

ILLINOIS POLLUTION CONTROL BOARD
January 22, 2015

ROXANA LANDFILL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-65
)	(Third-Party Pollution Control Facility
VILLAGE BOARD OF THE VILLAGE OF)	Siting Appeal)
CASEYVILLE, ILLINOIS; VILLAGE OF)	
CASEYVILLE, ILLINOIS; and)	
CASEYVILLE TRANSFER STATION,)	
L.L.C.,)	
)	
Respondents.)	

VILLAGE OF FAIRMONT CITY, ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	PCB 15-69
)	(Third-Party Pollution Control Facility
VILLAGE OF CASEYVILLE, ILLINOIS,)	Siting Appeal)
BOARD OF TRUSTEES and CASEYVILLE)	(Consolidated)
TRANSFER STATION, L.L.C.,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Village Board of the Village of Caseyville (Village) granted approval to Caseyville Transfer Station, L.L.C. (CTS) for siting a municipal solid waste transfer station in Caseyville, St. Clair County (Site). Roxana Landfill, Inc. (Roxana) and the Village of Fairmont City (Fairmont City) filed petitions asking the Board to review the Village's siting approval. On December 18, 2014, the Board affirmed the Village's decision approving CTS's siting application.

On December 12, 2014, the Village filed a motion for reimbursement of costs of preparing and certifying the Village record of its proceedings (Mot.), accompanied by an affidavit (Mot. Aff.). On December 24, 2014, Roxana (Rox. Resp.) and Fairmont City (Fairmont Resp.) filed responses to the Village's motion. For the reasons below, the Board partially grants and partially denies the Village's motion. Petitioners are ordered to pay \$440.84 in copying costs and \$71.30 in mailing costs, for a total of \$512.14.

THE VILLAGE'S MOTION

Section 107.306 of the Board's rules requires a petitioner to pay the costs of preparing and certifying the record to the Board. 35 Ill. Adm. Code 107.306. The Village seeks \$4,896.57 for costs incurred in the preparation and certification of the Village record. Mot. at 2. These costs include: 16 hours of work expended by the Village Clerk (\$607.04); 24 hours of work expended by the Deputy Village Clerk (\$944.88); costs from Document and Network Tech for the copying and scanning of the Village record (\$440.84); costs from PohlmanUSA Court Reporting for the preparation of transcripts (\$407.01); postage to send the record to the Board (\$71.30); and attorney's fees of the Weilmuenster Law Group, P.C. for the preparation and certification of the record (\$2,425.50).¹ *Id.*

ROXANA'S AND FAIRMONT'S RESPONSE

Roxana commits to reimburse the Village for copying and postage costs. Rox. Resp. at 5. However, Roxana objects to reimburse the Village for time expended by Village employees, fees charged by the Village's attorney, and fees incurred for the preparation of transcripts. Fairmont City adopts these same positions. Fairmont Resp. at 1. Roxana contends that the motion should be denied

because (A) it seeks fees and costs for which the Village and Village Board are not entitled to reimbursement and (B) as moot as the Village and Village Board failed to submit an invoice for costs to the Petitioners, the Pollution Control Board already ordered Petitioners to pay the cost of certifying the record, and consistent with Section 39.2(n) of the [Illinois Environmental Protection Act (Act)]. Rox. Resp. at 2.

Roxana argues that none of the following are costs under Section 39.2(n) of the Act: the fees of the Village Clerk and Deputy Village Clerk; the fees of the Weilmuenster Law Group, P.C.; and the transcript costs of PohlmanUSA Court Reporting. Rox. Resp. at 3. Section 39.2(n) requires a petitioner to pay "the cost of preparing and certifying the record of proceedings." *Id.*, citing 415 ILCS 5/39.2(n) (2012). Roxana states that "costs" does not include "fees." Rox. Resp. at 3, citing Miller v. PCB, 267 Ill. App. 3d 160, 171 (4th Dist. 1994) ("[a]bsent a statute or contract to the contrary, attorney fees and the ordinary expenses and burdens of litigation are not recoverable by the prevailing party."); *see also* House of Vision, Inc. v. Hiyane, 42 Ill. 2d 45, 51-52 (1969).

Roxana states "there is no itemization of time for the alleged fees of" the Village Clerk and Deputy Village Clerk. Rox. Resp. at 4. Roxana argues that the motion's affidavit does not comply with Illinois Supreme Court Rule 191 because "it is conclusory, fails to attach documentation referenced in the affidavit, and fails to identify how the information is within her personal knowledge sufficient for such an affidavit." *Id.* Roxana also argues that the fees are

¹ On December 10, 2014, the Village's attorney sent an e-mail to the Board's hearing officer stating that the correct amount of attorney's fees sought was \$1,836.45, and the correct total amount sought was therefore \$4,307.52.

unreasonable “given the size of the Record on Appeal . . . and its condition, lacking nearly half of its content.” *Id.*

Roxana states that the Village seeks costs for preparation of transcripts for the record from PohlmanUSA Court Reporting, but that the Village “provides no receipt from Pohlman and no reference to what ‘transcripts’ are included in this cost, and no authentication of the cost.” Rox. Resp. at 4. Roxana contends that costs of transcripts of the public siting hearing and any decision-making hearings are the responsibility of the applicant. *Id.*, citing 415 ILCS 5/39(k) (2012) (“[a] county board or governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process.”).

