

ILLINOIS POLLUTION CONTROL BOARD
June 16, 1983

VILLAGE OF LOMBARD,)
)
 Petitioner,)
)
 v.) PCB 82-152
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MS. RITA ELSNER, VILLAGE ATTORNEY, APPEARED ON BEHALF OF THE VILLAGE OF LOMBARD.

MS. MARY E. DRAKE APPEARED ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY.

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

This matter comes before the Board upon a December 30, 1982 petition for variance and an April 1, 1983 amended petition filed by the Village of Lombard (Village) requesting relief from 35 Ill. Adm. Code 309.241(a) (old Rule 962(a) of Chapter 3: Water Pollution). On March 28, 1982 the Illinois Environmental Protection Agency (Agency) filed a recommendation that variance be granted subject to certain conditions, and on May 6, 1983 it reaffirmed that position. Hearing was held on March 30, 1983 at which both parties presented witnesses and several members of the public testified.

The Village owns certain property located in the downtown area of the Village and has been authorized to act as an agent for School District #44 which is the beneficial owner of nearby land held in trust by the DuPage County Board of Supervisors. These properties are partially vacant parcels of land on which a school and the former Village Hall are located. Surrounding properties are residential and business. The Village proposes that these properties be privately developed to aid in revitalization of the downtown area. The proposed development consists of a 145-unit apartment complex and two retail stores. This development, however, cannot occur absent the granting of the requested relief since the properties are located in a portion of the Village which is currently on Restricted Status, precluding Agency issuance of construction or operating permits.

The Village has a present population of approximately 38,800 persons. Existing sewer facilities within the Village are both combined and separate sewers and consist basically of four interceptor sewers: a 30-inch serving northern areas, a 54-inch serving west central areas, a 108-inch serving southern and east central areas, and a new interceptor serving separate sanitary sewers in the southern-most areas. The proposed development will be tributary to the 54-inch combined interceptor sewer.

Currently, the Village is participating in a multi-phase state grant project for sewer system rehabilitation with Phases I, II and III aimed at the 30-inch, 54-inch and 108-inch interceptors, respectively. Phase I is near completion and Phase II will begin soon with completion on or before December 31, 1984. Upon completion of Phase II the section tributary to the 54-inch interceptor, which includes the Village's proposed sewer extension, can probably be removed from Restricted Status.

Some windows of the former Village Hall and the school are presently boarded up as a result of vandalism and not used for any purposes. They, therefore, do not contribute any sewage load to the Village's sewer system. Storm water from those sites does, however, currently run into combined lines which merge at the 54-inch interceptor. If the proposed residential and commercial development is allowed to proceed, 483 population equivalents (48,300 gallons per day) of domestic wastewater and effluent from a single grocery store would be added to the system (R.15 and App. D of Petition).

The Village proposes that the storm water from those sites would be removed from the line which runs into the 54-inch combined sewer interceptor and instead routed into a separate storm sewer line. The Village estimates that 16.9 cfs (cubic feet per second) will be removed from the interceptor as a result. The Village also proposes to remove nine storm structures from the 54-inch combined line which would allegedly remove an additional 11 cfs. Finally, an additional 2.1 cfs would allegedly be removed from the line due to the rebuilding of forty-two manholes. Thus, 30.0 cfs would allegedly be removed from the line while only 0.3 cfs would be added.

The Agency points out, however, that these removal values are based on rainfall intensities of 5.3 inches per hour, not total rainfall, which can be misleading when comparing this to the continuous discharge that will occur from the proposed development. The 5.3 inches per hour figure is actually based upon a total rainfall of 0.88 inches occurring over a 10-minute period. As a result, the actual quantities of water that will be eliminated or restricted from entering the system on a day of average rainfall is much less than these amounts.

Regarding the removal of 16.9 cfs, the Agency states that it cannot determine whether the run-off coefficient used to obtain this value is based upon existing conditions or conditions after the proposed development is constructed.

All that is not to say that these projects will not have any benefit. These modifications will help relieve sudden surges in the sewer system resulting from direct inflow during a rainfall event and should eliminate some stormwater from the combined system, thus having a positive overall effect upon the 54-inch combined interceptor service area. In short, Lombard proposes to reduce potential overflows from the 54-inch combined sewer caused by peak storm flows while increasing domestic sewage flow at a steady rate in the 54-inch combined sewer from the two parcels of land.

The overall environmental impact of these changes is unclear. At present, several locations within the 54 inch interceptor service area are subject to back-ups and flooding. Several citizen witnesses appeared at the hearing to describe these problems which form the basis for the imposition of Restricted Status. Mr. George W. Fyler described an area approximately 1,000 feet downstream from the proposed connections which surcharged during heavy rainfall on August 7, 1982. That location is at the intersection of a 48-inch sewer line with 36-inch and 12-inch lines which merge into the 54-inch line, apparently causing a bottleneck which results in surcharging conditions.

While the Village has demonstrated a reduction in flows to the 54-inch line during storm events, it has not demonstrated that the reduction is sufficient to eliminate such surcharging, and if surcharging continues, the problem could be aggravated in that the domestic sewage component of the flows will be greater. However, the Agency notes that any net environmental harm resulting from the granting of this variance will be of limited duration in that Lombard is under a court order to complete improvements to its sewer system by December 31, 1984 which should be sufficient to avoid future surcharging problems.

