ILLINOIS POLLUTION CONTROL BOARD
September 16, 1971

PYRAMID MOBILE ESTATES, INC.	)	
	)	
	)	#71-154
v.	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

LEE ZELLE, ATTORNEY FOR ENVIRONMENTAL PROTECTION AGENCY
A. G. SHEELE, ATTORNEY FOR PETITIONER, PYRAMID MOBILE ESTATES, INC.

OPINION AND ORDER OF THE BOARD (BY MR. LAWTON):

On April 14, 1971, in case entitled "City of Mattoon v. Environmental Protection Agency, #71-8", this Board rendered an Opinion and Order providing inter alia the following:

> "The City of Mattoon shall not permit the connection of any new sewers or other sources of waste to its facilities, or any increase in the strength or concentration of wastes discharged to its facilities, until it demonstrates to the Agency that it is in full compliance with the requirements of SWB-14 with respect to overloads, bypasses, and the provision of advanced waste treatment."

The same Order established a program of compliance pursuant to which the City of Mattoon was to meet its delinquent obligations to the State of Illinois to comply with Rules and Regulations of SWB-14. Construction of facilities to establish compliance was to be completed no later than July 31, 1972.

Petitioner in the present case seeks a variation of the Board's April 14, 1971 Order to allow sewer connections to a Mattoon interceptor sewer presently serving Lakeland Junior College, pursuant to special allowance from the Environmental Protection Agency in order to service a yet undeveloped mobile home park comprising sixteen acres, which would be developed with ninety-one mobile home sites, plus a sales lot.

The Environmental Protection Agency recommended denial of the variance. Hearing was held on the petition in Mattoon on August 11, 1971. We deny the petition for variance for the reasons more fully set forth in this Opinion.

Previous decisions of this Board, principally dealing with the sewer ban imposed in the area served by the North Shore Sanitary District, have held that there must be a substantial showing of hardship imposed on Petitioner as a consequence of the sewer ban before this Board will vary its Order in this regard. See Fred Wachta and J. Richard Mota, d/b/a Belle Plaine Subdivision, #71-77; Robert C. Wagnon v. Environmental Protection Agency, #71-85. Cases where variances have been allowed have been those where the hardship upon the petitioner is so extreme as to make the burden on him if the variance is denied disproportionate to the burden on the public if the variance is allowed, and constitute, in effect, a deprivation of constitutional rights. Where the issue relates to purchase and development of real estate, hardship is not demonstrated merely from the purchase of the land per se. Rather, a substantial change of position must have taken place as a consequence of reliance on the ability to install sewer facilities and create the likelihood of substantial loss or forfeiture if the Order of limitation is not varied. Petitioner has wholly failed to satisfy this burden in the present case. The petition for variance and the evidence show that petitioner entered into an option for purchase of the subject property on January 6, 1970 and was successful in causing re-zoning of this and adjacent property to permit the operation of a mobile home park and sales lot. The property was purchased on or about June 1, 1970 and petitioner was led to believe, on the basis of statements of officials of the City of Mattoon, that it would be permitted to tap into sewer facilities of the City of Mattoon which were to be extended to accommodate Lakeland Junior College. In September, 1970, however, the express conditions in the construction permit should have put the petitioner on notice that no sewer tie-in would be permitted until the required improvements to the city treatment plant had been completed.

Further, Exhibit 4, being the authorization from the Environmental Protection Agency to the City of Mattoon to operate the sewer facilities in question, servicing Lakeland Junior College, expressly provides "no additional loads or connections will be permitted on the sewers constructed under these two permits until adequate interceptor capacities have been provided and additional treatment facilities have been constructed to meet the 1972 requirements as stated in SWB-14 with respect to flows to be treated at the treatment plant and by-pass flows in excess of treatment plant capacity." Failure to meet these requirements by the City of Mattoon is what has precipitated the sewer ban of April 14, 1971. Explicit in the permit allowance of the Lakeland Junior College sewer is the express prohibition that no tie-ins will be permitted to this facility until SWB-14 has been complied with. This condition, as to the specific sewer, pre-dated our comprehensive sewer ban imposed on the City of Mattoon's sewage treatment facilities generally.

Petitioner endeavors to make a showing of hardship based upon its purchase of the land and the costs and expenditures relating to

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legal and architectural fees, mortgage commitments, tax and recording payments and miscellaneous expenditures inherent in the purchase of any tract of land. It is manifest that these expenditures in no way establish hardship of the magnitude necessary to justify waiver of the sewer ban Order. Petitioner presently operates a trailer park in Charleston, Illinois, on which a substantial mortgage has been incurred for its purchase. It endeavors to show hardship by suggesting that income from the proposed Mattoon trailer park will be needed to defray the mortgage expenses incurred for the Charleston facility. The record suggests that this is not a fact but that the debt can be satisfied from other sources. However, even if this were the case, such a showing does not constitute the character or degree of hardship the Board finds necessary to justify the granting of a variance. The record indicates that the proposed facility would generate sewage to the already inadequate facilities of the City of Mattoon in an amount approximating 25,000 gallons per day. Petitioner has expended approximately $60,000.00 for the purchase of the land and for development costs, none of which will be lost to it if it is obliged to wait until the sewage situation in Mattoon has been ameliorated. The hardship on the community if the variance is allowed is greatly disproportionate to any hardship imposed on petitioner in being required to wait until the fruits of its investment can be enjoyed, and adequate sewer facilities are available.

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

IT IS THE ORDER of the Pollution Control Board that the variance be denied.

I, Regina E. Ryan, Clerk of the Board, certify that the above Opinion was adopted by the Pollution Control Board on the 16 day of September, 1971.

Regina E. Ryan

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