Roxana argues that the “remainder of the Motion” should be denied as moot, because the Village “failed to submit an invoice for costs to the Petitioners, the Pollution Control Board already ordered Petitioners to pay the cost of certifying the record, and consistent with Section 39.2(n) of the Act, the Petitioners will reimburse the \$440.84 in copying costs and \$71.30 in mailing costs to the Village . . . within 30 days of having received those invoices.” Rox. Resp. at 5.

BOARD DECISION

Petitioners contend that the Village’s motion is moot in part because the Board has already directed the petitioners to pay the cost of certifying the record. Rox. Resp. at 2. While the Board has previously directed petitioners to pay these costs, the parties differ in specifically what costs are reimbursable. The Board therefore addresses each of the sought costs below.

The Village seeks \$440.84 in copying costs and \$71.30 in mailing costs. Mot. at 2. Petitioners agree that they are required to reimburse the Village for these costs. Rox. Resp. at 5. Invoices for these costs are attached to the motion. The Board orders the petitioners to pay the \$440.84 in copying costs and \$71.30 in mailing costs, for a total of \$512.14.

As to the remaining costs claimed by the Village, Petitioners dispute that they are required to reimburse the Village for time expended by two Village employees, fees charged by the Village’s attorney, and fees incurred for the preparation of transcripts of the Village’s siting proceeding.

The Act requires a petitioner to pay the cost of preparing and certifying the record of proceedings. 415 ILCS 5/39.2(n) (2012). Section 107.306 similarly provides that the petitioner must pay the cost of preparing and certifying the record to the Board. 35 Ill. Adm. Code 107.306. The purpose of Section 39.2(n) of the Act and Section 107.306 of the Board’s procedural rules “is to require the petitioner to reimburse the local siting authority for costs it would not otherwise incur but for the petitioner filing the appeal with the Board.” Sandberg v. City of Kankakee, et al., PCB 04-33, slip op. at 3 (Jan. 22, 2004).

The Village seeks \$407.01 for the preparation of transcripts. Mot. at 2. The Act provides that the local siting authority must have all documents pertaining to the proposed facility

available for public inspection. 415 ILCS 5/39.2(c) (2012). This includes the local hearing transcript. American Bottom Conservancy, et al., v. Village of Fairmont City and Waste Management of Illinois, Inc., PCB 00-200, slip op. at 43 (Oct. 19, 2000). Petitioners are not required to reimburse the Village for the \$407.01 in costs incurred by PohlmanUSA Court Reporting “for the preparation of the transcripts for the Record on Appeal.” Mot. Aff. at 2.

The Village next seeks \$607.04 for work done by the Village Clerk, and \$944.88 for work done by the Deputy Village Clerk, in preparing and certifying the record. Mot. at 2. Attached to the motion is a document that breaks down the Village employees’ hourly rates, hours expended, and costs sought for each employee. The document does not state specifically what work was performed, or whether these charges were expended outside of the employees’ ordinary business hours. In Miller, a landowner sought review of a Board administrative citation determination ordering in part the landowner to pay costs not included in “hearing costs” as provided for by the Act. Miller, 267 Ill.App.3d at 162-163. The Appellate Court stated that “[t]he fee for ‘preparation and mailing of documents’ should be reduced to the cost of mailing the administrative citation to Miller.” *Id.* at 172. The Appellate Court further stated that “[t]he expense incurred in the preparation of the documents is not, however, recoverable as ‘costs.’” *Id.* Similarly, the Board here finds that the expense incurred by the Village as to wages paid to the Village’s employees in the preparation of the documents is not recoverable as costs.

The Village also seeks \$2,425.50 in attorney’s fees for the preparation and certification of the record. Mot. at 2. “Statutes which provide for the award of attorney fees do so by specific language.” Miller, 267 Ill. App. 3d at 171, citing State Farm Fire & Casualty Co. v. Miller Electric Co., 231 Ill. App. 3d 355, 360 (2d Dist. 1992). Section 39.2(n) of the Act requires a petitioner to “pay to the county or municipality the cost of preparing and certifying the record of proceedings.” 415 ILCS 5/39.2(n) (2012). Section 39.2(n) does not, however, provide for the recovery of attorney’s fees. The Board therefore declines to award the attorney’s fees sought by the Village in its motion. *See also O’Hare v. Moniak*, 110 Ill.App.2d 327, 328 (1969) (statutory costs did not include attorney fees).

CONCLUSION

The Board grants in part and denies in part the Village’s motion for reimbursement of costs incurred in preparing and certifying the record to the Board. The Board orders Roxana and Fairmont City to pay \$440.84 in copying costs and \$71.30 in mailing costs, for a total of \$512.14. The Board denies the Village’s motion for costs of wages paid to two Village employees and fees paid to the Village’s attorney in preparing the record, and for costs incurred in preparing Village transcripts.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 22, 2015, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board