

ILLINOIS POLLUTION CONTROL BOARD
December 18, 1975

ELMHURST COUNTRY CLUB,)
)
 Petitioner,)
)
 v.) PCB 75-76
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

MR. LAWRENCE X. PUSATERI, appeared on behalf of the Petitioner;
MR. JOHN T. BERNBOM, appeared on behalf of the Respondent.

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

On February 7, 1975, Petitioner Elmhurst Country Club filed with the Illinois Pollution Control Board (Board) a "Motion To Re-Open" PCB 74-354. That previous Opinion and Order of the Board denied Petitioner's September 30, 1974 petition for variance. The Board, while denying Petitioner's motion to re-open, construed that motion as a new petition for variance. The Illinois Environmental Protection Agency (Agency) filed its recommendation on March 10, 1975. A hearing was held on April 2, 1975.

More than seven months elapsed between the hearing date in April and the time Petitioner delivered copies of the transcript to the Board on November 12, 1975. Petitioner had filed a waiver of the right to a decision within 90-day (that right had already been waived by operation of Rule 410 of the Board's Procedural Rules). Petitioner has not explained this extraordinary delay in presenting copies of the transcript to the Board. Such delay causes the Board to seriously question the presence of good faith on the part of Petitioner. The net effect of the extraordinary delay has been to prevent this Board from rendering its decision until almost the time that Petitioner has stated as the latest possible date of compliance, and four months after the anticipated compliance date.

The Board is thus asked to render a decision on Petitioner's variance request more than eight months after the hearing. The Board is asked to grant this variance without any information whatsoever as to the progress of Petitioner's alleged efforts to control its discharges into Salt Creek, and its alleged efforts to construct a sewer connection to the Addison Sewage

Treatment Plant. Petitioner was to have completed these projects by mid-summer of 1975. It is now winter. The Board has received no information on these projects since the testimony given on April 2, 1975.

The Board's Procedural Rule 410 clearly states it is Petitioner's responsibility to furnish the Board with transcripts within 15 days of the hearings. Given the unexplained 7 month delay, Petitioner should have at the very least submitted an explanation of both the delay and its progress towards compliance.

The Board finds that, due to Petitioner's unreasonable delay, it is faced with a situation analagous to mootness. The Board has no way of knowing whether Petitioner has been acting in good faith in its compliance program for these past eight months. Normally, if such a variance were granted the Board would impose conditions on Petitioner regarding the operation of its waste treatment system and a timetable for the completion of various stages of construction and modification. Here the Board has no way to determine whether or not such conditions would be moot.

The unreasonable seven month delay, being unexplained by Petitioner, places upon Petitioner the additional burden of setting forth the details of its alleged compliance efforts for the period of the delay. Therefore, the Board finds that Petitioner has failed to present facts sufficient to support its petition for variance.

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


Mr. Young abstains.

ORDER

The Board hereby denies the Petition for Variance.

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 18th day of December, 1975 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board