

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1985

HAWTHORN REALTY GROUP, INC., )  
)  
Petitioner, )  
)  
v. ) PCB 85-85  
)  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY and VILLAGE OF LINCOLNSHIRE, )  
)  
Respondents. )

MESSRS. CHARLES L. SIEMON AND WILLIAM W. MERRILL III OF SIEMON,  
LARSEN & PURDY ON BEHALF OF PETITIONERS;  
MESSRS. PATRICK A. LUCANSKY AND MICHAEL J. DUGGAN OF KLEIN,  
THORPE & JENKINS, LTD. ON BEHALF OF THE VILLAGE OF LINCOLNSHIRE;  
MS. HEIDI E. HANSON ON BEHALF OF THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a petition for variance filed on June 18, 1985 by Hawthorn Realty Group, Inc. (Hawthorn) for relief from 35 Ill. Adm. Code 309.222(b). By order of June 27, 1985 the Board joined the Village of Lincolnshire (Village) as a necessary party respondent, ordered Hawthorn to serve the Village and to provide the Board with proof of service on the Village, and ordered Hawthorn to file an amended petition. In response to a motion by Hawthorn dated August 8, 1985, the Board on August 15, 1985 determined that the ninety day time period for it to render a decision on the variance petition commenced on July 16, 1985, the date of filing of the proof of service on the Village. A pre-hearing conference was held on September 3, 1985 and a hearing was held in Lincolnshire, Illinois on September 10, 1985. While the Village originally objected to a grant of variance, it subsequently withdrew its objection.

Hawthorn is a Delaware Corporation duly authorized to conduct business in the State of Illinois. It is active in the ownership, development, sale and management of real estate in the State of Illinois.

Hawthorn is the developer of an office and hotel complex known as the Tri-State International Office Center. The complex is located at the intersection of Illinois State Route 22 and the Tri-State Tollway in Lake County, Illinois. Phase I of the project is located in the Village of Lincolnshire and is currently under construction pursuant to permits issued by the Village of Lincolnshire and a number of other governmental

agencies, including IEPA permit numbers 1984-HB-0306, 1977-HB-4314 and 1977-HB-4314-1. Phase I involves three office buildings with a combined square floor area of 350,000 square feet. Phase II lies in unincorporated Lake County immediately to the north of the corporate limits of the Village of Lincolnshire. It consists of two office buildings with 210,000 square feet of floor area and a 120 room hotel all of which has been approved by Lake County. Phase II of the project, upon its completion, will employ approximately 804 persons.

Hawthorn proposes to provide sewer service to the Phase II development by building a sewer line that will connect with the line built as part of Phase I. The line serving Phase I was turned over to the Village by Hawthorn. The proposed sanitary sewer extension is 650 feet of 10 inch ductile iron pipe and 90 feet of 6 inch ductile iron pipe. The proposed sewer also includes 2 manholes for the 10 inch pipe set at a maximum distance of 375 feet apart and 2 manholes for the 6 inch pipe, a maximum of 50 feet apart. The proposed discharge from Phase II is 195.3 (PE) of ordinary domestic waste. The discharge would be transported through a series of receiving sewers which are a part of Lake County's areawide wastewater treatment system to the Des Plaines River Sewage Treatment Plant (Pekara Road Plant). Hawthorn has applied to the IEPA for construction permit approval for Phase II.

The receiving sewer through which the proposed discharge would be transported is 1575 feet of 10 inch pipe and 10 manholes that were constructed by Hawthorn solely at its cost. Hawthorn also contributed \$250,000 to assist in improving the area wide sewer system.

Hawthorn requests relief from Section 309.222(b) which provides:

- b) Permit applicants for sewer construction or modification shall be accompanied by signed statements from the owners of all intermediate receiving sewers and the receiving treatment works certifying that their facilities have adequate capacity to transport and/or treat the wastewater that will be added through the proposed sewer without violating any provisions of the Act and this Chapter.

At a pre-trial conference, all parties agreed that granting the variance would have no adverse impacts on the water quality of the waters of the State. In addition, they agreed on three issues to be addressed at hearing:

- a) whether capacity of the intermediate receiving sewer line is adequate to receive the Phase II discharge;

- b) whether the Village had refused to certify the capacity of the line; and
- c) whether compliance with Section 309.222(b) would result in an arbitrary or unreasonable hardship.

