

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1971

ARGONNE DEVELOPMENT COMPANY)
)
) PCB 71-185
)
v.)
)
ENVIRONMENTAL PROTECTION AGENCY)

Messrs. Roger B. Harris and Henry Balikov of Altheimer, Gray,
Naiburg & Strasburger, Attorneys for Argonne Development Co.

Mr. Roger Ganobcik, Attorney for Environmental Protection Agency

Opinion of the Board (by Mr. Dumelle):

On March 31, 1971, the Board decided an enforcement action initially brought by the League of Women Voters against the North Shore Sanitary District (NSSD). Paragraph seven of the order in that case imposed a ban on new sewer connections throughout the District.^[1] The petitioner in the instant case, Argonne Development Company (Argonne), is directly affected by the sewer connection moratorium which forbids new or additional discharges reaching the North Chicago Sewage Treatment Plant.

Argonne is an Illinois partnership in the business of acquiring and developing real estate in the City of North Chicago for urban renewal projects. The agreement concerning the particular project involved in this proceeding was entered into by Argonne and the City of North Chicago on December 23, 1968. Argonne is presently actively involved in Phase II of the project which calls for the construction of 180 units of cooperative apartments known as Manchester Knoll. The overall urban renewal plan also provided for the construction of 224 housing units which were completed in 1969 and 1970.

[1] League of Women Voters, et al v. North Shore Sanitary District, PCB 70-7, 12, 13, 14 (March 31, 1971).

The portion of the order from which the instant variance was sought is as follows:

"7. The District shall not permit any additions to present sewer connections, or new sewer connections to its facilities until the District can demonstrate to the Board that it can adequately treat the wastes from those new sources so as not to violate the Environmental Protection Act or the Rules and Regulations promulgated thereunder."

By its petition for variance filed on July 12, 1971, Argonne sought to be allowed to make sewer connections for 180 housing units. We grant petitioner's request to connect 180 units of Manchester Knoll to the sewer system served by the North Chicago Plant of the North Shore Sanitary District. We do so because of the nature of the hardship which a denial would create.

Variances are usually requested from regulations or statutory requirements. However, in this case a variance is sought from the operation of a Board Order. Such a procedure is clearly provided for by the Environmental Protection Act, Section 35. The standard to be applied in such cases is likewise provided for in the Statute and the Board's Rules. In considering whether to grant the variance, the Board must consider all the facts and ultimately use its best judgment coupled with the expertise it is statutorily presumed to embody to determine if compliance with the Order from which exemption is being sought will impose an arbitrary or unreasonable hardship on the petitioner. This hardship must then be balanced against the harm done to the environment. In this case petitioner has set in motion unique and irretrievable procedures which cannot be duplicated in any similar fashion at a future date. Petitioner has obtained FHA mortgage commitments which include interest reduction payments, loan guarantees, and assurance of rent reduction payments. Without such commitments from the federal agency, low and moderate-income housing of the type contemplated in the instant venture cannot possibly be realized. The probable loss of direct federal funds and other desirable federal participation in the project is the chief reason why we are able to grant the requested variance.

Apart from the hardship visited on the petitioner in this case, we are struck by the crying need for housing presented on the record. Mayor Kukla testified eloquently on the dire need for low and moderate-income housing in North Chicago. He further stated that it was likely that many of the occupants of the new housing would be denizens of the area presently served by the NSSD, people who would be leaving substandard and over-occupied dwellings to take up residence in Manchester Knoll and, as such, the load on the treatment system would not be an additional one. This conclusion reached after considerable speculation is believable, however, only if the new occupants' former residences are abandoned and demolished.

Thus, it is clear that this is not a case of a property owner who, after owning a parcel of real estate for several years, decides it is time to build his dreamhouse only to be confronted with the prohibition on sewer connections. (See e.g. Robert H. Monyeyek v. EPA, PCB 71-80, July 19, 1971). Denial of the variance here would

constitute not a dream deferred but a raisin withered in the sun. Such substantial steps have been taken down a path which cannot be trod again that we are persuaded that the hardship resulting from not allowing the connection of the 180 units would outbalance the environmental harm which must result from allowing the connection to a greatly overburdened treatment plant.

We have considered the alternative to connection to the treatment system of the NSSD presented on this record and indeed would surely have considered the presentation incomplete without evidence of the possible other ways of handling the wastes from the project. The most promising alternative in most situations would appear to be the package treatment plant; a portable facility (in the sense that it can be relocated after its period of utility) capable of treating up to perhaps 100,000 gallons per day and requiring minimal supervision. A requisite for employment of such alternative treatment is a receiving stream which does not find its way to the overloaded treatment plant. The only feasible portable plant outlet in this case would be to the City sewer system. The hydraulic burden of the effluent would then be conveyed to the North Chicago plant with very little alleviation of the pollution problem. The other alternatives discussed were septic fields, storage and hauling, and storage with selective release to the treatment plant. Use of a septic field in a high density population area could constitute a health hazard. (See IIEQ71-2, Septic Tanks and the Environment). So, too, could the storage of a great quantity of raw sewage be a health hazard and unapprovable by health authorities. Hauling the sewage by tank truck to another treatment plant, involving several trips per day, would be prohibitively expensive. Of the several alternatives imaginable none would be feasible in this case. (R.106-117).

It has not been an easy or simple matter arriving at the decision in this case. The strategy of imposing a sewer connection ban when the treatment capacity of a facility is exceeded is a severe one which should not be used except in exacerbated situations like the NSSD. The underlying rationale of the instant sewer ban is simply to abate the amount of untreated and inadequately treated waste flowing into Lake Michigan. With such a ban in effect this Board and other public agencies are confronted with balancing conflicting but seemingly equally important public interests. The Board's decision cannot be viewed as meaning that low-cost housing is of transcendent interest. This case presents unusual circumstances where very substantial and non-duplicative steps were taken by petitioner before the imposition of the ban. In other cases

where substantial steps were taken prior to the date of our decision we have allowed connection to existing sewers. See, e.g. Wachta v. EPA, PCB 71-77 (July 12, 1971); Wagnon v. EPA, PCB 71-85 (July 19, 1971).

The above constitutes the Board's findings of fact and conclusions of law.

Mr. Lawton took no part in the consideration or decision of this case.

O R D E R

The Variance requested by Argonne Development Company is granted. Permission is hereby granted to allow the inter-connection to the City of North Chicago sewer system of the one hundred eighty (180) housing units of Manchester Knoll.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order on the 14 day of October, 1971.



Regina E. Ryan, Clerk
Illinois Pollution Control Board