

BEFORE THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE



APPEAL OF:
MICHAEL P. SACKAWICZ

)
)
) Appeal No. 92-19
)

FINAL ORDER

The Environmental Appeals Board ("Board") held a hearing on this Appeal on November 24, 1992. The Board members present were Thomas J. Kealy, Chairman, Joan Donoho, Clifton H. Hubbard, Jr., Mary Jane Willis and Ray K. Woodward. Steven C. Blackmore, Deputy Attorney General, advised the Board. Appellant, Michael P. Sackawicz, was present and represented himself. The Secretary of the Department of Natural Resources and Environmental Control ("DNREC") was represented by Deputy Attorney General Keith A. Trostle. This appeal involves the denial of an application for an agricultural water well permit. The Board affirms the denial of the well permit.

SUMMARY OF THE EVIDENCE

This relatively straightforward appeal involves the construction of Senate Bill No. 144, codified at 7 Del. C. sec. 6075 et seq. Mr. Sackawicz offered his testimony and two newspaper articles describing S.B. 144, as well as a copy of the Bill itself. Mr. Sackawicz had applied for a water well permit for purposes of watering his lawn and vegetable garden. He would continue to draw drinking water and household water from Public Water Supply Company, Inc. ("Public Water"), which services his development. He argued that he would not be

wasting well water, since water he used would be returned to the ground-water system. He also argued that he qualified for an agricultural well permit exception because he was a "gentleman farmer." Mr. Sackawicz contended that the preamble to S.B. 144 created an exception for agricultural wells. Mr. Sackawicz was also very upset by large rate increases granted to Public Water by the Public Service Commission ("PSC") and the alleged failure of the PSC and other agencies to empathize with retirees and fixed income pensioners.

DNREC argued that it was prohibited by S.B. 144, specifically 7 Del. C. sec. 6077(b)(3), from granting a permit to Mr. Sackawicz. DNREC indicated that a certificate of public convenience and necessity ("CPCN") had been issued to Mr. Sackawicz's water company and he resided in a recorded development where public water was available. DNREC offered three exhibits in support.

FINDINGS OF FACT

1. Mr. Sackawicz is a resident of the Oak Meadows sub-division, which is a recorded development according to the Sussex County Planning and Zoning Commission. (See Letter dated October 14, 1992 from Lawrence B. Lank, DNREC Ex. No. 3).

2. The Oak Meadows sub-division, and Mr. Sackawicz's residence, are serviced by Public Water. Public Water has received a CPCN from DNREC. (See DNREC Exhibits 1 and 2).

CONCLUSIONS OF LAW

Mr. Sackawicz argued that he is entitled to an agricultural well through an exception created by S.B. 144. His second exhibit, an unidentified newspaper article, states:

With Cordrey's SB 144, an individual landowner has the right to install their (sic) own wells, meaning central water is not mandatory.... Because it would be too costly to farm on metered water, farms would not have to hook into the water district.

The preamble to S.B. 144 states that the Bill was intended to rectify the existing regulatory climate which "could deprive such citizens of the free use of groundwater which is beneath their own land...." The intent of the new law was to establish new procedures "while at the same time preserving to as great an extent as possible the traditional patterns of water utilization for agriculture, for rural, single-family residential units not part of a development...." 7 Del. C. sec. 6075.¹

DNREC does not believe there is an exception for agricultural well use. 7 Del. C. sec. 6077(b)(3) states:

(b) Following issuance of a certificate of public convenience and necessity to a water utility, the Department shall not withhold a water well permit, or require an applicant for a water well in an area served by a water utility to utilize the services of the utility, unless:

* * *

¹ Generally, the newspaper articles offered as exhibits refer to the rights of farmers and landowners under 7 Del. C. sec. 6077(a), which prohibits a utility from expanding a service area without the approval of local landowners or DNREC.

(3) The applicant is a resident of a municipality, county water district, or recorded development where public water is available. (emphasis added).

DNREC interprets the "shall not withhold" language to require it to deny all water well permit applications where the requirements of one of the sub-sections of section 6077(b) are satisfied.

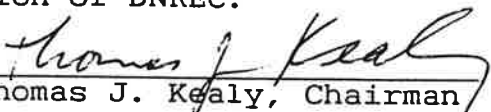
Here, Mr. Sackawicz is a resident of a recorded development where public water is available. Therefore, DNREC argued it was required to deny his permit application under section 6077(b)(3). DNREC's interpretation is apparently bolstered by an opinion from Jeanne L. Langdon, Deputy Attorney General, but this opinion was not offered to the Board. The Board does not express an opinion on the rigid interpretation of DNREC. Section 6077(b) could be interpreted to prohibit DNREC from withholding water well permits unless one of the sub-sections of section 6077(b) is satisfied, as it was here. Under this interpretation, DNREC would be given the authority, in its discretion, to withhold the permit.

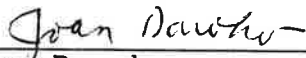
Regardless, whether the authority to withhold a permit is discretionary or mandatory, DNREC withheld the permit here. Statutes should be interpreted in accordance with their plain language when the statutory language unambiguously reflects the legislative intent. Spielberg v. State, Del. Supr., 558 A.2d 291, 293 (1989). If the statutory language is ambiguous, the legislative history and the preamble should be consulted to determine the legislative intent and to resolve the ambiguity. Carper v. New Castle County Board of Education, Del. Supr., 432 A.2d 1202, 1205 (1981).

The statutory language in section 6077(b)(3) clearly shows that DNREC has the authority to deny Mr. Sackawicz's request for a water well permit. Generally, in construing statutes, the specific language prevails over the general language. Mergenthaler v. State, Del. Supr., 239 A.2d 635, 637 (1968). The specific language of section 6077(b)(3) controls over the general language of the preamble to S.B. 144. Also, DNREC expressed legitimate concern about possible interconnections into water wells by residents of recorded sub-divisions who do not wish to pay for water, and the various health risks which such wells or interconnections could pose. Further, restricting the number of wells drilled into Delaware aquifers reduces the risk of contamination of the aquifers.

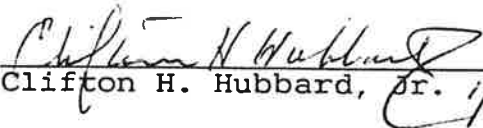
CONCLUSION

Appellant (Mr. Sackawicz) had the burden of proof to show that the decision below was not supported by the evidence. 7 Del. C. sec. 6008(b). He failed to satisfy his burden on appeal. Accordingly, the Board unanimously affirms the decision of DNREC.


Thomas J. Kealy, Chairman


Joan Donoho

Mary Jane Willis


Clifton H. Hubbard, Jr. 1/12/93


Ray/K. Woodward 1/12/93

DATE: January ____, 1993

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CONCLUSION

Appellant (Mr. Sackawicz) had the burden of proof to show that the decision below was not supported by the evidence. 7 Del. C. sec. 6008(b). He failed to satisfy his burden on appeal. Accordingly, the Board unanimously affirms the decision of DNREC.

Thomas J. Kealy, Chairman

Joan Donoho



Mary Jane Willis

Clifton H. Hubbard, Jr.

Ray K. Woodward

DATE: January 8, 1993