

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1993

CONCERNED CITIZENS OF)
WILLIAMSON COUNTY, and)
R.S. BLAKELY and MAX)
STUCKER, as members of)
Concerned Citizens of)
Williamson County,)

Petitioner,)

v.)

PCB 92-204
(Landfill Siting Review)

BILL KIBLER DEVELOPMENT)
CORP., a/k/a KIBLER)
DEVELOPMENT CORP., and the)
WILLIAMSON COUNTY BOARD OF)
COMMISSIONERS,)

Respondents.)

ORDER OF THE BOARD (by J. Theodore Meyer):

This case is before the Board on a February 5, 1993 motion to dismiss the amended petition for review, filed by respondent Kibler Development Corporation (Kibler). Petitioners Concerned Citizens of Williamson County, and R.S. Blakely and Max Stucker, as individual members of Concerned Citizens of Williamson County (collectively, Citizens), have not filed a response to the motion to dismiss.

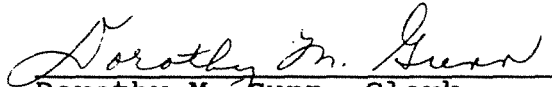
Kibler asks that the Board dismiss the amended petition filed by Citizens on January 27, 1993, and accepted for hearing by the Board on February 4, 1993. Kibler contends that Citizens amended petition alleges four procedural flaws, and that all four alleged deficiencies in the local proceeding are "facially incorrect and belied by the record." (Motion at 1.) Thus, Kibler asks that the Board dismiss the petition for failure to state a cause of action. Finally, Kibler requests, in the alternative to its request that the proceeding be dismissed, that the Board treat the instant motion as a motion for summary judgment, and that summary judgment be granted in its favor.

The motion to dismiss is denied. The Board fails to see how it can determine that the flaws alleged by Citizens are "belied by the record", when the record of this proceeding has not yet been filed with the Board by the Williamson County Clerk. As to the request that the Board treat Kibler's motion as a motion for summary judgment, the Board notes that Kibler has not pled any of the elements of summary judgment. Even if Kibler had done so, it

is still necessary to review the record (not yet on file with the Board) in ruling upon a request for summary judgment. Kibler's request that the Board treat the motion as a motion for summary judgment is also denied. Kibler is, of course, free to raise these motions again at hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25th day of February, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board