ILLINOIS POLLUTION CONTROL BOARD
March 28, 1977

FARMINGTON DEVELOPMENT CORP., INC., and FARMINGTON MANOR, INC.,	)	
Petitioners,	)	
v.	)	PCB 76-284
ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

Mr. John Potter, Baudino & Potter, Attorney for Petitioners
Mr. Joseph Svoboda, Environmental Protection Agency, Attorney for Respondent

OPINION AND ORDER OF THE BOARD (by Mr. Young):

This matter comes before the Board on the petition filed by Farmington Development Corporation, Inc., and Farmington Manor, Inc., seeking variance from Rule 962(a) of Chapter 3: Water Pollution, which would permit them to connect a proposed seventy-four bed skilled nursing facility to the Farmington sewer system. Because Farmington's existing sewage treatment plant is currently on restricted status, no sewer extensions are permitted. Objections to the grant of this variance were filed by the Farmington Sanitary District, the Agency, and almost 100 Farmington residents; a public hearing was held on February 28, 1977.

During the year 1976, and with full knowledge that the sewer ban was in effect, the petitioning corporations were formed for the purpose of constructing and operating a nursing and care center in the Farmington community. It is Petitioners' contention that an arbitrary or unreasonable hardship will be suffered by both themselves and the Farmington community unless the Board grants this variance. As in any variance case, it is Petitioners' obligation to prove that such hardship will be suffered unless the variance is granted. Petitioners' evidence in this regard is not compelling. Although Petitioners have expended an unspecified sum of money for land on which to build the proposed facility (R. 15), the record fails to clearly set forth what sums of money, if any, will be lost if this variance is denied and the project is abandoned. If the project goes forward despite the variance denial,

Gerry Griffith, Petitioners' architect, testified Petitioners would be required to install an on site treatment facility estimated to cost $45,000.00. Requiring such an expenditure would be unreasonable according to Griffith because he expects the new treatment plant to come on line at approximately the same time the home is to be completed (R. 145). While the Board agrees that it would be unreasonable to require this expenditure if the District's plant was scheduled to be on line, the Board notes that a firm timetable for the District's plant has not yet been established. Carroll Baylor, Clerk and Trustee of the District, testified that a delay of 14 months had already occurred in the plant project (R. 202), and feared that increases in construction costs due to inflation may require the District to abandon construction of the new plant. This question should be resolved in the near future, however, but prior to the time this question is resolved, the Board is unwilling, and unable, to determine the reasonableness of an expenditure by Petitioners for their own treatment plant.

In relation to the hardship that would fall on surrounding communities if this variance were denied, James Swanson, Petitioners' consultant, testified that the Farmington service area needs 148 additional intermediate and skill care beds (R. 111). Mr. Michael Coultos, the administrator of a skilled nursing facility located in Canton and only 10 miles from Farmington, testified, however, there was an excess of 134 beds in Fulton County (R. 70), and that in Knox County, also in Petitioners' service area, there existed an excess of 146 beds (R. 73).

In regards to the existing treatment facility and the environmental effects that would result from the grant of this variance, the Board notes the following. By Petitioners' own admission, the conditions in the receiving stream are intolerable at the present time (A. Pet. 2). It is fair to say such conditions will continue to exist until the new treatment plant is operational and that any additional discharge to the existing facilities can only cause further deterioration of the receiving stream. Petitioners contend, however, that the conditions in the receiving stream are of only minor importance in the question before the Board because of their hope that the new plant will come on line at approximately the same time as the nursing facility (A. Pet. 2). If a firm treatment plant completion date was indeed in existence, the Board could possibly agree with this contention. But absent the existence of such a date, it seems the Board would be doing nothing other than risking further environmental injury by granting this variance. Further, although it did not appear to be a matter of concern at the hearing, the fact that Petitioners are not presently located within the boundaries of the sanitary district does present an apparent disability insofar as eventual compliance is concerned (R. 16). This matter should also be resolved.

In view of the foregoing, the Board is disinclined to grant the relief requested. The Board is unable to find that any arbitrary or unreasonable financial hardship will be suffered if this variance is denied. The money Petitioners allege would be wasted if required to install their own sewage plant can be saved simply by waiting for the District's new plant. But this is a business decision which only Petitioners can make; the risk is Petitioners'. The Board finds no justification for shifting the risk onto the environment. Further, because the record does not establish a shortage of nursing beds in the area surrounding Farmington, the Board does not believe the denial of this variance will place either an arbitrary or unreasonable hardship on citizens in the Farmington community. While many of the persons testifying at the hearing expressed hope that a nursing home would eventually be built, almost all expressed a belief that the sewage plant should first be operational.

In conclusion, and in view of the condition of the receiving stream, the Board does not believe Petitioners have established sufficient hardship to warrant the grant of a variance and that such request will therefore be denied. However, in the event that construction at the new treatment plant will take place, and once a firm completion date is established and annexation occurs, the Board would be disposed to reconsider this matter if the requested connection were synchronized with the plant's scheduled completion date.

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

ORDER

The petition for variance filed by the Farmington Development Corporation, Inc., and the Farmington Manor, Inc., is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of March, 1977 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board