

well, and explains technology-based controls that would be used to minimize the potential for contamination. 415 ILCS 5/14.2(c) (2012).

Ascend notes that it intends to construct a well at the site to serve the proposed commercial center. Pet. at 2 (¶4); *see* Exh. A. That well is located approximately 195 feet from the septic system, and Ascend has granted a waiver for construction of that well. Pet. at 2 (¶10). Ascend stated that it does not petition for a setback exception for the well on its own site. *Id.*

In order for the Board to grant the requested exception, the petitioner must provide adequate proof to allow the Board to find that compliance with the statutory setback would pose an arbitrary and unreasonable hardship upon the petitioner; the petitioner will use the best available technology controls economically achievable to minimize the likelihood of contamination of the potable water supply well; the maximum feasible alternative setback will be used; and the potential route will not constitute a significant hazard to the potable water supply well. 415 ILCS 5/14.2(c) (2012); 35 Ill. Adm. Code 106.310 (Burden of Proof).

Section 106.308 of the Board's procedural rules requires that "[t]he Board will hold at least one public hearing in an exception proceeding. The hearing officer will schedule the hearing." 35 Ill. Adm. Code 106.308.

AGENCY RESPONSE

The petition states that the Illinois Environmental Protection Agency (Agency) has concurred with Ascend's request for a waiver regarding the setback for both the Tierney well and the well to be located on the site. Pet. at 2 (¶6), Exh. C. In addition, the Agency on April 17, 2014, filed a response to Ascend's petition (Resp.).

The Agency believes that Ascend should provide additional information in support of its position that denial of the requested exception would present an arbitrary and unreasonable hardship. Resp. at 4. The Agency indicates that Ascend should provide to the Board cost information regarding the cost of a sewer extension as it relates to the cost of the proposed development. *Id.* The Agency believes that Ascend should compare the economic benefit of commercial and residential development of the site and evidence of expectation that the site can be developed commercially. *Id.* The Agency also states that, in addition to regular inspections of the proposed septic system, Ascend should commit to following recommendations for service and repairs. *Id.* at 5. The Agency also sought "information demonstrating that the 500 gallon per day system is the appropriate size." *Id.* at 6.

In the conclusion of its response, the Agency proposed testing of the Tierney well if the Board concluded to grant the requested setback. Resp. at 6.

ACCEPT FOR HEARING

Based on its review of Ascend's petition, the Board accepts the petition for hearing, at which Ascend has the burden of proof. 35 Ill. Adm. Code 106.310.

In the following section of this order, the Board directs Ascend to file the required appearance of an attorney licensed and registered to practice law. 35 Ill. Adm. Code 101.400(a). Accordingly, the Board directs the hearing officer to schedule the required hearing only after Ascend has filed the required appearance.

As noted above, the Agency has filed its response to the petition. *See* 35 Ill. Adm. Code 106.306(a). Ascend “may file a reply within 14 days after the service of any response.” 35 Ill. Adm. Code 106.306(b). The Board may request additional information addressing the merits of the petition in a Board or hearing officer order.

APPEARANCE OF ATTORNEY

The Board’s procedural rules require that “any person other than individuals must appear through an attorney-at-law licensed and registered to practice law.” 35 Ill. Adm. Code 101.400(a)(2), citing 705 ILCS 205/1 (Attorney Act); 705 ILCS 220/1 (Corporation Practice of Law Prohibition Act). The petition clearly identifies Ascend as an Illinois corporation. Pet. at 1. The Board notes that Ascend’s petition appears to bear the signature of Mr. Mukesh Patel, referred to in the petition as both Owner and President of Ascend. Pet. at 6; Exhs. B, E. There is no indication in the record that Mr. Patel is an attorney licensed and registered to practice law. The Board recognizes that the petition is accompanied by a letter from Mr. Mark Eiden stating that he represents Ascend. In addition, the Certificate of Service (35 Ill. Adm. Code 101.304(d)) indicates that Mr. Eiden is an attorney licensed and registered in the State of Illinois. However, the Board’s procedural rules require that “[a]ny attorney appearing in a representative capacity must file a separate written notice of appearance with the Clerk, together with proof of service and notice of the filing of the appearance on all parties in the proceeding.” 35 Ill. Adm. Code 101.400(a)(4). Accordingly, the Board directs Ascend to file an appearance by an attorney licensed and registered to practice law and directs its hearing officer to schedule hearing only upon the filing of that appearance. 35 Ill. Adm. Code 101.400(a)(2).

CONCLUSION

The Board accepts Ascend’s petition and directs Ascend to file an appearance by any attorney licensed and registered to practice law.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 1, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board