

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

STATE OF OHIO

VILLAGE OF REMINDERVILLE : Case No. EBR 773637
: :
Appellant, : :
: :
v. : :
: :
DONALD SCHREGARDUS, DIRECTOR OF : :
ENVIRONMENTAL PROTECTION, ET AL. : Issued on: February 3, 1998
: :
Appellees. : :

RULING ON MOTION TO DISMISS
AND FINAL ORDER

Issued By:

ENVIRONMENTAL REVIEW APPEALS
COMMISSION

Toni E. Mulrane, Chairman
Julianna F. Bull, Vice-Chairman
Jerry Hammond, Member

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RULING ON MOTION TO
DISMISS AND FINAL ORDER

-2-

Case No. EBR 773637

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This matter comes before the Environmental Review Appeals Commission ("ERAC" or "Commission") upon Appellee Liberty Glenwood's Motion to Dismiss.

The instant case involves objections by a number of appellants to the issuance of a wastewater Permit to Install ("PTI") to the Summit County Department of Environmental Services ("the County") by the Director of the Ohio Environmental Protection Agency ("Director", "OEPA", "the Agency"). On July 25, 1996, the Village of Reminderville filed its appeal of this action, naming the Director and the County as Co-appellees. That appeal was docketed by the Commission as Case Number 773637. On July 29, 1996, Aurora Shores Homeowners Association (ASHA) filed its appeal against the same appellees (ERAC Case Number 183642). Also on July 29, 1996, Area Residents for Intelligent Development (ARID) filed its appeal against the Director and the County (ERAC Case Number 773638). On August 7, 1996, Liberty Glenwood, Inc., a developer involved in the wastewater treatment expansion and directly affected by any decision on the PTI, moved to intervene before the Commission in the related appeals. On August 15, 1996, the Commission granted Liberty Glenwood's motion to intervene, and named Liberty Glenwood a party-appellee in this matter. The Commission consolidated the appeals on November 6, 1996.

Appellee Liberty Glenwood filed a NOTICE OF CANCELLATION OF DISCOVERY

DEPOSITIONS AND MOTION TO DISMISS with the Commission on January 22, 1998. Since that date, several additional NOTICES OF CANCELLATION OF DEPOSITION have been received by the Board.

STATEMENT OF THE CASE

1. On July 25, 1996, the Village of Reminderville filed an appeal with the ERAC objecting to the Director's decision to issue a Permit to Install (PTI) a Wastewater Treatment Plant to the Summit County Department of Environmental Services. (Case File A)

2. Area Residents for Intelligent Development (ARID) and the Aurora Shores Homeowners Association (ASHA) also appealed the Director's action. The three appeals were consolidated by the Board. (Case File L.)

3. From the outset of this appeal, Appellee Liberty Glenwood has documented difficulty in conducting discovery with the Village. A number of status conferences have been scheduled in an effort to achieve some progress in processing this appeal. The status conferences have all been at the request of the Appellee or the Commission, not at the request of the Village.

4. As a result of one such attempt, on May 2, 1997, the parties agreed that all discovery would be completed by October 17, 1997. They also agreed that a de novo adjudication hearing should commence on November 4, 1997.

5. In late June of 1997, Appellee Liberty Glenwood moved the Commission to order the deposition of 10 individuals whose names appeared on the

Village's witness list. Noting no objections, the Commission granted the motion for depositions and ordered that documents be made available before the depositions. The Commission also issued subpoenas for the witnesses to the county sheriff, as well as checks to cover witness fees and mileage. (Case File R, III, KKK.)

6. Despite a number of conversations confirming the deposition dates, the Village cancelled the depositions the day before they were scheduled to occur.

7. Appellee Liberty Glenwood attempted to reschedule the cancelled depositions; nevertheless, the depositions did not occur, and disputes ensued. In an attempt to resolve these disputes and to accommodate the appeal, the Commission held another status conference on August 5, 1997, at which time all parties agreed to work together and cooperate in moving discovery in this case forward. The parties were reminded of the agreed-to discovery date cut-off of October 17, 1997. (Case file LLL.)

