

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1975

ENVIRONMENTAL PROTECTION AGENCY)	
Complainant)	
v.)	PCB 73-279
DONALD F. SIZELOVE, individually and)	
d/b/a CENTRAL REALTY AND DEVELOPMENT)	
CO., and THE MARK IV CORPORATION, a)	
corporation)	
Respondents)	

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This case was originally filed by the Illinois Environmental Protection Agency as an enforcement action on July 10, 1973. After considerable pleadings, the parties entered a Stipulation and Proposal for Settlement at a hearing held November 26, 1974.

The Board is not opposed to the factual provisions of the proposed settlement, or to the provisions for penalty and future compliance contained therein. There are, however, certain technical difficulties which weigh against its adoption by the Board.

First, the Stipulation as it exists does not adequately provide for the inclusion of necessary parties. Although two motions have been submitted to the Board for the inclusion of three Homeowners Associations in this proceeding, the testimony at hearing indicates that such associations may not yet properly exist. And although the proposed settlement would require that these additional parties take on specific duties and acquire certain property, the associations have in no way bound themselves to this course of action, assuming that they do in fact exist.

Second, the Stipulation provides that, in the event the Board should adopt this Stipulation, the Complaint in this matter should be dismissed. This is procedurally unsound, insofar as it can raise difficulties regarding the power of the Board to bind the parties. The Board is limited to the terms of the Stipulation, Brotherhood v. N.Y. Central, 339 Ill. 201, 209, 171 N.E. 148 (1930). Were the Board to dismiss the Complaint in this action, it necessarily is left without authority to determine that violations have in fact occurred, or to impose a penalty. As the Board may not alter the terms of the Stipulation, that portion of the Stipulation requiring dismissal negates all terms of the Stipulation which precede it.

Third, the compliance and settlement plans in this matter contemplate the provision of water to the Washington Heights Subdivision by the Bloomington Township Water District. No direct evidence on the intentions of that District have been presented. While the Board does not require a binding agreement from that District, so integral a part of the case cannot be left to speculation.

Fourth, the stipulation in paragraph two directs the Board, should it find a violation and impose a penalty, in the use of the funds which such a penalty would generate. This is also unacceptable. Penalties assessed by the Board shall, as has been past practice, be made payable to:

State of Illinois
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

For these reasons, the matter will be remanded to the Hearing Officer for actions to be taken in compliance with this Interim Opinion and Order. It is suggested that, in addition to the changes discussed above, the following be submitted with a corrected Stipulation and Proposal for Settlement:

- 1) Copies of the Articles of Incorporation, or other legal documents, showing the legal existence of Washington Heights Homeowners Association Number One, Washington Heights Homeowners Association Number Two, and Washington Heights Homeowners Association Number Three.
- 2) Binding agreements executed by the above described Associations, under which such Associations agree to accept the properties and responsibilities detailed in this Opinion and Order of the Board, and in the Stipulation and Proposal for Settlement submitted by the parties to this action, and agree to perform the duties thereunder.
- 3) A written communication from the Bloomington Township Water District whereby such District evidences an intent to supply water to the residents of the Washington Heights Subdivision. Such communication need not be binding upon that District, and need only show an intent and a brief statement of its plans based on such intent.

This Opinion constitutes the Board's findings of fact and conclusions of law with regard to this Interim Opinion and Order.

ORDER

IT IS THE ORDER OF THE Pollution Control Board that:

The above titled matter is remanded to the Hearing Officer for actions to be taken in compliance with the Opinion herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order were adopted on the 22nd day of January, 1975 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board