ILLINOIS POLLUTION CONTROL BOARD
November 5, 1981

CITY OF MARQUETTE HEIGHTS, Petitioner,	)	
v.	)	PCB 81-15
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

WILLIAM F. MORRIS, TEPLITZ & MORRIS, APPEARED ON BEHALF OF THE PETITIONER.

WILLIAM E. BLAKNEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE RESPONDENT.

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

On February 2, 1981 the City of Marquette Heights (City) filed a petition for variance from Rule 604(b) of Chapter 3: Water Pollution. On March 5, 1981 the Board ordered the developers of "Outlot H" to be joined as parties to this action. On March 18, 1981 the Illinois Environmental Protection Agency (Agency) filed its recommendation that the variance be denied. Hearing was held on July 28, 1981. The Agency filed its closing brief on September 22, 1981 and the City filed its brief on September 24, 1981. LLK Development Company joined in the City's brief.

The City owns and operates a sewage treatment plant (STP) located in Tazwell County that consists of a comminuter/bar screen, one primary clarifier, an activated sludge unit, a secondary clarifier, chlorination and an anaerobic digester. Discharge is to the Illinois River. The water and sewer systems were first developed in the late 1940's by a private developer and were purchased by the City in 1963. By that time, the secondary treatment equipment, which had never been used, had deteriorated to the point that it was totally unusable (R. 19-23). On December 6, 1976 the Agency placed the STP on restricted status (Pet. Ex. #1) for failure to provide secondary treatment.

"Outlot H" is a tract of undeveloped acreage in the City (Pet. Ex. #3) which was purchased by the LLK Development Company (LLK) of Pekin, Illinois, in July, 1978, for the purpose of constructing 40 single-family homes on the site over a 3 year period (Pet. Ex. #3 and R. 7-9). Due to the restricted status,

"Outlot H" cannot be developed (R. 13-16). Variance is requested in order that sewer service can be made available to "Outlot H" such that development may proceed.

The Board, like the Agency, construes the petition as seeking relief from Rule 962(a) of Chapter 3. Variance from that rule is sufficient to allow the requested relief. Variance from Rule 604(b) is denied in that that rule is merely definitional.

In determining whether a variance should be granted, the Board must balance the hardship which would be imposed by denial of the variance against the environmental harm which would be caused by its granting. In this case the City alleges hardship in the following areas: cost of compliance, loss of growth and revenues, direct costs, hardship to the developer and unreasonable effluent limitations. The Board finds that none of these have been proven to demonstrate the sort of hardship which is necessary to support variance in this case.

First, the cost of compliance, which is stated to be the greatest hardship imposed, is not a cost which would be imposed by a variance denial. It does not necessarily follow that because the sewer hookups under consideration here will not be permitted absent a variance that the City will spend the funds necessary to upgrade the plant so as to be removed from restricted status. This is especially true in that the plant will be closed upon completion of the regional facility in 1984.

Second, the loss of growth and revenues due to the imposition of restricted status is also not arbitrary or unreasonable. It is an obvious consequence of the imposition of restricted status that the growth and revenues are deferred until such time as restricted status ends, and there is no showing that the impact would be greater than normally expected through the imposition of restricted status.

Third, the City alleges hardship as a result of litigation pending in Circuit Court involving the deannexation of "Outlot H" as a result of the inability of the developers of "Outlot H" to obtain sewer connections (Pet. Ex. #17 and R. 93-4). The City has also had to expend public funds to defend itself in that suit and to pursue this petition for variance. Again, these costs are not the sort of costs which establish an arbitrary or unreasonable hardship. These costs are at present speculative at best and any judgment against the City may well be passed on to the Agency (which has been impleaded) if the restricted status is found to have been improper. Money spent in pursuing this variance cannot be regarded as hardship in that all petitioners would have such a "bootstrap" claim.

Fourth, the developer's hardship is self-imposed. LLK purchased the property two years after the imposition of restricted status, such that it knew, or should have known, that

development could not take place until the restricted status was lifted. LLK should certainly have made inquiries regarding the sewage treatment capabilities, though they did not (R. 16-17).

Fifth, the imposition of restricted status based upon violations of interim limitations which were imposed upon the City's STP under a federal enforcement compliance letter cannot support a finding of arbitrary or unreasonable hardship in this case. In a variance proceeding the issue before the Board is whether the Board's rules or orders work an unreasonable hardship upon the petitioner as applied, not whether restricted status was properly imposed years earlier. The City has attempted to show that its interim limitations are more stringent than surrounding communities, but that is not the issue and such testimony is, therefore, immaterial and will not be considered by the Board in that these other communities were not shown to have been in a substantially similar situation.

Thus, there has been no showing of any hardship other than that which necessarily follows from the imposition of restricted status. That being the case, any environmental harm will outbalance it. The Board finds that the STP's discharges are well in excess of general standards, and that any increase beyond present levels will cause additional harm and should be discouraged. The Board, therefore, denies the requested relief.

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

ORDER

The City of Marquette Heights is hereby denied variance from Rules 604(b) and 962(a) of Chapter 3: Water Pollution, and its petition in PCB 81-15 is hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of November, 1981 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board