Regarding a), the intervening sanitary sewer line capacity was stipulated as 1870 PE. From Hawthorn's calculations there is more than adequate reserve capacity in the receiving sewer (Exhibit D to the petition at 13). The connection of the project in question will add 195.3 PE. As for b), the Village refused to certify at hearing (R.8,18). The basic reason the Village refuses to certify is that Hawthorn will not agree to annex Phase II to the Village (R. 8). Therefore, the only issue left for the Board to determine is whether Hawthorn has shown an arbitrary or unreasonable hardship.

Section 35 of the Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par.1035) provides that petitioners must show that compliance with the Board's rules and regulations or the Act would impose an arbitrary or unreasonable hardship on petitioner. Monsanto Co. v. IPCB, 67 Ill.2d 276, 376 N.E.2d 684 (1977). The evidence shows that if Hawthorn does not connect to the Village sanitary sewer system, it would have to install either a parallel sanitary sewer line at a cost of \$119,000 or a package treatment plant (R.30-1). Hawthorn states that such a plant would be an expensive installation, costly to operate, entail a high degree of maintenance and would require an amendment to the Village's wastewater management system (Id.). While the evidence does not suggest that the options are technically infeasible, they are clearly more costly than connecting to the existing sewer line owned by the Village. In addition, constructing the alternate sewer line would cause considerable damage to existing facilities and property that would not occur with the use of the existing line (R. 27-30).

Under the regulations, Hawthorn cannot receive a permit to construct its proposed sewer unless the Village certifies that the receiving sewer has adequate capacity or Hawthorn obtains a variance. The purpose of this regulation is to insure that sewers and sewer plants are not inadvertently overloaded by additional hookups. The factual question to be addressed deals solely with capacity, not Village policy on annexation or Hawthorn's property rights which should be addressed in another forum. The record shows that the capacity is adequate for the proposed connection, but that the Village will not certify for reasons having to do with other matters. The Village's refusal to certify this simple factual question places Hawthorn in the position of not being able to file a complete permit application. Given this situation, complying with the regulations constitutes an arbitrary or unreasonable hardship. Hawthorn could seek a mandamus order requiring certification, but this would consume both public and private resources without resolving the underlying issue. The Board rejects the argument

that any hardship is self-imposed, because Hawthorn can reasonably expect the Village to certify line capacity without imposing extraneous conditions regardless of other issues which may be in dispute. Such conditions are improper and frustrate the regulatory intent.

The Board finds that Hawthorn will suffer an arbitrary or unreasonable hardship if required to comply with Section 309.222(b). The Board hereby grants Hawthorn a variance from 35 Ill. Adm. Code 309.222(b) for two years or until the Agency renders a final decision on the requisite permit applications, whichever is sooner. This variance is limited to the sewer line at issue in this case. The Board also points out that this variance does not obviate the need for compliance with any applicable local ordinances.

This Opinion constitutes the Board's findings of facts and conclusions of law in this matter.

#### ORDER

Hawthorn Realty Group, Inc. is hereby granted a variance from 35 Ill. Adm. Code 309.222(b) as it relates to the receiving sanitary sewer in the Village of Lincolnshire serving Phase I of the Hawthorn development known as Tri-State International Office Center.

1. The variance expires on October 10, 1987 or when the Illinois Environmental Protection Agency renders a final decision on the requisite permit applications, whichever is sooner.
2. Within 45 days of the date of this Order, Hawthorn shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Unit, Water Pollution Control Division, 2200 Churchill Road, Springfield, Illinois 62706, a Certification of Acceptance and Agreement to be bound to all terms and conditions set forth in the Order. The 45 day period shall be held in abeyance during any period in which this matter is being appealed. The form shall be as shown below:

CERTIFICATION

I, (We), \_\_\_\_\_, hereby accept(s) and agree(s) to be bound by the above terms and conditions of the Order of the Pollution Control Board in PCB 85-85 dated October 10, 1984.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Title

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Board Member J.D. Dumelle dissented.

Board Member B. Forcade abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of October, 1985 by a vote of 5-1.

*Dorothy M. Gunn*

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board