

ILLINOIS POLLUTION CONTROL BOARD
September 29, 1975

AMERICAN NATIONAL BANK and)
ALVIN W. DEJONG,)
Petitioner,)
)
v.) PCB 75-75
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

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

This matter comes before the Pollution Control Board (Board) upon the petition of American National Bank (American) for variance from Rule 962 of the Water Regulations. A hearing was held August 13, 1975, at which time a stipulation was submitted. However, the only facts stipulated as true were: 1) that the issuance of a permit would have a minimal effect on Wheaton's existing sewer plant capacity; 2) that Wheaton Sanitary District plans to enlarge its sewer plants; and 3) that Wheaton Sanitary District is a "borderline case" in regard to compliance with current Illinois Environmental Protection Agency standards.

The Petitioner alleged, but produced no testimony to support its allegation, that it constructed or planned to construct a Denny's Restaurant relying on the representations by the Sanitary District and the Agency that it would be able to obtain the necessary permits. No sworn testimony was received at the hearing.

Petitioner alleges that it would an arbitrary and unreasonable hardship to require it to expend finances to extend the Carol Stream sanitary facilities to its premises. This allegation standing alone will not support the grant of a variance.

It is the Board's Opinion that Petitioner may have alleged a prima facie case for a variance grant. However the evidence introduced at the hearing is too scant for the Board to rule in Petitioner's favor. Therefore, it is the Order of the Board that this cause shall be, and hereby is, remanded to the Hearing Officer and the record shall be opened for the purpose of receiving sworn testimony concerning the following issues:

1. Whether Petitioner was misled by the representatives of the Agency or Wheaton's Sanitary District as to the likelihood that it could obtain a permit;

2. If Petitioner was misled, whether Petitioner relied on the misrepresentation in constructing its restaurant;

3. Whether Petitioner actually applied for a permit from the Agency;

4. Whether Petitioner had been issued a permit for 1800 PE prior to the time it requested a permit from Wheaton Sanitary District;

5. Whether Petitioner knew of the "sewer ban" at the time it began construction; and

6. The Hearing Officer shall receive evidence pertaining to the efficacy of the Petitioner's proposed holding tanks.

Said hearings shall be held within forty-five days of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 29th day of September, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board