

ILLINOIS POLLUTION CONTROL BOARD
February 9, 1984

VILLAGE OF LOMBARD,)
)
) Petitioner,)
)
) v.) PCB 83-147
)
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

Order of the Board (by B. Forcade):

This matter comes before the Board upon a February 6, 1984, Motion for Supplemental Hearing filed by the Illinois Environmental Protection Agency ("Agency").

On October 3, 1983, the Village of Lombard ("Lombard") filed a variance petition requesting relief from 35 Ill. Adm. Code 309.241(a). On November 4, 1983, the Agency filed a recommendation that variance be granted subject to certain conditions. Hearing was held on December 7, 1983, and the record closed on January 24, 1984.

Lombard, in support of its variance petition in this proceeding, has alleged economic hardship if the variance is not granted, and tied that hardship closely to the closing of Henderson's Department Store, which occurred at the end of July or the first of August, 1983 (T. 118). According to the Motion for Supplemental Hearing, the Agency has discovered new evidence which by due diligence could not have been discovered in time for the hearing, namely that the site of Henderson's Department Store has been leased long-term by Long's of Lombard. The lease was signed January 9, 1984, five days after the record closed.

The Agency requests a supplemental hearing for the following reasons:

1. To incorporate newly discovered evidence into the record of this proceeding.
2. A supplemental hearing would avoid the necessity of seeking relief from 35 Ill. Adm. Code Section 103.224 Final Orders pursuant to Section 103.241 (b)(1) or (2).

3. The hearing is required to ensure development of a clear and complete record and is required by justice, 35 Ill. Adm. Code Section 103.200.

On February 8, 1984, Lombard indicated that they intend to file a response to the Motion for Supplemental Hearing, and that they plan to strictly adhere to the time period prescribed by Sections 103.123(c) and 103.140(c). This allows Lombard until February 14, 1984, to respond. The next regular Board meeting at which the matter could be considered is February 22, 1984.

Due to the 90-day statutory deadline, which Lombard refuses to waive, the decision is due March 15, 1984. If the Board waits for Petitioner's response to this motion it will leave only 14 days to hold any hearing that might be granted, receive the transcripts, and decide the case.

In view of the very real time constraints placed on the Board in this matter, the Board will order an additional hearing be held without the benefits of Petitioner's response to the Request for Additional Hearing. The Board will order this hearing to be held before February 23, 1984 and allow final briefs, if any, to be filed before February 27, 1984. Petitioner may address any concerns regarding this additional hearing in the final brief. All filings, including transcripts are to be filed with the Clerk of the Board not later than February 27, 1984.

The Illinois Environmental Protection Agency's Motion for Supplemental Hearing is hereby granted subject to the following conditions:

1. The hearing is to be held before February 23, 1984, and, is limited to issues relevant to the new leasing of the site of Henderson's Department Store in downtown Lombard, including any information regarding, (1) adverse environmental impact on the sewer system created by the leasing of the store and, (2) how the lease of the store affects the alleged economic hardship which Lombard claims is exacerbated by Restricted Status.
2. All filings with the Illinois Pollution Control Board of new information must be completed no later than February 27, 1984.

IT IS SO ORDERED.

Board Member J. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9th day of February 1984 by a vote of 7-0.

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