

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1975

HAWTHORNE LODGE, INC.)
)
 Petitioner,)
)
 v.) PCB 75-297
)
 ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

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

Petitioner in this case seeks a Variance to allow the construction and operation of a sewer extension for its proposed nursing home facility in Pana, Illinois. Hawthorne Lodge, Inc. (Hawthorne) filed its Variance Petition with the Board on July 29, 1975, specifically seeking Variances from Sections 12(b) and 39(a) of the Environmental Protection Act (Act) and from Rule 962(a) of Chapter 3: Water Pollution, of the Pollution Control Board (Board) Rules and Regulations. The Environmental Protection Agency (Agency) filed its Recommendation on August 27, 1975. No hearing was held in this matter.

THE PROPOSED FACILITY

Hawthorne is a Missouri corporation, licensed to operate in Illinois, engaged in the business of owning and operating nursing home facilities, several of which are located in Illinois. On September 17, 1974, Hawthorne purchased the operations, (but not the physical plant), of the existing DePaepe-Ashcroft facility knowing that it did not meet the Illinois Department of Public Health (Public Health) minimum construction standards for intermediate care nursing facilities. The DePaepe-Ashcroft facility was purchased as part of Hawthorne's plan to replace it with a new, larger facility. On September 25, 1974, Hawthorne executed an option to purchase other property in Pana for the construction of such a new facility. Hawthorne now plans to construct a 123-bed intermediate care nursing home on the optioned property, which it hopes to have ready for operation and occupancy on March 1, 1977.

On June 12, 1975, Hawthorne submitted to the Agency a permit application for a sewer extension of 450 feet, to connect the proposed facility to the city of Pana sewer system. Hawthorne estimated that with full occupancy (123 persons) and 75 employees, the projected facility would yield a domestic sewage flow of approximately 14,550 gallons per day (gpd); Hawthorne estimated a population equivalent (PE) of 146.

PRESENT VIOLATIONS AT
PANA SEWAGE TREATMENT PLANT

The Agency denied Hawthorne's permit application in a letter dated June 17, 1975. The Agency cited Rule 962 of our water pollution regulations, and stated that it could not grant Hawthorne's permit because of the additional load which the proposed nursing home would place on the city of Pana's sewage treatment plant (STP). The Agency noted that Pana's STP was designed to receive and treat 0.6 million gallons per day (MGD), with an organic PE of 8,530. The Pana STP has an average flow of .6134 MGD; its organic loading is 10,641 PE.

In addition to the overloading noted above, the Agency's Recommendation states that bypassing of raw sewage occurs on a near daily basis at the Pana STP. The Agency's field personnel report that the entire load on the Pana STP cannot be treated without flooding the clarifiers at the plant. Particularly large amounts of bypassing occur during periods of heavy rain, due to combined sewers tributary to the plant.

The Pana STP discharges to Coal Creek, which has a seven day, ten year low flow of 0.43 cfs (due to the plant effluent). Coal Creek is tributary to Becks Creek, an intermittent stream, and then to the Kaskaskia River. In a 1970 biological survey, no organisms were found one mile downstream from the STP discharge; sewage mold and slime were seen in the stream. The Agency characterized the stream at that point as "grossly polluted." Five miles downstream from the plant, the stream was classified as "semi-polluted." The Agency also states that operating conditions at the Pana STP have not improved since the 1970 survey. The Agency has not, however, received any complaints regarding the STP or Coal Creek during at least the last five years.

The city of Pana was certified for a step I grant by the Agency on March 17, 1975, as part of its plans to construct a new or modified treatment plant by December, 1977. If Pana receives step I, step II and step III approval for its planned STP facility, it should be able to achieve an effluent limitation of 10 mg/l BOD and 12 mg/l SS.

HARDSHIP

The individual hardship claimed by Petitioner is based on its expenditures to date in planning for the new nursing home facility. Hawthorne states that it was not aware of problems at the Pana STP when it began planning the new facility, or when it purchased the operations of the existing DePaepe-Ashcroft Nursing Home. Hawthorne states that it has spent to date a total of \$72,659.90, both in planning the proposed facility and in obtaining approval from various state and local regulatory bodies. Hawthorne states that all these expenditures were made while it believed in good faith it would be able to connect the proposed facility to the Pana sewer system.

Hawthorne feels it has no feasible alternative method of disposing of the sanitary wastes generated by the proposed nursing facility. After receiving the Agency's permit denial letter, Hawthorne engaged engineering consultants to perform percolation tests on its optioned property in Pana. Those tests, made on June 24 and 25, 1975, indicate that the soil on the optioned property is not suitable for the construction of a septic field to serve the proposed nursing home, (Ex.E.).

