

ILLINOIS POLLUTION CONTROL BOARD

October 5, 2000

SILVER GLEN HOMEOWNERS' ASSOCIATION, INC.,)
)
 Petitioner,)
)
 v.)
) PCB 00-223
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,) (Permit Appeal - Water)
)
 Respondent.)
)
)
)

ORDER OF THE BOARD (by E.Z. Kezelis):

This matter is before the Board on a motion to dismiss filed by the Illinois Environmental Protection Agency (Agency) on July 17, 2000. Silver Glen Homeowners' Association, Inc. (Silver Glen) filed its reply to the motion on July 24, 2000.

On August 10, 2000, the Board entered an order deferring a ruling on the Agency's motion to dismiss until such time as the Agency filed its administrative record in this case. On September 7, 2000, the Board denied the Agency's motion for reconsideration of that order. On September 14, 2000, the Agency's administrative record was filed.

MOTION TO DISMISS

On June 23, 2000, Silver Glen filed a permit appeal. Silver Glen seeks review and termination of a permit issued to it as Water Pollution Control Permit No. 2000-GC-0879 by the Agency on May 19, 2000.

Permit No. 2000-GC-0879 allows for the construction of improvements to the existing sewage treatment facility. The improvements include, among other things, increasing the irrigation system and irrigation acreage. Silver Glen maintains that in granting the permit, the Agency approved a plan to increase the irrigation acreage by creating easements on many of the existing lots in the subdivision. Silver Glen objects to the creation of easements and to the use of existing lots for additional irrigation acreage.

In its motion to dismiss, the Agency argues that the Board lacks jurisdiction to grant the relief requested by Silver Glen. In its order of August 10, 2000, the Board deferred ruling on the Agency's motion to dismiss and ordered the Agency to file its administrative record.

DISCUSSION

In its permit appeal, Silver Glen cites to Section 105.102 of the Board's procedural rules (35 Ill. Adm. Code 105.102) as the basis for the relief requested. Section 105.102 provides, among other things, that permit appeals, other than those involving National Pollutant Discharge Elimination System and Clean Air Act Permit Program permits, may be filed when: the Agency denies a permit or the Agency issues a permit with one or more conditions or limitations to which the applicant objects. 35 Ill. Adm. Code 105.102(a)(1) and (2).

Having now had an opportunity to review the administrative record submitted by the Agency, the Board is able to conclude that the easement plan to which Silver Glen objects, was part of the record on which the Agency purportedly based its decision to grant the permit. Accordingly, the easement plan is arguably an objectionable "limitation" imposed in the permit, as described in Section 105.102 of the Board's procedural rules.

The Board clearly has the authority to review Agency permitting decisions under Section 105.102. At this juncture, Silver Glen's permit appeal appears to be properly based on the portion of Section 105.102 that allows for appeals of permits with objectionable conditions or limitations.

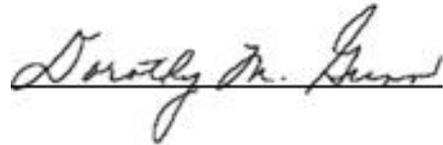
For these reasons, the Board finds that the matter before it constitutes a properly pled permit appeal, and that upon appropriate proof, the Board may grant at least some of the relief requested therein. The Board accordingly denies the Agency's motion to dismiss.

The Board notes that this case currently has a decision deadline of December 20, 2000. The parties are directed to proceed to hearing without further delay.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; 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 5th day of October 2000 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board