On that basis, the Agency recommends that variance be granted but that a condition should be imposed requiring that the Glenview and St. Charles Storm Sewer Project (involving the removal of the nine storm structures and required by the above court order to be completed by December 31, 1983) and the Sanitary Manhole Project (involving the repair of the forty-two manholes and required by the above court order to be completed by June 30, 1983) be completed prior to occupancy of any building built on the sites which are subject to this variance petition.

The Agency states that these conditions, along with the diversion of the storm water from the 54-inch combined sewer line to the separate storm sewer as agreed to by the Village (Agency Ex. 1), would be helpful because they will allow additional capacity in the 54-inch combined sewer line and thus reduce the likelihood of overflows in the vicinity of the objectors.

Finally, the Agency recommends that a condition should be imposed requiring that the development of the sites in question be restricted to a total design population equivalent of 483 (Petition, Ex. D), divided between domestic and commercial use, that the effluent from the sites be limited to domestic wastewater and effluent from a single grocery store, and that on-site storm water detention on the two parcels be required as approved by the Agency.

In reaching those conclusions the Agency considered the continued deterioration of downtown Lombard and the loss of tax revenue which would result from denial of the variance and balanced that against the uncertain, and possibly beneficial, environmental impact of granting variance and the Village's good-faith effort to correct its sewer system problems in the past few years.

At hearing there was much support for and little opposition to the proposed project, so long as the surcharging conditions are improved prior to occupancy. On the other hand, several witnesses testified regarding serious problems. "Water would shoot a good three feet" out of toilets in the old Village Hall when it rained, damaging township papers (R.228). Charles Gaul, who has lived in Lombard for 20 years, "can't recall a year" that he did not have back-ups in his basement (R.234). He lives one block west of the school (R.235). His neighbors also have flooding (R.235). Larry Resinsma, who lives just south of Mr. Gaul testified that sewage backed up into his basement at least four times in 1982 causing increased sickness such that he will not allow his children to play in the basement (R.241-242). Linda Sullivan, who lives two blocks from the site, testified that she has had raw sewage two feet deep in her basement and "a crust an inch thick" on her lawn composed of "toilet paper and cigarette butts" (R.88-89). Her six year old son has developed an allergy to yeast and mold and cannot go in the basement (R.89). She further testified that he missed 37 days of school last year "and the allergist feels it is directly a result of the yeast and mold" caused by the flooding.

The Board has always taken testimony of basement flooding very seriously and will not allow new sewer connections which could aggravate such problems. In this case the Village has not made a sufficient showing that such aggravation will not occur. Arthur Allen, an engineer, submitted suggested variance conditions alternative to the Agency's recommendation to insure that no such aggravation would occur, which would disallow any construction prior to completion of all presently proposed sewer modifications and construction. Since the record indicates that Restricted Status will likely be terminated upon completion of all these projects, Mr. Allen's condition would render the variance nearly meaningless.

The Board finds both these alternatives to be unacceptable. The stated hardship is not great and is poorly documented. There are certainly some costs associated with the upkeep of the two vacant buildings and there is some lost revenue. However, these costs are not quantified and the reason the old Village Hall became unusable appears to be the same as the reasons for the imposition of Restricted Status, and to that extent is self-imposed. The loss of tax revenues is only prospective in that it has not previously been on the tax rolls. For the most part, Restricted Status has simply caused an opportunity to be deferred, which is the very basis for its imposition. However, there is evidence supporting a need for housing, and the deterioration of the downtown area is not an expected consequence of Restricted Status, such that some hardship has been shown.

On the other hand, the environmental harm from basement flooding is of serious consequence and outweighs the hardship. Therefore, the Board cannot grant a variance which allows that possibility, and connection to the sewer system cannot be allowed prior to the termination of Restricted Status. However, the sewer system rehabilitation program upon which the Village has embarked appears adequate to assure compliance by December 31, 1985, and construction should be allowed to proceed prior to that date.

Thus, the Board finds that denial of variance to allow the construction of the proposed facilities constitutes an arbitrary or unreasonable hardship. The Board will grant variance to allow the Agency to issue a construction permit, but will not allow the issuance of an operating permit prior to the termination of Restricted Status.

It is possible that an alternative proposal could be developed by the Village to assure that sewage back-ups would not be aggravated due to connection of the proposed facilities to the sewer system (e.g. use of holding tanks for the waste water to be discharged only under low flow conditions). However, the present record does not support such a finding. The Village is, of course, free to bring a modified proposal before the Board if it so chooses.

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

ORDER

The Village of Lombard is hereby granted a variance from 35 Ill. Adm. Code 309.241(a) -- Standards for Issuance, until December 31, 1985 in order to allow the construction of connections to the sanitary sewer system of the Village for certain developments subject to the following conditions:

1. The developments shall be restricted to two parcels of land as described in Exhibits A and B of the Variance Petition, which consist of approximately one-half of the area bounded by the Lombard streets of Lincoln, Grove, Park and St. Charles;

2. Operating permits shall not be issued prior to termination of Restricted Status on the applicable portion of the sewer system.

3. The development of the two parcels of land shall be restricted to a total design population equivalent of 483, divided as follows:

a) the residential development would be limited to 474 P.E., and

b) the retail development limited to 900 gallons per day total for all of the retail stores to be built on the sites subject to this variance petition;

4. The effluent from the two parcels in question shall consist only of domestic wastewater and effluent from a single grocery store;

5. There shall be on-site detention of storm water on the two parcels of land as approved by the Agency;

6. Within 45 days of the date of this Order, the Village of Lombard shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. Said Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) _____, hereby accepts and agrees to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 82-152, June 16, 1983.

Petitioner


Authorized Agent

Title

Date

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 16th day of June, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board