

ILLINOIS POLLUTION CONTROL BOARD  
June 25, 2014

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JUN 25 2014

STATE OF ILLINOIS  
Pollution Control Board

ASCEND R.L.B. an Illinois corporation, )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY and JOHN AND VERA TIERNEY, )  
)  
Respondents. )  
)  
)



ORIGINAL

PCB 14-122  
(Water Well Setback Exception)

**HEARING OFFICER ORDER**

In an effort to assist the Board in its determination of the above-captioned water well setback exception petition, petitioner is to be prepared to orally answer the attached questions at the hearing or file a written response addressing the attached questions at or before the hearing, scheduled for July 1, 2014.

The parties or their legal representatives are directed to participate in a telephonic prehearing conference with the hearing officer on June 26, 2014, at 10:00 a.m. The telephonic conference must be initiated by the petitioner, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

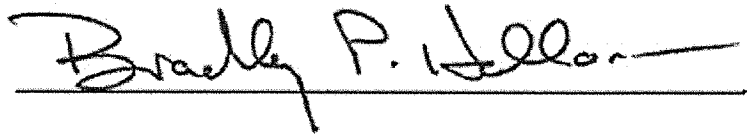
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on June 25, 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 June 25, 2014:

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



Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
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PCB 2014-122  
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Libertyville, IL 60048

PCB 2014-122  
Vera Tierney  
John Tierney  
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Lake Villa, IL 60046

PCB 2014-122  
Christopher W. Cramer  
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ATTACHMENT TO HEARING OFFICER ORDER OF JUNE 25, 2014

**1. 35 Ill. Adm. Code 106.304(a)**

Petitioner states that Ascend requested a waiver from the Tierneys on October 21, 2013, however, the Tierneys did not grant the waiver. Pet. at 2; Exh. E. (Tierney Waiver Agreement and Drawing). Exhibit E contains a waiver agreement and drawing showing the proposed septic system and states in part that “[i]f it is determined that Ascend R.L.B. Inc.’s, septic system contaminated your well Ascent R.L. B., Inc. shall replace your well.” Exh. E. Petitioner states, that Ascend and its consultants met with Tierney many times between April and November of 2013. Pet. at 2. Exhibit B to the Petition is a letter dated September 16, 2013 on behalf of Ascend to the Illinois Environmental Protection Agency (IEPA) regarding a convenience store and retail project and “requesting concurrence for a setback waiver.” Exh. B.

On June 19, 2014, John and Vera Tierney filed a “Response to Petition for Setback Exception” stating in part that “it does not appear from the record available to Tierney’s counsel that the proper notice pursuant to 415 ILCS 5/14.2(b) regarding the requested waiver was provided to Tierney.” Response at 1. The Response refers to the September 16, 2013 letter to the Illinois Environmental Protection Agency and states that “no proof showing delivery of such required notice on Tierney was provided.” Response at 1.

- a) Please provide evidence that written request for a waiver was made under Section 14.2(b) of the Environmental Protection Act to the owner of the water well and the Agency. 415 ILCS 5/14.2(b) (2012).
- b) Please identify the alternative potable water supply petitioners would be required to provide under Section 14.2(c) of the Illinois Environmental Protection Act (415 ILCS 5/14.2(c)) pursuant to Section 6b of the Illinois Water Well Construction Code (415 ILCS 30/6b). See 415 ILCS 5/14.2(c), 30/6b (2012).
- c) Please indicate if the alternative potable water supply would be within the setback zone of a potential route or source under Section 14.2 of the Environmental Protection Act. 415 ILCS 5/14.2 (2012).

**2. 35 Ill. Adm Code 106.310(a)**

- a) Please provide an enlarged or otherwise more legible copy of Exhibit A entitled “Cost Comparison” to Ascend’s Reply filed May 14, 2014.
- b) In Exhibit A to Ascend’s May 14, 2014 reply, please clarify if the landscaping item of \$17,500 should be included under both options or only under the first option as itemized.
- c) To demonstrate the economic benefit of developing the property as commercial instead of residential, the Ascend Reply includes Exhibits B (Neighboring Lots) and C (Typical Neighboring Valuation). Reply at 2. Exhibit C refers to two lots on the east side of N. James Dr. to show residential valuation. Reply at 2, Exh. C. Exhibit D (County Future Land Use Plan) appears to show these two lots as being located in a “Residential Single-



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family Residential (0.25 to 1-acre lot density)” area, while Ascend’s property appears to be located in a “Retail/Commercial” area.

- (i) Please indicate the current zoning for Ascend’s property.
- (ii) Please provide comparable property values based on residential development now within the same zoning as Ascend’s property and also within the Retail/Commercial designation under the County Future Land Use Plan. Please also include a per acre valuation.

