ILLINOIS POLLUTION CONTROL BOARD
August 30, 1971

MR. & MRS. WALLACE W. PIROYAN	)	
	)	
v.	)	PCB 71-103
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
and		
RAY WICKSTROM	)	
	)	
v.	)	PCB 71-105
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
and		
DALE & IRIS SCHLAFER	)	
	)	
v.	)	PCB 71-184
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

DISSENTING OPINION (BY MR. KISSEL):

I disagree with the opinion of the majority of the Board on each of the above-captioned cases. In each case I would grant the variances requested.

I believe that the test set forth by the majority of the Board on whether variances should be granted to those persons who own property within the North Shore Sanitary District (the "District") and who wish to connect on to the District's sewer system is set forth in the case of Monyek v. Environmental Protection Agency, PCB 71-80, dated July 19, 1971:

> "In cases where a house has been completely built before the date of the order (March 31, 1971) or where substantial steps toward completion have been taken, we can clearly judge the hardship of non-connection to be unreasonable."

While the variance in the Monyek case was denied (and I agreed with that decision), it serves to indicate what the Board thinks the test for granting of variances should be. The test set forth obviously contemplated that something less than completion of the house was necessary before the variance would be granted. While some of the Board's decisions required some construction to be under way (See Wachta and Mota v. Environmental Protection Agency, PCB71-77, dated August 5, 1971), other cases did not (See Ciancio v. Environmental Protection Agency, PCB 71-100 and McAdams v. Environmental Protection Agency, PCB 71-113). While it is unclear exactly what a person must have done to be determined as "substantial steps toward completion", it is obvious from the decisions of the Board that it need not be actual beginning of construction. The Monyek case, supra, says as follows:

> "Building a house is not simply a matter of dealing with bricks and mortar. Various other matters such as permissions from governmental bodies and financing from lending institutions are involved."

I couldn't agree more with the quoted sentences, because they are an implied recognition that to have substantial reliance as I have outlined it in other dissents (See Dissenting opinion in Wachta and Mota v. Environmental Protection Agency, supra) one need only be committed to building, and need not have taken the additional step of scooping a shovel of dirt. I believe therefore that the majority of the Board uses the right test for granting, or denial, of the variances, but applies it erroneously.

In all three of the cases which we decide here, the petitioners did much in reliance upon their right to build on land previously purchased by them. Mr. Piroyan (PCB 71-103) bought the land, spent money on a custom designed house for that lot, entered into a contract with a builder to build the house and cleared the land for the construction. What else could he have done to show reliance, except actually scoop a shovel of dirt? Mr. Wickstrom (PCB 71-105) bought the land, sold his old home, had plans and specifications prepared for the house, entered into a contract with the builder and removed trees from the lot in preparation for building. Mr. Schlafer bought the land, had plans and specifications prepared by an architectural firm, and paid the architectural firm $4,000 for the plans.

Each one of the Petitioners was substantially committed to going ahead with the building of their respective houses. Under the Board's own test, I feel that we should grant the variances for failure to do so is an illegal and unwarranted taking of their property and violation of their constitutional rights.

I, Regina E. Ryan, Clerk of the Board, certify that Mr. Richard J. Kissel submitted the above dissenting opinion on this 30th day of August, 1971.

Regina E. Ryan