

ILLINOIS POLLUTION CONTROL BOARD  
April 29, 1982

LOMBARD PINES SHOPPING CENTER, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 82-8  
 )  
 ) ILLINOIS ENVIRONMENTAL PROTECTION )  
 ) AGENCY, )  
 )  
 ) Respondent. )

NORMAN K. SACKAR, PETITIONER, APPEARED PRO SE.  
WAYNE WIEMERSLAGE, ESQ., APPEARED ON BEHALF OF RESPONDENT.  
RITA ELSNER, ESQ., APPEARED ON BEHALF OF THE VILLAGE OF LOMBARD.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On January 27, 1982, Lombard Pines Shopping Center (Lombard Pines) filed a Petition for Variance from Rule 962(a) of Chapter 3: Water Pollution of the Board's Regulations to allow a sewer connection of a proposed development located in the Village of Lombard, Illinois. Lombard Pines subsequently filed an Amended Petition in response to a Board Order and, on March 19, 1982, the Board joined the Village of Lombard (Lombard) as a Respondent herein and ordered the matter set for hearing since three objections to the Petition had been timely filed. The hearing was held April 19, 1982, at which a number of citizens expressed their concern about the proposed variance. On April 21, 1982, Lombard Pines moved for expedited consideration in this matter, which motion is hereby granted. Jewel Food Stores (Jewel) having filed an appearance herein and having participated in the hearing, the Board on its own motion hereby joins Jewel as co-petitioner pursuant to Procedural Rule 303(c).

Lombard Pines presently owns and operates the Lombard Pines Shopping Center located at Roosevelt Road and Main Street in Lombard, Illinois. Jewel operates a combination grocery-drug store in the shopping center, which also contains a number of other stores and a large parking lot. Lombard Pines proposes to build a new and larger facility to be leased to Jewel on the Lombard Pines site. The existing facility would then be rented to others for use other than as a grocery-type store pursuant to an agreement between Jewel and Lombard Pines. The proposed new facility will create an estimated sewage flow of approximately 2,300 gallons per day. The additional discharge requires a

permit to construct and operate a sewer extension pursuant to Rule 951(b)(2) of Chapter 3: Water Pollution. Construction of the new facility was expected to start in April or May of 1982, and the need for the sewer extension and connection to the Lombard sewer system anticipated in September or October of 1982. Discharge from the old facility is expected to be reduced to a total of 285 gallons per day which, when added to the wastewater discharge of the new facility, would result in a net increase of 48 gallons per day of wastewater generated by the shopping center.

The Lombard sewer system is presently under restricted status imposed by the Illinois Environmental Protection Agency (Agency) due to surcharging sewers, overflows, and basement back-ups. Lombard has a population of approximately 38,800 persons. The existing sewer facilities are both combined and separate sewers which are tributary to the new Glenbard Sewage Treatment Plant. Variance is requested from Rule 962(a) in order to allow the construction and connection of the sewer extension thereto.

The Agency recommends that the variance be granted with a number of conditions, the total effect of which will maintain the status quo with regard to discharge to the sewer system from the shopping center. This result will occur because not only is the new facility more efficient in its use of water, but Jewel proposes to limit its total water usage to no more than an average of approximately 2,400 gallons per day until completion of a new interceptor sewer which will eliminate potential problems downstream of the shopping center. In addition, Lombard Pines proposes to leave the existing facility empty until such time as the interceptor is completed and operating. This results in slightly less sewage to be discharged than that which is presently discharged by the existing facility. There thus appears to be an environmental improvement under the conditions proposed by the Agency for the variance.

Another potential environmental problem may occur due to the increased roof area and the attendant runoff. At hearing, both the engineer retained by Lombard Pines and the City Engineer of Lombard testified that if runoff from the shopping center were to go either east or west, it would be contained by a retention basin or conducted through storm sewers to a local stream (R. 5, 11 and 20).

The citizens that testified at the hearing brought up a number of problems concerning the Lombard sewer system. Jeanne Greenwald expressed concern about the 48 additional gallons per day originally predicted from the new facility. This situation will be corrected if the Agency's proposed conditions are accepted by the Board. Peter Davis appeared in support of the variance. Flora Allen appeared on behalf of a Not-For-Profit Citizens group known as "We The People." Ms. Allen mentioned potential runoff problems and the fact that certain citizens

who were currently utilizing septic fields should be given consideration for hook-up to the sewer system before a business. The City Engineer of Lombard pointed out, in cross-examination, that the people with the septic fields cited by the Du Page Health Department and ordered to connect to the available sewer system before May 1, 1982, are in Du Page County, and not under the control of the Village of Lombard.

George Fyler presented a rather lengthy statement citing allegations of widespread, long-time sewer neglect by the Village, allegations of false statements issued by the Lombard Administration concerning the sewer problems, and alleging poor design of the Agency-approved interceptor sewer. Mr. Fyler's statement rambled a bit, but the gist of his argument appeared to be that Village and Agency engineers were incompetent and that other more serious problems in the Village should be addressed before the new interceptor is constructed. During cross-examination, the City Engineer explained that the new interceptor was merely a part of a larger plan to relieve the entire area and that it had not only been carefully designed, but it had been reviewed by the Village, the Agency, and by an outside engineering firm.

The Board is well aware of the problems associated with the sewer system in the Village of Lombard. It has granted variances in this area only after careful consideration of the effect on downstream connections and have insisted that any variance granted be conditioned upon the protection of the downstream citizens. In this case, it appears that by incorporating certain conditions the Board may recognize the arbitrary and unreasonable hardship that Lombard Pines would incur should it be unable to provide Jewel with the new facility at the shopping center, while protecting the interests of the downstream citizens at the same time. The concerns about runoff at the facility appear to have been already addressed and the problem corrected. If the variance is conditioned as the Agency proposes, there will be a net decrease in the amount of wastewater discharge into the sewer system from the shopping center. The issue of whether or not some other citizen should somehow stand in line ahead of Lombard Pines is not before the Board. Any citizen who feels he/she is sustaining an arbitrary and unreasonable hardship with regard to the restricted status of the Lombard sewer system has the right to come before this Board with a variance petition and have it considered on its own merits without regard to other similar situations.

The Board finds that denial of the proposed variance would work an arbitrary and unreasonable hardship on Lombard Pines and will therefore grant the variance from Rule 962(a) to allow the construction and operation of the sewer extension, as requested, but will condition such variance pursuant to the Agency recommendation so as to give protection to downstream citizens from any increase in sewer problems.

This Opinion constitutes a finding of facts and conclusions of law of the Board in this matter.

ORDER

Lombard Pines Shopping Center, the Village of Lombard, and the Jewel Food Stores are hereby granted variance from Rule 962(a) of Chapter 3: Water Pollution Control Regulations to allow the connection of a facility located at Roosevelt Road and Main Street, Lombard, Illinois, to the Village of Lombard sewer system subject to the following conditions:

1. Petitioner shall comply with subparagraphs a) through g) of paragraph 51 of the Illinois Environmental Protection Agency's Recommendation, filed April 19, 1982, which Recommendation is incorporated by reference as if fully set forth herein.
2. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, PWS Enforcement Programs, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), \_\_\_\_\_, having read the Order of the Illinois Pollution Control Board in PCB 82-8, Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
By: 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 29<sup>th</sup> day of April, 1982 by a vote of 5-0.

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

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