



1987, the Board vacated the Wayne County Board's siting approval, based on the Board's finding that a defective legal description of the site predominated over an accurate narrative description of the site. One year later, the Fifth District Appellate Court reversed that decision and remanded the case to the Board. Daubs Landfill, Inc. v. Pollution Control Board, 166 Ill. App. 3d 778, 117 Ill. Dec. 626, 520 N.E.2d 977 (5th Dist. 1988). Thus, the Board's June 2, 1988 Opinion and Order disposed of the other issues raised by petitioners in their original petition for review.

Petitioners' current contention that the Wayne County Board and this Board lacked jurisdiction of this case because of a defect in a statutorily required notice has not been raised before the instant motion to vacate. In its August 4, 1988 briefing order, the Board specifically asked petitioners and Daubs to address whether the Board has authority to review this jurisdictional issue consistent with the remand order of the appellate court. In response, petitioners and Daubs have raised a number of arguments. After careful consideration of these arguments, the Board finds that this jurisdictional claim cannot be raised at this late date.

Petitioner cites several cases for the proposition that the right to assert a jurisdictional issue exists at any time and in any proceeding, directly or collaterally. Weingart v. Department of Labor, 122 Ill. 2d 1, 118 Ill. Dec. 436, 521 N.E.2d 913 (1988); R. W. Sawant Company v. Allied Programs Corp., 111 Ill. 2d 304, 95 Ill. Dec. 496, 489 N.E.2d 1360 (1986). However, the Board believes that these cases are not dispositive of the issue in this case. Weingart allowed a late-filed appeal where an administrative agency had entered a recoupment order beyond the time in which it was authorized to recoup benefits, while Sawant involved a default judgment against a company over whom the court had no personal jurisdiction. Neither of these situations are involved in this case.

Instead, the Board is persuaded by a line of cases which stand for the proposition that although subject matter jurisdiction may be contested at any time, jurisdiction of the subject matter does not mean simple jurisdiction of the particular case, but jurisdiction of the class of cases to which that individual case belongs. People ex rel. Scott v. Janson, 57 Ill. 2d 451, 312 N.E.2d 620, 624 (1974); People v. Western Tire Auto Stores, Inc., 32 Ill. 2d 527, 207 N.E.2d 474 (1965); People ex rel. Person v. Miller, 56 Ill. App. 3d 450, 13 Ill. Dec. 920, 371 N.E.2d 1012, 1018 (1st Dist. 1977). Where the subject matter of the litigation is within the general jurisdiction of the tribunal, the claim of want of jurisdiction by reason of special circumstances cannot be raised for the first time on appeal. People ex rel. Person, 371 N.E.2d 1012, 1018. The Board specifically points out that both People ex rel. Scott and People

ex rel. Person involve cases where the cause of action was created by statute and did not exist at common law. That is the case here: the local siting approval procedure exists solely as a statutory procedure. Although People ex rel. Scott and People ex rel. Person involve proceedings before a trial court, and not administrative proceedings, the Board believes that these cases provide guidance in the absence of case law involving administrative proceedings.

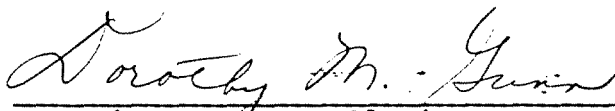
Therefore, the only jurisdictional claim which could be raised for the first time at this point in the proceeding is a claim that the Wayne County Board does not have jurisdiction over petitions for local siting approval. Pursuant to Section 39.2 of the Act, the Wayne County Board is the only body which can have jurisdiction over applications for approval of sites within Wayne County which are outside any municipal boundary. Petitioners do not contend otherwise. This Board cannot now consider a claim that certain notice was not given when that claim has never been advanced before. The proper time to raise such a claim is before the County Board or in a petition to this Board for review of siting approval, not in a motion to vacate filed nearly two years after the County Board's decision.

For these reasons, petitioners' motion to vacate is denied.

IT IS SO ORDERED.

Bill Forcade abstained; J. D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 6th day of October, 1988, by a vote of 5-1.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board