

ILLINOIS POLLUTION CONTROL BOARD
January 30, 1973

LIBERTY FINANCIAL CORPORATION)
)
) #72-462
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

GIFFIN, WINNING, LINDNER, NEWKIRK & COHEN, ON BEHALF OF PETITIONER
THOMAS J. IMMEL, ASSISTANT ATTORNEY GENERAL, ON BEHALF OF ENVIRON-
MENTAL PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

On November 8, 1972, we entered our order denying the variance filed by Liberty Financial Corporation, seeking relief from the Sewer Ban Order imposed by the Agency with respect to sewer connections to the Springfield Sewage Treatment Plant. We denied the petition on the grounds that the record before us at that time indicated that petitioner's hardship was self-imposed and that there was no evidence that petitioner had attempted to ascertain the possibility of receiving an Agency permit prior to making its expenditures and commitments. The petitioner sought the permit in order to construct and operate a mobile home trailer park. The opinion noted that the application had been denied because of the overloaded condition of the Springfield Sewage Treatment Plant and that a new sewage treatment plant was expected to be on line by March of 1973.

Subsequent to our November 8, 1972 Order, we received a Motion for Rehearing and Consideration, which motion stated that petitioner was represented by new counsel and that certain evidence that would have been available to the Board at the initial hearing had not been presented, which conceivably would have caused the Board to grant the variance requested.

The new evidence presented by way of affidavit sets forth that petitioner had ascertained that in April of 1971 and prior to the commencement of any site work prior to institution of any contract or purchase of land and prior to the imposition of the Agency's sewer ban on July 12, 1972, that petitioner could connect with the Springfield Sanitary District's facility. In reliance on this

assurance, petitioner began development of its project. The petition notes several cases where, on comparable facts, the Board had allowed connections premised on similar reliance. See Illinois National Bank of Springfield v. Environmental Protection Agency, #72-300, 1st National Bank of Springfield v. Environmental Protection Agency, #72-301 and Illinois National Bank of Springfield v. Environmental Protection Agency, #72-307.

Petitioner has prepared an 186-unit mobile home facility which is ready for operation if the sewer connection can be made. A response was filed by the Environmental Protection Agency to the Motion for Rehearing, in essence supporting the position of petitioner. The Agency concurs that the factual situation of the instant case, based upon the matters included in the affidavit, would make the case indistinguishable from those cited above in which a variance enabling connection had been allowed. While there are some distinguishing characteristics of the instant case, we believe the factual situations to be sufficiently similar to reverse our previous holding and allow a variance permitting the requested connection.

However, in view of the likelihood that the Springfield plant will be on line on or about March 1, 1973, we will permit the connection as of that date, believing that even if the plant is not in operation precisely at that time, the polluttional impact from petitioner's operation will be minimal.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that petitioner, Liberty Financial Corporation, be granted a variance from and after March 1, 1973 to connect its mobile home park, being the subject matter of the present proceeding, to facilities of the Springfield Sanitary District.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 30th day of January, 1973, by a vote of 3 to 0.

