

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1971

AMERICAN NATIONAL BANK AND TRUST)
COMPANY, as Trustee under Trust)
No. 28512, by Harold Ableman,)
Beneficiary) #PCB 71-132
)
v.)
)
ENVIRONMENTAL PROTECTION AGENCY)

OPINION OF THE BOARD (BY MR. LAWTON):

This is a petition filed by the American National Bank and Trust Company as Trustee seeking a variance from our March 31, 1971 order entered in Case Nos. PCB70-7, 70-12, 70-13, 70-14, forbidding any new connection to sewers operated by the North Shore Sanitary District until the conditions of overload are corrected. This opinion supports our order entered July 26, 1971 granting the petition without hearing, subject to receipt of verification of the petition. Such verification has been received. Motion to reopen and hold a hearing was filed by the Environmental Protection Agency on July 30, 1971. The petition notes that the Agency had not filed a timely recommendation in this matter but has intended to participate in the hearing. The motion to reopen and hold hearing filed by the Agency is denied.

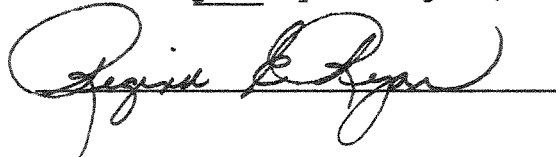
Petitioner is in the process of constructing a 65-unit apartment building in Waukegan. The petition sets forth that engineering drawing and specification have been filed with the Agency requesting the extension of sewer service and connection with the facilities of the North Shore Sanitary District. Petitioner has been advised that temporary treatment facilities to service the structure would not be approved because irrespective of the purity of the effluent the increased hydraulic load could not be accommodated. The petitioner recites that a construction loan in the amount of \$912,200 secured by mortgage has been made. Construction of the building was initiated upon receipt of the building permit from the City of Waukegan in October of 1970. The building at the present time is approximately 35% completed. A construction loan pay-out is presently due and the mortgage requires approval of the sewer extension prior to pay-out. Interest payments at 8-1/4% per annum amounting to \$6,687.29 per month commence February 1, 1972. The payments are to be made out of the rentals of the property.

This case is one of many the Board has been considering as a consequence of its March 31, 1971 sewer ban order. As we said in *Wachta, et al v. EPA*, No. PCB71-77 (opinion approved this day), each case must be decided on its own facts. The basic consideration in every variance is to balance the hardship inflicted on the petitioner if the variance is denied against the hardship imposed on the community if the variance is allowed. This balance, in turn, determines whether the hardship on the petitioner is of such a magnitude as to justify a variance from the order of this Board. We have held that where substantial expenditures have been made and substantial improvements placed on the land in the reliance on the right to obtain a permit and made prior to the date of our order, the hardship is of a degree justifying the variance allowance. In the present case, the incurring of the mortgage indebtedness and the completion of 35% of the structure represent activity of a sufficient magnitude to entitle petitioner to the variation sought. In granting this variance we are not unmindful that its allowance will further worsen an already bad situation. However, it is the opinion of the Board that the hardship imposed on the petitioner in being denied the sewer tie-in in this case is of a magnitude far greater than the burden that will be suffered by the general public in its allowance.

It must be noted that the sole issue dealt with in this case was the request for sewer connection. We have not commented upon or decided in any way the question raised by the EPA in their motion to reopen, of whether the petitioner was proceeding with their construction in an illegal manner inasmuch as it did not obtain a permit from the Agency. This grant of a variance will not protect the petitioner from possible prosecution by the EPA on the permit question.

This opinion constitutes the findings of fact and conclusions of law of the Board.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion this 5 day of August, 1971.

A handwritten signature in cursive script, reading "Regina E. Ryan", is written over a horizontal line.