

**Objection to issuance of Sanitary Sewer Construction Permit Approval No. 19883  
Lafayette Ridge and Lafayette Landings  
Floyd Knobs, Floyd County, Indiana  
2011 OEA 136, (11-W-J-4451)**

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**OFFICIAL SHORT CITATION NAME:** When referring to 2011 OEA 136 cite this case as  
*Robert Lynn Company, Inc., 2011 OEA 136.*

**TOPICS:**

dismissal  
sanitary sewer  
jurisdiction  
zoning  
12(B)(6)  
aggrieved  
adversely affected  
*Huffman*  
327 IAC 3-6-6(b)

**PRESIDING JUDGE:**

Catherine Gibbs

**PARTY REPRESENTATIVES:**

IDEM: Justin Barrett, Esq.  
Petitioner: Richard R. Fox Esq.; Law Offices of Richard Fox  
Permittee: C. Gregory Fifer Esq.; Applegate Fifer Pulliam LLC

**ORDER ISSUED:**

October 6, 2011

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

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STATE OF INDIANA                    )  
  )  
COUNTY OF MARION                 )

BEFORE THE INDIANA OFFICE OF  
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:   )  
  )  
OBJECTION TO ISSUANCE OF SANITARY   )  
SEWER CONSTRUCTION PERMIT   )  
APPROVAL NO. 19883   )  
LAFAYETTE RIDGE and LAFAYETTE LANDINGS   )  
FLOYD KNOBS, FLOYD COUNTY, INDIANA   )  
\_\_\_\_\_   )  
Floyd County,   )  
    Petitioner,   )  
Robert Lynn Company, Inc.,   )  
    Permittee/Respondent,   )  
Indiana Department of Environmental Management,   )  
    Respondent   )

CAUSE NO. 11-W-J-4451

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**

This matter came before the Office of Environmental Adjudication (the OEA or the Court) on the Respondent’s Motion to Dismiss or Alternatively, for Summary Judgment. The Court, being duly advised and having read the record and motion, now enters the following findings of fact, conclusions of law and final order.

**Summary of Decision**

The Indiana Department of Environmental Management (the IDEM) approved the Robert Lynn Company, Inc.’s (the Respondent) application for sanitary sewer construction. Floyd County objected. The Respondent filed its Motion to Dismiss or Alternatively, for Summary Judgment. The Court concludes that the Petitioner has failed to state a claim upon which relief can be granted and enters judgment in favor of the Respondent.

**FINDINGS OF FACT**

1. On January 14, 2011, the Indiana Department of Environmental Management (IDEM) issued Permit Approval No. 19883 (the Approval) to the Robert Lynn Company, Inc. for the construction of a sanitary sewer in the Lafayette Ridge and Lafayette Landings subdivisions.
2. These proposed subdivisions are located in Floyd County.

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3. Floyd County (the Petitioner) filed its Petition for Administrative Review on January 24, 2011. The Petitioner objects to the approval for two (2) reasons: (1) the Respondent allegedly lacks local zoning approval for the proposed Lafayette Landings subdivision and (2) an alleged discrepancy between the number of homes proposed to be served by the sewer and the potential number of homes in the approved Lafayette Ridge subdivision.
4. On March 24, 2011, the Court issued its Order Striking Filing, striking a filing from the Floyd County Health Department on the grounds that said filing was untimely and ex parte.
5. The Court issued a Case Management Order on May 5, 2011, setting deadlines for filing, responding and replying to dispositive motions. The Respondent timely filed its Motion to Dismiss or Alternatively, for Summary Judgment on August 1, 2011. The Petitioner did not file a response. The Respondent did not file a reply.
6. The Floyd County Plan Commission approved the construction of 223 homes in Lafayette Ridge. The Floyd County Plan Commission rejected the proposed construction of the Lafayette Landings subdivision.

