

ILLINOIS POLLUTION CONTROL BOARD  
March 21, 1984

VILLAGE OF LOMBARD, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 83-147  
 )  
 ) ILLINOIS ENVIRONMENTAL PROTECTION )  
 ) AGENCY, )  
 )  
 ) Respondent. )

Dissenting Opinion (by B. Forcade):

I respectfully dissent from the majority because Lombard has failed to establish arbitrary or unreasonable hardship and failed to evaluate the environmental consequences of the requested variance.


Previously this Board has held that arbitrary or unreasonable hardship exists when previous financial expenditures or commitments are frustrated by the subsequent imposition of restricted status. In these circumstances there is a direct cause and effect relationship between restricted status and the hardship. Today the Board holds that general deterioration due to loss of businesses in the downtown municipal area constitutes such hardship. Restricted status did not terminate the sewer discharges from Henderson's department store or any other Lombard business. Thus there is no nexus between restricted status and the hardship.

Additionally, Lombard has completely failed to evaluate the environmental impact of diverting stormwater from one sewer to another. I believe Petitioners have that burden in a variance proceeding. Lombard claims that diverting stormwater from the overloaded combined sewer to the overloaded storm sewer will reduce downstream basement back-ups. The intervenors dispute this conclusion. Since the record is remarkably silent on facts supporting either conclusion, I was unable to determine whether the plan will improve or aggravate basement back-ups. Such a finding could have been made if Lombard or the intervenors had provided information on downstream sewer layout, cross connections, capacities and flows, as well as the cause and location of flooding and basement back-ups.

The record here has focused on the seven acres of the Plan. Much more attention should have been given to the areas where the problems occur so this Board could evaluate the impact the variance would have.

  
Bill S. Forcade, Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 27<sup>th</sup> day of March, 1984.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board