**3. 35 Ill. Adm. Code 106.310(b)**

- (a) Page 4 of the petition states that “[t]he best technology is being utilized, including an aerobic filter.” Ascend’s Reply states that the proposed “Septic System is the best technology and is state of the art, which exceeds the benefits of the ‘conventional’ [anaerobic] mound systems.” Ascend Reply at 3. Please clarify whether the proposed septic system satisfies the requirement that proposed system will use “the best available control technology economically achievable to minimize the likelihood of contamination of the potable water supply well.” 415 ILCS 5/14.2(c); 35 Ill. Adm. Code 106.310(b).
- (b) Exhibit F (Health Department Summary) to the petition is an email from Lake County regarding results of the soil evaluation for the Health Department. The email states, “Chapter 7 contains the design criteria for system types.” Exh. F.
  - (i) Please provide a complete citation for “Chapter 7” and a copy of pertinent sections relating to design criteria for the type of system Ascend proposes to install.
  - (ii) Please provide more detailed information from the Lake County Health Department on the soil evaluation, including where and how the samples were taken.
- (c) The petition states at page 3 that “[t]he Septic System is a standard residential design and is limited to 500 gallons per day (‘gpd’), which is one of the smallest designs available.” Pet. at 3. Ascend’s Reply explains how the design volume was determined. Reply at 3. Ascend further states that “Lake County would not issue a building permit to a large volume tenant that is limited by parking sanitary sewer limitations.” Reply at 3.
  - (i) Please state Lake County’s requirements for septic system sizing for building uses, rather than sanitary sewer limitations, as well as the requirements under 77 Illinois Administrative Code 905, Appendix A, Illustration A.
  - (ii) Please indicate if the design capacity of the proposed septic system of 500 gallons per day would meet these requirements.
  - (iii) Please indicate if the requirements of Lake County or 77 Ill. Adm. Code 905 restrict the type of wastes that may be disposed of in a septic system of the type Ascend

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proposes to install and if any of the potential property uses would create wastes that would not be allowed in such a septic system.

- (d) The petition states at page 4 that “Ascend will enter into a maintenance contract providing septic inspections performed by a licensed professional twice per year.” Pet. at 4.
- (i) Please clarify what type of license is required to inspect the proposed septic system.
  - (ii) Please indicate how this condition would transfer with the Ascend property if it is sold.
- (e) Based on information provided at pages 3 and 4 of the petition under the “technology based controls,” please comment on the following possible conditions of a water well setback exception or propose alternate language. Please indicate how these conditions would transfer with Ascend’s property if it is sold.
- (i) The septic system must be an at-grade Class V injection well (mound type) septic system with aerobic number eight stone and topsoil with a design capacity no less than 500 gallons per day and must be located as indicated in Exhibit A of the petition filed in PCB 14-122, Ascend R.L.B. v. Illinois Environmental Protection Agency and John and Vera Tierney.
  - (ii) Ascend must enter into a maintenance contract providing septic inspections performed twice a year by a licensed professional twice per year for as long as both Ascend operates the septic system and the potable water supply well located at [insert Tierney address] within the 200 foot setback is not sealed according to 77 Ill. Adm. Code 920 (Water Well Construction Code). Ascend must commit to following the recommendations for service and repairs that the inspector makes.
  - (iii) Ascend must offer the owners of the property at [insert Tierney address] sampling of their potable water supply well by an experienced third party, at Ascend’s expense, for bacteria and nitrate prior to operating Ascend’s proposed septic system and semi-annually thereafter. Ascend must coordinate any such sampling with the Lake County Health Department, provided the owners of the property at [insert Tierney address] are willing to grant access to their well for sampling.
- (f) Petitioner states that, to connect to the sanitary sewer, the Village of Round Lake Beach would require the Ascend property to be annexed. Petitioner states if the property were annexed, one or more of the uses of the Ascend property currently allowed under County Zoning would be prohibited. Pet. at 3-4.
- (i) Please identify uses that would be permitted under the current zoning.
  - (ii) Please identify uses of the Ascend property that would be prohibited if the property were annexed.

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4. **35 Ill. Adm. Code 310(d)**

The petition indicates at page 3 that the Tierney well is approximately 300 feet deep and also states that “its depth is well below the layers of clay in northeastern Lake County making Septic System water intrusion extremely unlikely.” Pet. at 3. Please provide more specific geologic information regarding the clay layers near the Tierney potable water supply well. Geologic data may be able to be obtained from well data available through the Illinois State Geological Survey web application entitled “ILWATER” at <http://www.isgs.illinois.edu/ilwater> and <http://maps.isgs.illinois.edu/ilwater/>.

5. **35 Ill. Adm. Code 704 Subpart I**

Please indicate whether the proposed septic system would be subject to the requirements for Class V Injection Wells at 35 Ill. Adm. Code 704.Subpart I, including an inventory. 35 Ill. Adm. Code 704.283; *see* 35 Ill. Adm. Code 704.281(i) (examples).