

OCT 20 2014

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
October 21, 2014

ROXANA LANDFILL, INC.,)
)
Petitioner,)
)
v.)
)
VILLAGE BOARD OF THE VILLAGE OF)
CASEYVILLE, ILLINOIS; VILLAGE OF)
CASEYVILLE, ILLINOIS; and)
CASEYVILLE TRANSFER STATION,)
L.L.C.,)
)
Respondents.)

 ORIGINAL

PCB 15-65
(Third-Party Pollution Control Facility
Siting Appeal)

VILLAGE OF FAIRMONT CITY, ILLINOIS,)
)
Petitioner,)
)
v.)
)
VILLAGE OF CASEYVILLE, ILLINOIS,)
BOARD OF TRUSTEES and CASEYVILLE)
TRANSFER STATION, L.L.C.,)
)
Respondents.)

PCB 15-69
(Third-Party Pollution Control Facility
Siting Appeal)
(Consolidated)

HEARING OFFICER ORDER

On October 17, 2014, respondents Village of Caseyville (Village) and Caseyville Transfer Station (CTS) filed a joint motion for protective order. Petitioner Roxana Landfill, Inc. (Roxana) filed a response on October 20, 2014. Respondents filed a reply on October 21, 2014. As set forth herein, the motion is granted.

Respondents move for a protective order prohibiting discovery with respect to matters protected by the deliberative process privilege. Respondents assert that the privilege applies to the Village's trustees, and any inquiry into their mental impressions or processes with respect to their decision to approve CTS's application for local siting approval is prohibited under Illinois law.

Roxana responds that the motion should be denied for the following reasons: 1) the Trustees lack standing to raise the privilege because motion was filed by the Village, but did not specifically reference the Board of Trustees; 2) Two Trustees waived the privilege by discussing

their reasons for approving the application at the public meeting on August 6, 2014, and that the statements warrant an inference of fundamental unfairness; and 3) the privilege does not prevent petitioners from asking about the bases for the Trustee's decisions where they revealed the bases for the decision and prejudged the siting application;

DISCUSSION

To show bias or prejudice in a siting proceeding, the petitioner must show that a disinterested observer might conclude that the siting authority or its members had prejudged the facts or law of the case. Fox Moraine, 2011 IL App (2d) 100017. Further, the Board has stated that it is the petitioner's burden to demonstrate by clear and convincing evidence that the minds of the public officials were unalterably closed in critical matters of siting. See Stop the Mega Dump v. County Board of DeKalb County and Waste Management of Illinois, Inc., PCB 10-103, slip op at 52 (Mar. 17, 2011), citing Fox Moraine, LLC v. City of Yorkville, PCB 07-146, slip op. at 60 (Oct. 1, 2009).

The Trustees do not lose the deliberative process privilege merely because the motion was filed by the Village, and did not specify the Board of Trustees. Additionally, the privilege is not waived due to the Trustee's comments made at the public hearing.

Roxana's response contains quotes from the meeting which imply that the Village Board of Trustees approved the application because the Village needed the revenue source. There is precedent that revenue or other financial considerations are irrelevant to a prejudgment inquiry because neither the local siting authority nor its members will realize and enjoy the additional potential revenue or pecuniary benefit. It is the community at large that stands to gain or lose from the local siting authority approving or disapproving the site. (See Stop the Mega-Dump, 2012 IL App (2d) 110579); E & E Hauling v. PCB, 481 N.E.2d at 664 (1985).

The motion for protective order is granted. If petitioners plan to appeal this decision to the Board, petitioners may make offers of proof. This would allow witnesses to be deposed on deliberative process in a manner that is narrowly tailored to be relevant to petitioners' fundamental fairness claims. This line of questioning is authorized with the understanding that the evidence will not be admitted at hearing, but will be accepted as an offer of proof.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
Carol.Webb@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 21, 2014, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 21, 2014:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
Carol.Webb@illinois.go

PCB 2015-065
Rob Watt, Village Clerk
Village of Caseyville
909 S. Main Street
Caseyville, IL 62232

PCB 2015-065
Jennifer J. Sackett Pohlenz
Clark Hill, PLC
150 N. Michigan Avenue
Suite 2700
Chicago, IL 60601

PCB 2015-065
Caseyville Transfer Station, L.L.C.
John P. Siemsen, R. A.
290 South Main Place
Suite 101
Carol Stream, IL 60188

PCB 2015-065
Leonard Black, Mayor
Village of Caseyville
909 S. Main Street
Caseyville, IL 62232

PCB 2015-065
Penni S. Livingston
Livingston Law Firm
5701 Perrin Road
Fairview Heights, IL 62208

PCB 2015-065
Kenneth A. Bleyer
Roxana Landfill, Inc.
211 Taylor St., Suite 14
Port Townsend, WA 98368