

ILLINOIS POLLUTION CONTROL BOARD
September 19, 1996

VILLAGE OF LYNWOOD,)	
)	
Petitioner,)	
)	
v.)	PCB 97-28
)	(Pollution Control Facility Siting
)	Appeal)
COOK COUNTY BOARD OF)	
COMMISSIONERS AND J. T. EINODER)	
CO.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by G.T. Girard):

On August 6, 1996 the Village of Lynwood (Lynwood) filed a petition for review asking the Board to review a decision by the Cook County Board of Commissioners (Cook County) approving siting of a pollution control facility pursuant to Section 39.2 of the Environmental Protection Act (Act). On August 27, 1996 a motion to dismiss (Mot.) was filed by Cook County alleging the Board lacks jurisdiction in this matter as the action by Cook County was a zoning decision not a siting approval. Also on that date Cook County filed a motion for extension of time to file the record which was granted by hearing officer order on September 4, 1996. On September 5, 1996 the Village of Lynwood (Lynwood) filed a motion for extension of time to respond to the motion to dismiss. On September 11, 1996, the hearing officer granted Lynwood until September 13, 1996 to respond and Lynwood filed its response (Res.) on that date.

Cook County asserts that the Board lacks jurisdiction in this proceeding as "Einoder never applied to, nor received from the County Board, a §39.2 siting approval." (Mot. at 7 and 8.) Cook County argues J.T. Einoder, Co. (Einoder) applied to Cook County Department of Building and Zoning for a special use permit to operate a recycling center. Cook County maintains that the application filed by Einoder is devoid of any information requesting siting approval. (Mot. at 7.) In addition, the findings by the Zoning Board of Appeals also make no mention of the nine criteria enunciated in Section 39.2 of the Act and no findings refer to a siting application. Cook County states that the County Board after considering the special use request adopted an Ordinance granting Einoder a special use permit for the recycling operation. (Mot. at 8.) Cook County argues that the ordinance was enacted solely based upon the pertinent provisions of the zoning ordinance without any reference to the standards in Section 39.2 of the Act. (*Id.*)

Cook County agrees that if Einoder had been granted siting approval pursuant to Section 39.2 of the Act, the Board would have jurisdiction under Section 40.1 of the Act to review the decision. However, Cook County asserts that the Board must act "strictly within

the boundaries of its jurisdictional grant as created by law.” (Mot. at 6 citing Mystik Tape v. PCB, 16 Ill.App. 3d 778 (1st. Dist. 1973).) Because the decision granting a special use permit is a zoning decision, Cook County argues the Board is without jurisdiction to review Cook County’s decision. (Mot. at 6.)

In response, Lynwood argues that the granting of a special use permit is a violation of the Environmental Protection Act.

The Board is a creature of statute and as such any power or authority claimed by it must be found in the Act. (Shepard et al v. IPCB, 272 Ill.App.3d 764, 651 N.E.2d 555, 209 Ill.Dec. 377 (2nd Dist. 1995) and Granite City Steel v. IPCB, 155 Ill.2d 149, 613 N.E.2d 719, 184 Ill.Dec. 402 (1993).) Section 40.1 of the Act allows the Board to review decisions which grant approval for siting of pollution control facilities, including facilities in unincorporated Cook County, pursuant to P.A. 89-102, effective July 7, 1995. Cook County does not challenge the Board’s authority to review siting decisions pursuant to Section 39.2 and 40.1 of the Act. However, the Act does not give the Board the authority to review zoning decisions. Thus, the Board agrees that it lacks jurisdiction to review zoning actions by a local government.

In this case, the Board can find no evidence that the decision by the Cook County Board of Commissioners was a siting decision pursuant to Section 39.2 of the Act. Rather, the evidence, which includes the application and the findings by the Zoning Board of Appeals, support a finding that the action was a zoning decision. In addition, attached to Cook County’s motion to dismiss is an Illinois Environmental Protection Agency air permit which specifically prohibits acceptance of solid waste absent compliance with the siting requirements of Section 39.2 of the Act. Therefore, while the Board has the jurisdiction to review decisions made by Cook County pursuant to Section 39.2 of the Act, we lack jurisdiction to review the decision by Cook County which is the subject of this appeal.

The motion to dismiss is hereby granted and this docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration.")

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board