

ILLINOIS POLLUTION CONTROL BOARD
August 8, 1991

VILLAGE OF FOX RIVER GROVE,)	
)	
Petitioner,)	
)	
v.)	PCB 91-104
)	(Variance)
ILLINOIS, ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. Dumelle):

Currently before the Board in this case are 1) the Village of Fox River Grove's ("Village") request for expedited hearing, 2) the Illinois Environmental Protection Agency's ("Agency") motion to file its variance recommendation instanter, and 3) a request to set this matter for hearing.

Village Motion to Request Expedited Hearing

On August 1, 1991, the Village filed a motion requesting the Board to expedite its decision on its petition for variance from restricted status. In support of its motion, the Village states that Gardner Terrace Development, Inc., a developer which holds an option to purchase property within the Village on which it intends to develop a subdivision, filed a request with the Board on July 25, 1991 for an expedited decision. It is the Village's understanding that the development of the subdivision is dependent on the availability of a public water supply and that Gardner Terrace's option to purchase the land for the development will expire shortly.

The Village's motion is granted. The Board will act on this case as soon as possible, consistent with hearing requirements (see below) and the Board's workload and resources.

Agency Motion to File Agency Recommendation Instanter

On August 5, 1991, the Agency filed a motion to file its variance recommendation instanter. The motion is hereby granted.

Request for Hearing

On August 5, 1991, Ms. Belinda Staurowsky, a hydrogeologist, filed a request to set this matter for hearing. In her letter, Ms. Staurowsky states that, although she is not a resident of Fox River Grove, several residents requested that she review the technical aspects of the variance. Ms. Staurowsky also states that:

...it would be in the best interest of the citizens of Fox River Grove if a public hearing would be conducted as it appears that there are several issues on which the public needs clarification. Specifically, I have not seen any hydrogeologic information that shows where the contamination is coming from, what the dimensions of the contaminant plume are, any groundwater analysis, or a schedule of remediation.

Section 37(a) of the Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111½, par. 1037(a), states in part:

If the Board, in its discretion, concludes that a hearing would be advisable, or if the Agency or any other person files a written objection to the grant of such variance ... a hearing shall be held, under the rules prescribed in Sections 32 and 33(a) of this Act.

(Emphasis added).

Accordingly, this matter is accepted for hearing. The Hearing Officer is required to inform the objector of the hearing pursuant to 35 Ill. Adm. Code 104.200(b):

The Hearing Officer shall give notice of the hearing in accordance with 35 Ill. Adm. Code 103.123(b), at least 21 days before the hearing to the petitioner, the Agency, and anyone who has filed an objection to the petition.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as

expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain. Any waiver shall extend the time deadline of Section 104.180 regarding filing the Agency recommendation by the equivalent number of days, but in any circumstance the recommendation must be filed at least 20 days before the hearing.

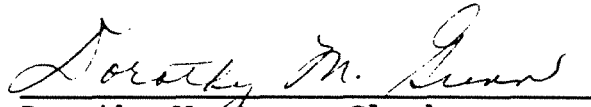
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no

such motion shall negate the obligation of the hearing officer to establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 8th day of August, 1991 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board