

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

April 1, 2015

**Redwood Trails Residential and Recreational Housing Development Letter of Approval
Appeal No. 13-2001 CWC**

Issue: This is a request for a decision from the Missouri Clean Water Commission regarding appeal No. 13-2001 CWC. This appeal is related to the Missouri Department of Natural Resources Water Protection Program method of wastewater disposal for residential development approval letter issued to developer Butch Menne. Several other identical appeals were filed by property owners in the development which were consolidated into the one appeal No. 13-2001 titled Harold and Pam Turner & Fred and Mary Gilman & Joe and Kim Dorenkamp & Curtis and Stefanie Thompson & Mark and Christine Gettings & Bernard aka Butch Menne & Kent Shriver vs. Missouri Department of Natural Resources.

Background: All pertinent background information is listed in the attached Missouri Administrative Hearing Commission recommended decision document.

Staff Recommendation: The Department recommends that the Clean Water Commission dismiss appeal No. 13-2001 CWC as recommended by the Missouri Administrative Hearing Commission.

List of Attachments:

- Administrative Hearing Commission's Recommended Decision

Before the
Administrative Hearing Commission
State of Missouri



HAROLD AND PAM TURNER and)
FRED AND MARY GILMAN and JOE)
AND KIM DORENKAMP and CURTIS)
AND STEPHANIE THOMPSON and)
MARK AND CHRISTINE GETTINGS)
and KENT SHRIVER and)
BERNARD aka BUTCH MENNE,)

Petitioner,)

vs.)

MISSOURI DEPARTMENT OF NATURAL)
RESOURCES,)

Respondent.)

No. 13-2001 CWC

RECOMMENDED DECISION

We recommend the Clean Water Commission (“CWC”) dismiss this case because it is moot.

Procedure

On November 19, 2013, Bernard (aka Butch) Menne filed a complaint appealing conditions set forth in the October 21, 2013 Letter of Approval (“2013 Approval Letter”) from the Department of Natural Resources (“DNR”) for on-site wastewater treatment systems at parcels of real property in the Redwood Trails Residential & Recreational Housing Development (“the Subdivision”), in Ralls County, Missouri. Menne is the permittee, and he waived the time

deadlines set forth in § 621.250.2.¹ On the following dates, the following Petitioners filed appeals regarding the same property:

December 9, 2013, Curtis and Stefanie Thompson;
December 10, 2013, Mark and Christine Gettings;
December 12, 2013, Joe and Kim Dorenkamp;
December 13, 2013, Fred and Mary Gilman;
December 13, 2013, Harold and Pam Turner.

On December 18, 2013, DNR filed a motion to consolidate those cases with this case, which we granted by order issued December 23, 2013. On January 1, 2014, Kent Shriver filed a request to be included in the consolidated case. We opened a separate case, No. 14-0009 CWC. On January 22, 2014, DNR filed a motion to consolidate Shriver's case with this one. We granted the motion by order issued January 27, 2014.

On September 15, 2014, we held a hearing. Assistant Attorney General Jacob T. Westen represented DNR. None of the Petitioners appeared. The matter became ready for our decision on November 6, 2014, the date DNR filed its written argument.

Findings of Fact

1. Menne is the developer of the Subdivision and owns lots in the Subdivision.
2. The remaining Petitioners own or owned lots in the Subdivision.
3. On January 16, 2008, DNR received an application from Menne requesting approval for wastewater treatment under 10 CSR 20-6.030² for disposal of wastewater in a residential housing development.
4. On March 31, 2008, DNR issued to Menne its first Letter of Approval ("2008 Approval Letter") for the Subdivision for the requested method of wastewater treatment.

¹ Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

² All references to "CSR" are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

5. The 2008 Approval Letter approved the Subdivision for one, single family residence, connected to an on-site septic wastewater treatment system, per lot.

6. On October 21, 2013, DNR issued an amended Letter of Approval (“2013 Approval Letter”) for the Subdivision.

7. The 2013 Approval Letter supersedes and expands the 2008 Approval Letter, approving that a single on-site system per lot will be sufficient to treat wastewater of any one of the following options, per lot: (1) one single family residence; (2) four recreational vehicles; or (3) three recreational vehicles and a seasonal structure (not for year-round occupation).

8. Menne appealed the proposed conditions in the 2013 Approval Letter.

9. All Petitioners raise the same or substantially similar issues in their complaints.

10. As of September 11, 2014, DNR, Menne, Shriver, Fred and Mary Gilman, Mark and Christine Gettings, and Curtis and Stefanie Thompsons had signed the agreement that resolves all issues raised. The Turners and the Dorenkamps did not sign the settlement agreement.

11. The agreement expands the conditions of the 2013 Approval Letter even further, under the consideration that “the extra [wastewater] load should be able to be handled with an on-site system with lateral lines as long as they were properly operated and maintained as such.”³

12. DNR will apply the agreement’s expanded conditions of the 2013 Approval Letter to all of the lots in the Subdivision.

Conclusions of Law

We have jurisdiction to hear this case.⁴ We exercise the authority to conduct a hearing and recommend a decision to certain commissions within DNR.⁵ DNR has the burden of proof.⁶

³ Tr. at 12.

⁴Section 621.250.

⁵*Id.*

⁶ Section 640.012.

DNR argues that this case should be dismissed because it is moot. A case is moot when a decision on the merits would have no practical effect on existing controversy or where it is impossible to grant any effective relief.⁷ “When an event occurs that makes a [tribunal’s] decision unnecessary or makes granting effectual relief by the [tribunal] impossible, the case is moot and generally should be dismissed.”⁸

DNR states that, after the filing of the different Petitioners’ complaints and prior to the hearing, DNR and all but two sets of Petitioners (the Turners and the Dorenkamps) entered into an agreement that resolved all the Petitioners’ complaints. The agreement explained and expanded some of the conditions in the 2013 Approval Letter, providing the relief that all Petitioners had requested. DNR argues that the signing of the agreement makes a decision on the merits in this case unnecessary and that the case should be dismissed because it is moot.

We agree that none of the issues raised by the Turners’ or the Dorenkamps’ complaints are unique to their filings. All the complaints identified the same or substantially similar issues, and the agreement addresses these. Because DNR agreed to apply the terms of the Agreement to all of the lots within the Subdivision, the Turners’ and the Dorenkamps’ grievances are resolved by the Agreement. In addition, neither the Turners nor the Dorenkamps appeared, either in person or by counsel, at the hearing. As stated above, DNR has the burden of proof; therefore, these Petitioners’ non-appearance did not, itself, support dismissal. However, their non-appearance is additional evidence that all issues between the parties have been resolved.

Therefore, a decision on the merits of this case is unnecessary and would have no practical effect.

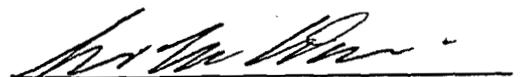
⁷ *Rosenfeld v. Thoele*, 28 S.W.3d 446, 451 (Mo. App., E.D. 2000).

⁸ *Hihn v. Hihn*, 235 S.W.3d 64, 68 (Mo. App., E.D. 2007).

Summary

We recommend that the CWC dismiss this case as moot.

SO RECOMMENDED on December 29, 2014.



SREENIVASA RAO DANDAMUDI
Commissioner

