

ILLINOIS POLLUTION CONTROL BOARD
September 2, 1976

VILLAGE OF DUPO, and ELMER AND)
MARIAN SCHLEMMER,)
)
Petitioners,)
)
)
v.) PCB 76-63
)
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

MR. WILLIAM HOTTO, appeared on behalf of the Village of Dupo;
MR. RICHARD BORDELON, appeared on behalf of the Environmental
Protection Agency;

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

This matter comes before the Board on a Petition for Variance filed by the Village of Dupo, St. Clair County, Illinois on March 4, 1976 requesting relief from the restricted status placed upon the Village of Dupo's (Village) sewage treatment plant on August 11, 1975. The variance is requested to allow sewer service to be provided to 21 lots in the Schlemmer Subdivision. The Agency filed its Recommendation on April 21, 1976 and requests that variance be granted only for houses presently constructed or under construction.

On May 19, 1976 the Agency received and forwarded to the Board a letter from the developers who own the lots which are the subject of the Village's Petition for Variance. In that letter Elmer and Marian Schlemmer noted their desire for a public hearing and their previous letters requesting an opportunity to present their position. On June 18, 1976 the Board issued an Interim Order in this cause requiring a public hearing in this matter. The Board further ordered the Schlemmers joined as parties to the proceeding. A hearing was held on July 22, 1976.

There is no question that the Village's sewage treatment plant is overloaded and that bypassing occurs. The plant's effluent is discharged into the Mississippi River via a 14-inch force main. The plant currently operates at between 105% and 125% of design capacity (R. 26). In its Recommendation, the Agency states that the lift station to which the Schlemmer subdivision is tributary is in good condition and does not bypass. There is no indication that any sewer backups or other specific environmental problems would be caused. It appears that the only adverse effect which would be caused by the requested variance is the bypassing of additional untreated sewage into the Mississippi River during peak flow periods. Based upon the design criteria of 100 gpd per person, the addition of 21 houses would contribute between 6,300 and 8,400 gpd (R. 26, 48) to the overloaded plant. Further, there is no question that the plant's effluent does not meet the appropriate standards (see paragraph 7 of Agency Recommendation). The Village is not currently submitting discharge reports (R. 27).

This case is complicated by the fact that there are two separate petitioners, each of whom present different questions on the issue of whether denial of this petition would create an arbitrary or unreasonable hardship. One of the petitioners is the Village which has expended funds to extend utility service to the Schlemmer Subdivision. The other petitioner is the developer of that subdivision.

The Village's hardship would be the inability to recoup its expenses incurred in extended utilities to the subdivision. These costs were to be paid via tap-on fees to the homeowners of the subdivision. The Village would thus not be able to receive over \$10,000 in revenue from these fees until such time as sewer connections are allowed (R. 32, 49). This is especially true because the lots are too small for septic systems and thus could not be developed and sold without sewer connections (R. 64). The Village, population 3,028, might also lose this investment indefinitely if the Schlemmers are forced to close the development (R. 66). Tax revenues would also be gained by the Village if the development was successful.

The Schlemmers, husband and wife, own the bulk of the subject land as joint tenants (R. 71). The present value of the property is in excess of \$100,000. There are currently two completed and occupied homes in the subdivision. The

remaining 19 lots are not under construction. The Schlemmers have spent \$30,600 to develop the subdivision besides the money spent by the Village. The Schlemmers must also pay interest of at least \$2,700 per year on money borrowed for this purpose (R. 61). Without income from the sale of these lots, the Schlemmers will not be able to pay this interest. The Schlemmers estimate that the lots will sell for \$5,000 each (R. 65,74) and there is a present demand for those lots.

Both parties have thus shown that they will suffer some hardship if this variance is not granted. The Village's finances are in trouble, especially in the sewer and water department (R. 52). The Village would also have great difficulty in selling additional bonds at a reasonable rate (R. 54, 55). The Village does have on hand \$130,000 for improvement of its sewage treatment system (R. 54) pursuant to the federal grant program (R. 55). The Schlemmers have expended funds which may be lost if the development is not allowed to progress. The issue to be resolved is whether these hardships would be such as to be arbitrary or unreasonable. Thus, we must next look at the reasonableness of the conduct of the parties.

On July 27, 1973 the Village was issued an Agency permit for the construction and operation of a sanitary sewer to serve the Schlemmer subdivision. The permit allowed two years for the completion of the project. At the end of two years, due to difficulties in securing easements, the sewer was between 80% - 90% completed (R. 37, 62). On July 22, 1975, five days prior to the expiration of the permit, the Agency received a new permit application for the same sewer. The permit was denied on August 4, 1975 and shortly thereafter the Village was placed on restricted status. Mr. Schlemmer states that he believes the sewer was completed within 10 days of the expiration of the permit (R. 68, 70). If that is true, the sewer was actually completed prior to the imposition of the restricted status.

The Village states that it had no reason to expect the permit denial (R. 12) and didn't realize that they could have requested an extension of the previous permit (R. 35). It appears from the record that the Village and the Schlemmers did act fairly reasonably under the peculiar facts they were faced with.

Petitioner's Exhibit No. 1 is a copy of a Grant offered by the Agency for the construction of a Regional Sewage Treatment Plant at the site of the Village's present plant. The operation date for the new system is scheduled for March 1, 1978 (R. 25).

At that time the restricted status would probably be lifted. In the meantime the Village has attempted to decrease flow to the plant by correcting seepage and storm water drain problems (R. 57). The Agency correctly points to the necessity of intensified efforts along those lines.

There is no doubt that denial of a variance for the two completed and occupied homes under these circumstances would cause an arbitrary or unreasonable hardship. The difficult question concerns the 19 empty lots. The Board must weigh the extent of hardship caused by delaying further construction until the restricted status is lifted. The May 14, 1976 letter from the Schlemmers to the Agency asks that "use of the sewer for at least six more lots" be allowed. At a sales price of \$5,000 each, this number of lots when sold should about equal the \$30,600 development cost. The Board finds that a variance for the two presently occupied homes and 6 additional lots is necessary to avoid placing an arbitrary or unreasonable burden upon the parties.

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

ORDER

Petitioners Village of Dupo and Elmer and Marian Schlemmer are hereby granted variance from the Agency restricted status to allow only two existing homes and 6 additional homes, all within the above-mentioned Schlemmer subdivision, to be connected onto the Village's sewer system.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 2nd day of September, 1976 by a vote of 5-0.

Christan L. Moffett c/l
Christan L. Moffett, Clerk
Illinois Pollution Control Board