

ILLINOIS POLLUTION CONTROL BOARD
October 25, 1990

GOOSE LAKE ASSOCIATION,)
)
 Complainant,)
)
 v.) PCB 90-170
) (Enforcement)
)
 ROBERT J. DRAKE, SR., FIRST)
 NATIONAL BANK OF JOLIET AS)
 TRUSTEE, TRUST NO. 370)
)
 Respondents.)

ORDER OF THE BOARD (by J.C. Marlin):

This matter comes before the Board on a Complaint filed by Goose Lake Association ("Goose Lake") on August 30, 1990. Respondents Robert J. Drake and First Bank of Joliet as Trustee of Trust No. 370 ("Drake") filed their Motion to Dismiss the complaint on August 31, 1990 by reason of it being duplicitous and frivolous as provided in Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, par. 1031(b). Goose Lake filed a Response to Defendant's (sic) Motion to Dismiss on September 14, 1990 and a Supplemental Response on September 21, 1990.

Drake's Motion to Dismiss is premised upon three contentions namely, that he has no ownership interest in the real estate which is the subject of this suit to expand development of a tract of land in Grundy County, Illinois (Botomika subdivision); secondly, that this controversy is the subject of a lawsuit pending in Grundy County Circuit Court; and, third that the Board lacks authority to grant injunctive relief. The Respondents attached a copy of the Grundy County suit and the affidavit of Robert J. Drake as support for their motion.

Goose Lake's Response states that any prior lawsuit between the parties will be dismissed. Their Supplemental Response attaches the order of dismissal of the Grundy County Circuit Court. The Board therefore finds the present suit not "duplicitous".

As to Drake's second grounds for dismissal, Goose Lake's Response states that on information and belief, Drake is the "head of the family" and "controls the power of direction for the Land Trust and has been the principal developer of all other residential phases in this property". Drake's Motion to Dismiss and affidavit contain sworn allegations that Robert Drake is

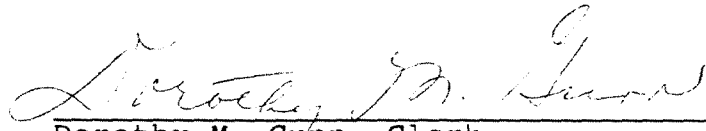
neither the owner nor developer of the Botomika subdivision. Because these factual allegations have been contested, the Board believes the issue of Drake's status as a respondent are best resolved after they are further aired at hearing. Therefore, the Board will rule upon the Motion to Dismiss Mr. Drake as a Repondent when it decides the case.

Finally, the Board notes that the Complainant requests injunctive relief as a remedy. Drake submits that injunctive relief is beyond the Board's authority to grant. While this is true, if a violation of the Act or of the Board's rules and regulations is proven as alleged, the Board may issue an order to cease and desist from further violations. Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, par. 1033(a). The Board therefore construes the request for injunctive relief as a request for a cease and desist order.

The Board finds the complaint is not "duplicitous" or frivolous, and thus the motion to dismiss on these grounds is denied. The Board hereby accepts the matter for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above and Order was adopted on the 25th day of October, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board