

Illinois Pollution Control Board
February 22, 1984

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| LAMPLIGHTER REALTY |) | |
| AND DEVELOPMENT COMPANY, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| |) | |
| v. |) | PCB 83-157 |
| |) | |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ROY M. HARSCH, ESQ., OF MARTIN, CRAIG, CHESTER & SONNENSCHNEIN,
APPEARED ON BEHALF OF PETITIONER.

MARY E. DRAKE, ESQ., APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

On October 26, 1983 the Lamplighter Realty and Development Company (Lamplighter) filed a Petition for Variance from 35 Ill. Adm. Code 309.241(a) as it relates to a connection to a sewer plant which is on Restricted Status. The Illinois Environmental Protection Agency (Agency) filed on December 14, 1983 its Recommendation that the variance be granted. A hearing was held on January 13, 1984 and petitioner waived the right to file a post-hearing brief.

In 1973 petitioner envisioned and designed a 95 acre area which included a 75 acre planned unit development. This development was to be a mixture of commercial, office, and high-tech light industrial uses. A series of option and land exchange contracts was entered into with the landowners (the Theidels) which provided that the petitioner would purchase a right to buy 95 acres in installments. After the first option was exercised and the land developed, the proceeds would be used to purchase the next option, until the total acreage was purchased. Ground-breaking occurred in late 1976 or early 1977 when public water and sewer service were available. An annexation agreement between Lamplighter, the Theidels and the Village of Willowbrook was entered into on July 25, 1977 which imposed certain conditions on the petitioner as developer (Pl. Exh. 3). The conditions

listed below were to be met regardless of the petitioner's financial condition or status of the project: (1) construct a street, (2) purchase and dedicate one acre of land to the Village, (3) construct and complete a 12-inch water main, and (4) make a commitment for off-street water management. If the petitioner could not fund these improvements, the Theidels as signators would be liable (Pl. Exh. 3). Meanwhile, the Theidels have bought a 200 acre farm so as to build a bigger nursery than the former one, which was on the land which is the subject of these proceedings. In order to have enough cash to build, the farm was put up as collateral for loans (Pl. Exh. 7). The nursery development is not complete because of lack of payment by petitioner, due to the imposition of restricted status on the Marionbrook plant.

On April 30, 1979 the Marionbrook sewage treatment plant, under jurisdiction of DuPage County Department of Public Works (DuPage), was placed on Restricted Status. Petitioner tried to arrange for sewer and water service from the Hinsdale Sanitary District, but was unsuccessful. Pursuant to court order in People v. County of DuPage, 80 MR 432, dated April 14, 1982, before any new connections to Marionbrook plant are made, current flows must be off-loaded so as to achieve a net reduction in flow to the plant. Additionally, DuPage may connect up to 75 single family residential population equivalent units (P.E.) per month; the units may accumulate. Although it is estimated that 550 P.E. units are needed for the proposed project and many P.E. units have accumulated, no off-loading has occurred due to various delays. Therefore, no connections are allowed at this time.

DuPage plans a series of Interceptor Systems and additional sewage treatment plants to accept off-loading from Marionbrook and eventually phase out that facility. Knollwood, an interim plant, has been completed and DuPage plans to off-load 179,950 gallons per day from Marionbrook to the interim plant. Construction is to begin on a permanent Knollwood plant in early 1984. After the permanent plant is operating, these improvements should effectively result in the lifting of restrictive status.

As in any variance proceeding, the burden is on the petitioner to show that compliance with the Board rules and regulations, specifically 35 Ill. Adm. Code 309.241(a), would impose an arbitrary or unreasonable hardship. The imposition of restricted status on the Marionbrook Plant suddenly halted the petitioner's project which was proceeding under a phased schedule. This situation prevents the petitioner from developing the project which was to provide the funds to honor his annexation agreement and option to purchase the remainder of the Theidel land. The petitioner remains obligated to meet the annexation conditions even though he cannot complete the project. Three land sale agreements worth \$700,000 were

lost because of restricted status and the resulting unavailability of sewer service (Record at 20), which also has had a chilling effect on the number of potential buyers. In addition, petitioner must expend at least \$275,000 to fulfill the conditions in the annexation agreement (R at 18-20). As of October 1983 Lamplighter has paid \$1,536,000 for 48 acres and is obligated under contract to buy 27 more acres for \$1,125,000 (Pl. Exh. 1). As of October 1983, \$1,781,834 has been expended (including the cost of 48 acres)(Pl. Exh. 1). Future costs are estimated to be \$2,539,000, which includes the purchase of 27 acres, completion of the annexation agreement conditions, and interest (Pl. Exh. 1). Total costs are \$4,320,834 (Pl. Exh. 1).

The Agency has recommended that this variance be granted. The proposed development and its 550 P.E. units will be phased in during the time the off-loading plan for the Marionbrook Sewage Treatment Plant is being implemented. The petitioner's design also provides for a storm water capture and retention feature which will reduce flooding and infiltration inflow problems external to the site (R at 63). According to the Agency, completion of the petitioner's project will reduce total adverse environmental impact.

In summary, the actual development was commenced long before imposition of restricted status. Efforts to arrange for alternate sewer service proved unfruitful through no fault of petitioner. Equally, if not more importantly, the petitioner has designed the project so as to decrease flooding problems and provide a lessening of environmental impact.

Balancing the financial hardship and the reduction of environmental impact, the Board finds that denial of the variance would impose an arbitrary or unreasonable hardship on the petitioner. Therefore, the Board grants a variance from the terms of 35 Ill. Adm. Code 309.241(a).

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

ORDER

Lamplighter Realty and Development Company is hereby granted a variance from 35 Ill. Adm. Code 309.241(a) to allow the Agency to issue construction permits for sewer extension to service Willowbrook Office Campus planned unit development of the petitioner; thereby enabling DuPage County Department of Public Works to issue the necessary sewer connection permits, provided that:

Within forty five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Unit, Water Pollution Control Division, 2200 Churchill Road, Springfield, IL 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period during which this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We) _____,
having read the Order of the Illinois Pollution Control Board in PCB 83-157, dated _____,
understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Title

Date

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22nd day of February, 1984 by a vote of 7-0.

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