiscal costs of a WTS over the environmental and social justice costs to the surrounding community and the county as a whole.

Due Process

As you know, the process for selecting a WTS site began almost 2 years ago, in December 2007. As one of its first actions, the BOCC unanimously adopted a resolution noting that it is “keenly concerned and committed to conducting a process that provides for a high level of public participation and abundant opportunity for meaningful public participation throughout.” In light of this stated commitment to transparency and substantive community input, the County held several public meetings and accepted comments and suggestions from county residents from December 2007 through June 2008, and ultimately developed three sets of criteria by which to evaluate each potential site. The process to this point, though cumbersome at times, appeared to have honored the County’s stated commitment.

- On September 16, 2008, the ten sites scoring highest on the technical and exclusionary criteria were presented to the BOCC, which voted to then apply the community specific criteria to all 10 sites. *The Paydarfar property failed to even meet the basic exclusionary criteria and thus was not among these ten sites.*

- On October 21, 2008, the results of evaluating the ten sites pursuant to the community specific criteria were presented to the BOCC, which agreed to proceed with consideration of the top three sites. It is worth noting that during these discussions, the county attorney specifically advised against changing or applying criteria “after the fact.”
In December 2008 the Site Selection Status Report was issued. It evaluated three sites "selected by the BOCC" and recommended the County pursue acquisition of the Howell site. At that time, the Commissioners were expressly given and clearly rejected the option to "revise site and evaluation criteria and restart search process." Further evaluation and analysis of the final three sites continued.

A Site Investigation and Evaluation of West 54 and OWASA sites was completed on April 16, 2009.

On May 14, 2009, former Chapel Hill Mayor Kevin Foy unilaterally introduced a town owned site on Millhouse Road into consideration for the WTS. This site had also been eliminated from consideration by application of the technical and exclusionary criteria.

On September 1, 2009, almost two years after the site selection process was begun and, $450,000 was expended on conducting the site selection process, and ten months after a site which met all established criteria was identified and recommended for acquisition, the Paydarfar site was introduced by staff as a potential alternative. Despite acknowledging that consideration of this site ignored the established criteria and circumvented the carefully developed selection process and the lauded transparency thereof, four commissioners nonetheless voted to pursue Paydarfar as a viable option.

Due process requires, at a minimum, that legal and governmental proceedings be fair, and that the governmental decision maker not act in an arbitrary and capricious manner. Clearly defined and openly established policy and procedures—and the impartial adherence to those procedures once adopted—are critical to protecting the due process rights of affected citizens. The BOCC’s decision, at the last minute, to apparently abandon its established procedures, evaluation criteria, and timeline, and perform a cursory evaluation of the Paydarfar site betrays its stated commitment to a transparent process with meaningful community input.

**Environmental Justice**

Among all of the County’s adopted exclusionary, technical and community specific criteria, “Environmental Justice Considerations” is the highest weighted and valued element (the only criteria rated “extremely important” and allotted 20 points). In defining environmental justice, this criterion requires that the BOCC consider “inequitable sharing of negative environmental consequences and potential cumulative environmental impact on proximate communities or neighborhoods.”

As noted above, consideration of the Paydarfar site has not followed any of the established site selection procedures and thus there has been no substantive evaluation or analysis of the environmental justice issues of this site. Nonetheless, some have suggested that the Paydarfar site has no “cumulative” environmental justice impacts because it is somehow not part of the community that has borne nearly four decades of impacts of the landfill and related solid wastes uses. This narrow conclusion fails to adequately recognize the history of the community surrounding the landfill, the ongoing legacy and impacts of other industrial uses.
approved and developed in the neighborhood, and the anticipated noise and traffic increases and patterns through the area. In addition, the Paydarfar site abuts the old landfill property, and as such clearly constitutes an extension and expansion of the existing solid waste uses on and around Eubanks Road, in violation of repeated assurances that no such expansion would take place. Those historical assurances, it should be noted, have been premised on the admitted racial and social inequity in further burdening the communities around and most severely impacted by the landfill and related uses.

The primary factor recommending the Paydarfar site seems to be cost (rated "important" and allotted 5 points, the lowest ranking for any criteria). In fact, implicitly acknowledging the environmental injustice and inequities inherent in the site, staff and some board members have suggested allocating “some portion of the land purchase differential between the Hwy 54 site... and the acquisition reimbursement of the County owned site...toward a water/sewer solution for the Rogers Road area.”

This rationalization for ignoring the due process and the environmental justice issues presented by the Paydarfar site is a further betrayal of promises made to the Rogers Road community and of the social, racial and economic justice values that the County and its residents hold dear. Water and sewer infrastructure improvements in the neighborhood have been recognized and discussed by local governments and the community as compensation for bearing the substantial burdens of the County’s landfill and solid waste operations for nearly forty years. While residents believe the County (and other local governments) are genuinely committed in good faith to provide these long overdue improvements, to suggest that these remedial measures be considered mitigation or consideration for additional—and potentially ongoing—solid waste uses perpetuates the legacy of disparate impacts on this under-resourced minority community, undermines the progress being made to remedy those inequities, and belies the fundamental values of the county and its residents. As Jonathan Kozol once said, “Charity is no substitute for justice.”

We respectfully request that the BOCC eliminate the Paydarfar site from further consideration.

Sincerely,

Mark Dorosin
Senior Managing Attorney

Sarah Krishnaraj
Attorney