8. Subsequent to this status conference, the parties filed a revised agreed-to discovery schedule. This schedule contained dates on which the Village and ASHA stated that their witnesses would be available for discovery depositions. (Case File NNN.)

9. Despite continued attempts on the part of Appellee Liberty Glenwood to depose proposed witnesses, as late as October 21, 1997, no depositions had

been taken in this case, and no discovery documents had been exchanged. This was obviously past the first discovery date cut-off and mere weeks from the scheduled hearing.

10. In another attempt to move the appeal forward, the Commission convened yet another status conference. At the conference, counsel for the Village assured the Commission that it would work diligently to accommodate discovery requests in this matter. In acknowledgement of the lack of discovery and the quickly approaching November hearing date, the Commission sua sponte rescheduled the hearing for February, 1998. At this time the Commission dismissed ARID from the case, noting this appellant's failure to prosecute the appeal, despite numerous orders from the Commission. (Case file CCCC, DDDD.)

11. Unfortunately, discovery did not progress, and disputes continued. Cognizant of the upcoming February hearing, and apparent lack of discovery for that hearing, the Commission ordered yet another status conference to be held at the Commission offices on January 7, 1998.

12. Once again, discovery, or the lack thereof, was discussed. Once again, parties agreed to exchange witness lists and agreed to a discovery date cutoff of February 9, 1998. (Case File VVV.)

13. Appellee Liberty Glenwood, once again, attempted to schedule depositions based on Appellant's witness list, and filed the appropriate notices with the Commission. Once again, the Commission issued the requisite

subpoenas and checks for the scheduled depositions.

14. This final set of depositions was also cancelled at the last minute by the Village.

15. The record demonstrates that Appellee Liberty Glenwood has attempted to depose at least eighteen individuals from the Village's various, and apparently ever-changing witness lists. Further, a number of these individuals have been scheduled and rescheduled for deposition three or four times each.

16. The latest agreed-to discovery date cut-off of February is less than two weeks away, and the thrice rescheduled hearing is set for March 10, 1998.

17. Despite those upcoming dates, and the fact that it has been nearly eighteen (18) months since the Village of Reminderville filed its appeal, the record reflects no effort on the part of the Village to initiate discovery. To the contrary, it is apparent from the record that the Village appears to have been obstructive to discovery efforts on the part of the other parties. It is also the opinion of this Commission that the Village has failed to demonstrate a good faith effort to prosecute its appeal.

18. Consequently, in light of the foregoing, the Commission hereby grants Appellee Liberty Glenwood's Motion to Dismiss the appeal filed by the Village of Reminderville.

FINAL ORDER

The Commission hereby grants Appellee Liberty Glenwood's motion to dismiss the Village of Reminderville from the above captioned matter. The Commission notes that the appeal as it relates to ASHA remains active and scheduled for hearing to commence on March 10, 1998.

The Commission, in accordance with Section 3745.06 of the Revised Code and Ohio Administrative Code 3746-13-01, informs the parties that:

Any party adversely affected by an order of the Environmental Review Appeals Commission may appeal to the Court of Appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulation to the court of appeals of the district in which the violation was alleged to have occurred. Any party desiring to so appeal shall file with the Commission a Notice of Appeal designating the order appealed from. A copy of such notice shall also be filed by the Appellant with the court, and a copy shall be sent by certified mail to the Director of Environmental Protection. Such notices shall be filed and mailed within thirty days after the date upon which Appellant received notice from the Commission by certified mail of the making of an order appealed from. No appeal bond shall be required to make an appeal effective.

THE ENVIRONMENTAL REVIEW
APPEALS COMMISSION

Toni E. Mulrane
Toni E. Mulrane, Chairman
Juliana F. Bull
Juliana F. Bull, Vice-Chairman
Jerry Hammond
Jerry Hammond, Member

Entered in the Journal of the
Commission this 3rd day
of January, 1998.

Mary J. Oxley
Mary J. Oxley, Executive Secretary

RULING ON MOTION TO
DISMISS AND FINAL ORDER

-9-

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COPIES SENT TO:

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