**CONCLUSIONS OF LAW**

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) and the parties to this controversy pursuant to I.C. § 4-21.5-7, *et seq.*
2. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
3. The Respondent argues that the Petitioner is not aggrieved or adversely affected by the issuance of the approval. Further, he argues that the Petitioner has failed to state a claim upon which relief can be granted.
4. A motion to dismiss for lack of standing should be treated as a motion to dismiss for failure to state a claim under Ind. R. Trial P. 12(B)(6). *Huffman v. Indiana Office of Environmental Adjudication, et al.*, 811 N.E.2d 806, 813 (Ind. 2004). “In reviewing a Rule 12(B)(6) motion, a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would not be entitled to recover under any set of facts admissible under the allegations of the complaint. This Court views the pleadings in a light most favorable to the nonmoving party, and we draw every reasonable inference in favor of that party.” *Huffman* at 814.
5. The Indiana Supreme Court addressed the definition of “aggrieved or adversely affected” in *Huffman*. The Court held that “whether a person is entitled to seek administrative review depends upon whether the person is “aggrieved or adversely affected.” The Court held that “Essentially, to be “aggrieved or adversely affected,” a person must have suffered or be likely

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to suffer in the immediate future harm to a legal interest, be it a pecuniary, property, or personal interest.” The Court defined “aggrieved” as “[A] substantial grievance, a denial of some personal or property right or the imposition upon a party of a burden or obligation . . . The appellant must have a legal interest which will be enlarged or diminished by the result of the appeal.” *Huffman* at 810.

6. The Respondent relies on the fact that Floyd County was unable to identify any real property that it owns that was adjoining or near the proposed sewer route. However, this is not the sole basis for claiming aggrievement under the *Huffman* standard. Floyd County has an interest in ensuring that the Approval was issued in compliance with the applicable regulations. It is clear that Floyd County is aggrieved or adversely affected by the approval as it is the county in which this sewer will be constructed.
7. Whether the Petitioner has stated a claim upon which the OEA can grant relief is another matter. The Petitioner objects to the Approval on the basis that the Respondent does not have local zoning approval to construct the Lafayette Landings subdivision. OEA does not have jurisdiction to hear disputes over local issues, such as zoning. Further, neither IDEM nor OEA has the authority to override the local requirements for zoning. The Approval explicitly states that “All local permits shall be obtained before construction is begun on this project.” Permit Approval No. 19883, Part I, paragraph 1, page 3 of 6. In addition, the applicable rule states, “All required permits or exemptions from other federal, state, and local units must be obtained prior to the commencement of construction of any sanitary sewer covered by this rule.” 327 IAC 3-6-6 (b). Lack of local zoning approval does not defeat the issuance of the Approval; likewise, the Approval may not be construed to authorize construction of the subdivisions without proper zoning approval. The Petitioner has failed to state a claim upon which OEA can grant relief.
8. The Petitioner also objects to the Approval because the Approval authorizes the construction of sanitary sewer to provide service for 153 single family homes whereas the local zoning board has given the Respondent approval to build 223 homes. The Respondent must comply with all applicable regulations and permit conditions regardless of the source. The Respondent may only construct the sanitary sewer in compliance with the terms and conditions of the Approval for the permitted 153 homes. If the Respondent builds more homes than the sanitary sewer has capacity for, he must seek additional approval to construct the necessary sewers. Nothing in the Approval or state regulations allow the Respondent to violate state, local or federal standards. The discrepancy between the number of homes permitted by the local zoning authority and the number of homes for which the Permit authorizes sewer service is not sufficient grounds to invalidate the Approval. The Petitioner has failed to state a claim upon which relief can be granted.
9. For the above reasons, the motion to dismiss should be granted.

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**FINAL ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition for Review filed by Floyd County is **DISMISSED**.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

**IT IS SO ORDERED this 6th day of October, 2011 in Indianapolis, IN.**

Hon. Catherine Gibbs  
Environmental Law Judge