

ILLINOIS POLLUTION CONTROL BOARD  
July 3, 1980

WILLOWBROOK DEVELOPMENT )  
CORPORATION and DUPAGE COUNTY )  
DEPARTMENT OF PUBLIC WORKS, )  
 )  
Petitioners, )  
 )  
v. ) PCB 80-58  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Respondent. )

MR. WALTER J. O'BRIEN, II AND MR. RICHARD GUERARD APPEARED ON BEHALF OF WILLOWBROOK DEVELOPMENT CORPORATION.

MR. JOSEPH S. BONGIORNO AND MR. CHARLES RUTH, ASSISTANT STATE'S ATTORNEYS, APPEARED ON BEHALF OF THE DUPAGE COUNTY DEPARTMENT OF PUBLIC WORKS.

MR. DONALD L. GIMBEL APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

Willowbrook Development Corporation (Willowbrook) on April 4, 1980 filed a Petition for Variance from Rule 962(a) of Chapter 3: Water Pollution Control Rules and Regulations (Chapter 3). On April 17, 1980 the Board on its own motion joined the Dupage County Department of Public Works (DuPage) as a petitioner in this matter. Hearings were held on June 19 and 20 of 1980. Neither citizens nor representatives of news media were present at these hearings. The Illinois Environmental Protection Agency (Agency) has recommended that the request for a variance be denied.

Willowbrook is the developer of Lake Willow Way, a housing development located in the Village of Willowbrook in DuPage County. The development is projected to comprise thirty-eight multiple family buildings which will contain a total of 152 units. The Village of Willowbrook is served by the Marionbrook Sewage Treatment Plant, a facility which is owned and operated by Dupage. It has been on restricted status since April 30, 1979. Willowbrook requests that it be permitted to connect a sewer extension serving all of the buildings with an existing sanitary sewer which is tributary to the Marionbrook Sewage Treatment Plant.

Willowbrook claims that it was unaware that the Marionbrook facility was on restricted status and that, therefore, it did not know that sewer hookups during the period of restricted status were to be banned. Willowbrook further asserts that it was repeatedly informed by DuPage that the Marionbrook plant by December 30, 1979 would be able to handle sewage flow from the Lake Willow Way development. Willowbrook believed that the construct only permit it had received on September 24, 1979 from the Agency to install, but not connect, a sewer line implied that an operation permit would be granted as soon as upgrading at the Marionbrook plant was completed.

Willowbrook contends that it was not informed of the Marionbrook plant's restricted status or of the impact of that classification (banning operating permits for sewer lines) until it met with the Agency in early April, 1980. Willowbrook states that it had spent over \$2 million before it had been informed that the Lake Willow Way development would not be allowed to connect its sewer lines to the Marionbrook plant. Furthermore, Willowbrook indicates that extreme economic hardship for the development corporation, its officers, and its lender would result if a variance were denied.

The Agency, on the other hand, alleges that Willowbrook has caused its own hardship by voluntarily remaining in a state of "blissful ignorance". (R.214, June 20, 1980). The Agency's allegation is based on the following facts: (1) the president of Willowbrook knew that the original construction and operation permit request was denied because of problems with capacity at the Marionbrook facility in April, 1979 (R.59, 67, June 19, 1980); (2) Thomas McWilliams, as Secretary-Treasurer of Willowbrook, signed but did not read a permit application on September 17, 1979 which explicitly stated that the permit was for construction only of a sewer extension, (R.105, June 19, 1980; Resp.Ex.2); (3) Willowbrook never contacted the Agency concerning the status of the Marionbrook plant (R.107); (4) Willowbrook has expended \$90,000 in sewer and water work plus at least \$70,000 in road work since learning of Marionbrook's restricted status; and (5) Willowbrook since December 30, 1979 had pumped down an artificial lake site, cleared and graded land, and laid three foundations for three eight-unit buildings. These facts indicate that many of the expenses that Willowbrook has incurred are a result of its own ignorance of the law.

In fairness to Willowbrook, however, it must be pointed out that DuPage did not accurately represent to it the condition of the Marionbrook plant. Correspondence from DuPage indicates only that the Marionbrook plant would be upgraded in the future to handle the flow from the Lake Willow Way development. DuPage never mentioned Marionbrook's restricted status to Willowbrook even though DuPage had been informed of the status in an April 30, 1979 letter from the Agency. It was not until February, 1980 that Dupage indicated that the Agency was not satisfied with effluent monitoring results and that a lengthy delay in allowing sewer hookups might occur (R.119, June 19, 1980).

Regardless of whether Dupage's representations to Willowbrook were deceptive ones, Willowbrook had an affirmative duty to check with the Agency to ascertain whether the Marionbrook plant had been placed on restricted status. The Agency, pursuant to Rule 604(a) of Chapter 3, publishes a list of facilities it places on restricted status. Thus, the status of the facility was readily ascertainable to Willowbrook.

Willowbrook is not the only party that will experience hardships should a variance be denied. Brookfield Federal Savings and Loan Association, which lent more than 55% of its net assets to individuals associated with the Lake Willow Way project, is one. Twenty-six apparently innocent purchasers of units in Lake Willow Way also stand to experience economic and other hardship if a variance were to be denied. In addition, the Village of Willowbrook will experience financial losses and planning problems.

At present eight buildings, containing a total of thirty-two units, have been substantially completed and twenty-six of these units have been sold. Willowbrook's plans call for an additional twenty units to be constructed in 1980. Granting variance for only these fifty-two units will allow time for the Agency and the Board to determine the likely future of the Marionbrook plant while Willowbrook continues construction in a limited manner. If a variance for only these fifty-two units is granted, the sewage contribution will be small in relation to the total flow going into the Marionbrook plant; therefore, any measurable increase in environmental damage will be slight.

In considering the millions of dollars already expended for the Lake Willow Way development, and the economic effect on the purchasers of disallowing connection of this development, the Board concludes that denial of a variance for these fifty-two units would result in an unreasonable hardship. The factual findings in this case do not justify a grant of a variance for all 152 proposed units at this time.

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 Willowbrook Development Corporation and the DuPage County Department of Public Works be granted a variance from Rule 962(a) of Chapter 3: Water Pollution Control Rules and Regulations solely for the purpose of connecting and operating a sewer extension for fifty-two units located at Willowbrook's Lake Willow Way development.

Mr. Dumelle concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 3<sup>RD</sup> day of July, 1980 by a vote of 4-0.

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