

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1979

FARMERS and MERCHANTS BANK)
of Highland as Trustee of)
Trust No. 756,)
)
Petitioner,)
)
v.) PCB 79-155
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ROBERT BAREWIN, ATTORNEY AT LAW, appeared on behalf of the
Petitioner.

PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, appeared on
behalf of the Respondent.

OPINION OF THE BOARD (by Mr. Dumelle):

Petitioner requested a variance from Rule 962(a) of
Chapter 3: Water Pollution in order to obtain a sewer connection
permit for a proposed apartment complex being developed by
Ralph Korte Construction Co. Inc., the beneficiary of a
trust for which Petitioner is trustee. On November 15,
1979, the Board ordered the denial of Petitioner's variance
request. This Opinion states the rationale supporting the
Board's Order.

Riverton, a village of 2,000 people located in Sangamon
County, has been on restricted status since July 21, 1978.
The Village has been awarded a Step 1 grant to do an Infiltration
Inflow study which it is presently conducting. Petitioner,
after receiving approval for financing from the Farmers Home
Administration (FmHA), purchased land on November 29, 1978
as a site for a new 4 building, 32 units apartment complex.
The Agency cannot issue a sewer connection permit to the
Petitioner while the Village is on restricted status unless
the Board grants Petitioner a variance.

Farmers and Merchants Bank asserted that the developers
were unaware of the Village's restricted status when the
land was purchased. Petitioner accurately pointed out that
the Village did not appear on the Agency's restricted status
list until April 1979, more than eight months after the
Village was placed on restricted status. Petitioner stated

that the list was reviewed prior to the purchase of the property and that the land would not have been purchased if the developers had known of the Village's restricted status. (R68). The Agency's restricted status list, however, contained a caveat that the list was being continually revised and that the Agency should be contacted for a final determination. With this warning, the developers could not in good faith have relied solely upon the restricted status list as a statement of the Village of Riverton's status. The fact that the Village's name did not appear on subsequent lists was irrelevant. The developers should have checked with the Agency before purchasing the land. Had the developers even contacted the Village prior to purchasing the property, they would have been informed of the Village's true status. Any hardship resulting from the purchase of the land, therefore, is self-imposed. Furthermore, most of the \$70,000 invested in the project was for legal and planning fees which would be recovered if the project was ever completed at a later date.

Petitioner also argued that no environmental harm would result if the sewer line were connected. Petitioner stated that the inflow and infiltration problems that caused the Village to be placed on restricted status had been eliminated by the installation of a new section of sewer pipe. Testimony, however, indicated that basement flooding occurred after the repairs. (R145,152,160). The Board, aware of the extensive property damage and the threats to health and safety occasioned by basement flooding, does not wish to allow the possibility of increased future basement flooding. Petitioner's promise to install a larger sewer pipe in a section of the Village of Riverton's sewer system, without presenting any data on the effectiveness of such a repair, is not sufficient to convince the Board that basement flooding would be abated.

Petitioner also asserted that denial of the variance would impose hardship on the citizens in the Riverton area. Petitioner stated that the FmHA only approved financing when there was a genuine need for housing in the area. The Agency in its Recommendation, however, indicated that the FmHA determined a need for only two or three units in the area as opposed to the 32 contemplated by Petitioner. The Agency further explained that the FmHA approves loans when there is an indication that enough units could be rented to assure payment of loan installments. Approval of the loan, therefore, did not necessarily demonstrate that a 32 unit housing complex was actually needed in the Riverton area.


Although Petitioner's variance request was denied, a new variance request may be filed. Petitioner, in any subsequent variance requests, should submit technical data supporting the effectiveness of any sewer improvements it will be willing to make. Because flooding is occurring

downstream for the proposed apartment complex during rainy weather, Petitioner should investigate the use of holding tanks (see Christian County Housing Authority v. EPA, PCB 77-16, 25 PCB 471 and 25 PCB 709).

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

Mr. Werner dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 29th day of November, 1979 by a vote of 3-1.


Christan L. Moffett, Clerk
Illinois Pollution Control Board