The Board in this case is also faced with the issue of public hardship. The old DePaepe-Ashcroft Nursing Home operated by Petitioner is licensed by Public Health only upon the condition that the new facility will be constructed. Thus, whether or not the new facility is built, the old 67-bed DePaepe-Ashcroft home will lose its certification from Public Health, and will be forced to close. Even with that home providing 67 beds, the record in this matter indicates that there is a serious need for additional intermediate care nursing beds in the Pana area.

Figures obtained by the Agency from Public Health verify the problem; besides the old DePaepe-Ashcroft home, there is one other nursing home in Pana, which has a 97.8% occupancy rate. The three nearest facilities outside of Pana, (all some distance from the city), have occupancy rates exceeding 90%. One of Petitioner's exhibits, (Ex.M), indicates that many patients are unable to receive nursing home care, and must be kept in hospitals at increased expense to either the individual or the government.

It seems clear that a failure to grant this Variance would work a hardship on the public in the area of Pana. Loss of certification at the old DePaepe-Ashcroft home, which will happen if Petitioner is not allowed to construct its proposed facility, will exacerbate an already serious nursing bed shortage.

DISCUSSION

Both Hawthorne and the city of Pana claim that the additional load on the Pana STP will be minimal. First, many of the patients at Petitioner's proposed nursing home will come from the present DePaepe-Ashcroft Home, which is inadequate and will be closed. Second, the city of Pana has recently closed an old swimming pool, and opened a new one, reducing loads on the Pana STP from approximately 16 million gallons to roughly 8 million gallons over the summer season. Third, census figures show that the population of the city of Pana, and therefore the PE load on its STP, have been dropping.

In addition, it appears that any additional load which the new nursing home might place on the Pana STP would last only a short while. The Agency Recommendation points out that occupancy at the new nursing home is scheduled for March, 1977, and it is projected that STP improvements will be completed in December, 1977.

Balancing these factors, we feel that the Variance here has been justified, and the Petitioner has met its burden of proof. The situation here is unlike prior cases, where the Board has had to weigh the likelihood of sewer backups during wet weather; there is no indication here of hydraulically overloaded sewers, despite Pana's combined sewer system. See, First Trust and Savings Bank of Taylorville v. EPA, PCB 74-448, (March 13, 1975).

Further, this Variance would be in keeping with prior cases decided by the Board. See, Brethren Home of Girard v. EPA, PCB 75-193 (July 24, 1975); see also, Sandwich Community Unit Schools, Dist. No. 430 v. EPA, PCB 74-428 (April 4, 1975). In similar and analogous situations, the Board has found that community hardship weighs heavily in the consideration of variances. We feel here that the Petitioner's financial hardship, public hardship in the form of a substantial need for additional nursing home beds in the Pana area, and the limited amount and duration of any additional load on the Pana STP outweigh the possible environmental harm which may be caused by the addition of further loading on the Pana STP.

THE VARIANCE

Petitioner has requested Variances from Sections 12(b) and 39(a) of the Act, as well as a Variance from Rule 962(a) of our Water Pollution Regulations. We feel that the grant of a Variance from Rule 962(a) will provide Petitioner sufficient relief, and that additional Variances from Sections 12(b) and 39(a) of the Act will not be needed.

The pleadings in this case do not address the problem of possible future disapproval or deferral of Pana's planned STP upgrading. The pleadings do note that the Agency's certification of Pana's step I grant has not yet been approved by the United States Environmental Protection Agency. For that reason, we shall require that if, within one year, a step II grant has not been approved for Pana's STP, Petitioner must submit to the Agency plans for a holding tank to decrease the load on the Pana STP during periods of heavy inflow.

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

ORDER

IT IS THE ORDER OF THE ILLINOIS POLLUTION CONTROL BOARD THAT Petitioner, Hawthorne Lodge, Inc., be granted a Variance from Rule 962(a) of Chapter 3: Water Pollution, of the Pollution Control Board Regulations, subject to the following conditions:

1. Petitioner shall, after one year, if step II grant approval for the upgrading or replacement of the City of Pana sewage treatment plant has not been granted, submit to the Environmental Protection Agency plans for a holding tank, in a form acceptable to the Agency, to decrease loads on the City of Pana sewage treatment plant during periods of heavy flow.

2. Petitioner shall, within 30 days of the date of this Order, submit to the Environmental Protection Agency, attn: Manager, Variance Section, 2200 Churchill Road, Springfield, Illinois 62706 and to this Board, a Certificate of Acceptance in the following form:

I, (We), _____, having read the Order of the Illinois Pollution Control Board in Case No. PCB 75-297, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 16th day of October, 1975, by a vote of 3-0.

Mr. Young abstained.



Christan L. Moffett, Clerk
Illinois Pollution Control Board