

ILLINOIS POLLUTION CONTROL BOARD
December 19, 1980

ALBERT EICHSTAEDT,)
)
 Petitioner,)
)
 v.) PCB 80-132
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY and COUNTY OF LAKE,)
 Illinois,)
)
 Respondents.)

ROBERT MARKS, MARKS, MARKS & KAPLAN, APPEARED ON BEHALF OF PETITIONER;

PHILLIP R. VAN NESS, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY STAFF ATTORNEY, APPEARED ON BEHALF OF RESPONDENTS.

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

On July 16, 1980 Albert Eichstaedt (Eichstaedt) filed a petition before the Board requesting variance from Chapter 3 Water Pollution of the Board's regulations to allow a permit to issue for the purpose of construction and hookup of a sewer extension to a sewer in the Village of Riverwoods, Illinois. Hearing was held in this matter on December 12, 1980.

In October, 1977 Eichstaedt purchased a six-acre tract of land in Riverwoods, proposing to subdivide the property into four lots upon which he would construct four homes. At that time Eichstaedt petitioned the Village of Riverwoods for approval of this proposed Deepwood Subdivision. Certain problems surfaced, combined with an alleged reluctance on the part of the Village of Riverwood's Board of Trustees to act, which resulted in approval of the subdivision at about the same time the Riverwoods sewer treatment plant was placed on restricted status by the Illinois Environmental Protection Agency (Agency). By that time Eichstaedt had allegedly expended approximately \$64,000 in developing the property.

Eichstaedt alleges that without the ability to construct the subdivision, future financing of the project is in jeopardy and Eichstaedt may suffer financial penalties. Balanced against this hardship is an alleged negligible impact upon the receiving system from the four-house subdivision and the fact that the overload system is currently being corrected by the Village of Riverwoods and the County of Lake. It appears from the record that the sewer in

question suffers from inflow and infiltration, caused by illegal stormwater hookons and poorly designed or maintained manholes. The sewer itself seems to be sized sufficiently to carry the sanitary waste load directed to it. The Village estimates that infiltration will be sufficiently eliminated by the end of this year to allow lifting of the restricted status. The evidence indicates that the property in question could not sustain an individual septic-type disposal system; permitting agencies involved would likely deny any such application.

The Agency recommends denial of the petition based upon the restricted status of the surcharging sewer system and the lack of hardship. The Agency does not challenge the allegation that the potential additional waste water load on the sewer is not significant. The Agency does challenge, however, whether Eichstaedt has alleged sufficient hardship, particularly since the restricted status may be lifted in the near future due to the remedial work being done by the Village and the County.

The Board finds that sufficient hardship exists when balanced against the potential damage to the environment. Due to the timing of Eichstaedt's funding for his project, he is in need of immediate relief notwithstanding the potential lifting of the ban in the near future. The proposed discharge to the sewer system from the new subdivision is not only insignificant but is likely to occur after the sewer has been removed from restricted status. It appears that Eichstaedt was put in his present position through the reasonable pursuit of a business venture without prior warning of the problem. Under the circumstances here, the Board finds that it would be an arbitrary and unreasonable hardship to deny the variance requested. The Board shall therefore grant the variance with certain restrictions.

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

ORDER

Variance is hereby granted to Albert Eichstaedt from Rule 962 (a) of Chapter 3: Water Pollution of the Board's regulations for the purpose of construction and connection of a sewer extension tributary to a sewer owned and operated by Lake County Public Works Department and located in the Village of Riverwoods, which sewer extension is to be limited to the service of four structures to be located in the Deepwood subdivision in the Village of Riverwoods.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order

were adopted on the 19th day of December, 1980 by a vote
of 5-0.

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