

ILLINOIS POLLUTION CONTROL BOARD

August 10, 2000

SILVER GLEN HOMEOWNERS' ASSOCIATION, INC.,)	
an Illinois not-for-profit corporation,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 00-223
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	(Permit Appeal – Water)
MARK KAPLAN, and B. DAVIDSON CUSTOM)	
HOMES, INC.,)	
)	
Respondents.)	
)	
)	

ORDER OF THE BOARD (by E.Z. Kezelis):

A permit appeal in the above-captioned matter was filed on June 23, 2000. On July 17, 2000, the Illinois Environmental Protection Agency (Agency) filed a special appearance and motion to dismiss on the grounds that the Board lacks jurisdiction. Silver Glen Homeowners' Association, Inc. (Silver Glen) filed its reply to the motion to dismiss on July 24, 2000.

BACKGROUND

Silver Glen is the responsible party in charge of maintaining Silver Glen Estates, a subdivision of unincorporated Kane County, Illinois. App. at 1. Silver Glen Estates is served by its own community water supply and sanitary sewer system. App. at 2. Mark Kaplan (Kaplan) is the original developer of Silver Glen Estates. App. at 1. B. Davidson Custom Homes, Inc. (B. Davidson), is a co-developer of the remaining undeveloped lots in Silver Glen Estates. App. at 3.

Since 1997, Silver Glen has been involved in a circuit court action with Kaplan, concerning the development and operation of Silver Glen Estates. App. at 2. At some point during the course of that litigation, Kaplan apparently sold the remaining undeveloped lots in Silver Glen Estates to United Lands, Inc. App. at 3. United Lands, Inc., then entered into an agreement to develop the lots with B. Davidson. App. at 3. United Lands, Inc., is not named as a party in this matter.

PRELIMINARY MATTERS

No responsive pleadings have been filed by either Kaplan or B. Davidson. Neither Kaplan nor B. Davidson are identified in the permit, which was issued only to Silver Glen; for the purposes of a permit appeal, they can be neither party petitioner nor party respondents. The Board's procedural rules provide that the permit applicant may be a petitioner, and that the Agency shall be a respondent in all permit appeals. See 35 Ill. Adm. Code 105.102(a)(4). Neither Kaplan nor B. Davidson are proper respondents in this type of permit appeal. Accordingly, the Board, on its own motion, hereby dismisses these respondents from this permit appeal.

MOTION TO DISMISS

In its permit appeal, Silver Glen purportedly objects to the Water Pollution Control Permit No. 2000-GC-0879, issued by the Agency to it on May 19, 2000. The basis for the objection however, is not readily apparent from the permit language itself.

Permit No. 2000-GC-0879 allows for the construction of improvements to the existing sewage treatment facility. Permit Application (App.) at Exh. F. The improvements include, among other things, increasing the irrigation system and irrigation acreage. *Id.* Silver Glen maintains that in order to approve the proposed improvements to the spray irrigation system, the Agency approved a plan to create easements on the majority of existing lots in the subdivision. *Id.* In apparent support of this position, Silver Glen attached an Exhibit H to its permit appeal, which is a map identified as portraying the “irrigation system area.” App. at Exh. H. Because the Agency record has not yet been filed, it is not clear whether this map was part of the permit application submitted to the Agency, nor whether it was relied upon by the Agency in the process of making its decision to grant construction Permit No. 2000-GC-0879 to Silver Glen.

Silver Glen seeks to have the Board enter an order granting the following relief: (1) order the Agency to terminate the construction permit; and (2) order the Agency to direct “the Respondents” to provide the necessary spray irrigation area without interfering with the property rights of the lot owners. App. at 5-6.

In its motion to dismiss, the Agency argues that the Board lacks jurisdiction to grant the relief requested by Silver Glen. The Board agrees that the second prayer for relief may be beyond the Board’s authority. Because the Board dismisses the non-Agency respondents, however, the Board does not reach the issue. With regard to the first prayer for relief, without the Agency’s administrative record, the Board lacks sufficient information to determine whether a cause of action has been stated that would entitle Silver Glen to the relief requested.

Accordingly, the Board will defer ruling on the Agency’s motion to dismiss until such time as the Agency’s administrative record has been filed. The Agency is hereby ordered to file its administrative record within fourteen days of the date of this order.

SPECIAL APPEARANCE

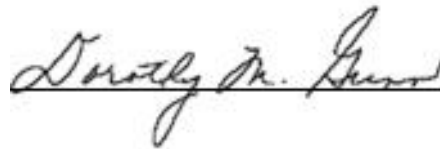
The second matter before the Board concerns the fact that the Agency filed a "Special Appearance" together with its motion to dismiss. The requirements of Section 101.243 of the Board's procedural rules provide that a timely filed special appearance preserves jurisdictional objections. 35 Ill. Adm. Code 101.243. The Agency has preserved its objection to the Board's jurisdiction. Accordingly, the Agency may participate in these proceedings, *i.e.*, file its administrative record, without waiving its objection to the Board's jurisdiction in this matter.

CONCLUSION

In conclusion, the Board, on its own motion, dismisses respondents Kaplan and B. Davidson from this permit appeal. Additionally, the Board defers judgment on the Agency's motion to dismiss and orders the Agency to file its administrative record within 14 days of the date of this order.

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 10th day of August 2000 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board