ILLINOIS POLLUTION CONTROL BOARD JULY 21, 1982

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WESTOWNS LAND WEST SUBDIVISION AND STELLA ANNES, et al.,

Petitioners,

v.

PCB 82-57

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

On April 30, 1982 Stella Annes filed a petition for variance from Rule 962(a) of Chapter 3: Water Pollution, as it relates to connection to a sower line which is on Restricted Status. The petition was filed on behalf of four homeowners who live in the Westown Lands Subdivision in the Village of Lombard (Village), DuPage County and who have been identified by the DuPage County Health Department as having malfunctioning septic systems. By Order of May 13, 1982 the Board joined the Village as a party. Hearing was waived and none was held. On July 9, 1982 the Illinois Environmental Protection Agency (Agency) filed a recommendation that the variance be granted, accompanied by a motion to file instanter, which is hereby granted.

The petition in this matter incorporates the records, opinion and order of the Board in PCB 81-43 (44 PCB 31; November 5, 1981) which granted variance to eight homeowners in the same subdivision. Given that the factual situation is nearly identical to that in PCB 81-43, the Board will not restate those facts here. The only changes since the prior variance was granted are that the four septic systems listed in this petition have now been determined to be malfunctioning in addition to the original eight; that on March 19, 1982 the Village was issued a Construct Only permit for the construction of a West Side Interceptor Sewer, which upon completion should allow the Village to be removed from Restricted Status; and that the completion date is now estimated to be sometime this summer.

The Agency alleges that requiring Petitioners to expend thousands of dollars to repair or replace septic systems which, due to the soon to be completed interceptor system, will be used for only a short time and which are in any case unsuited to the soil in which they would be functioning, would impose an unreasonable hardship upon the individual petitioners, especially considering the public health hazard presented by the surfacing of untreated sewage which would result from a denial of variance. In addition, any increased load on the sewer system experienced as a result of such grant should last for only the short period of time prior to completion of the interceptor. The Board agrees and will grant variance from Rule 962(a) for the purpose of allowing the connection of the four septic systems determined by the Health Department to be malfunctioning.

The Board notes that in its Opinion in PCB 81-43, it stated that the existing sewer extension was to be used for the eight subject connections in that case "and is unavailable for additional connections." The Agency suggests, therefore, that variance be granted from that language. However, that language simply stated the fact that no other connections were being allowed by that variance. Its intent was not to bar any future variances. Therefore, the Board finds that variance from Rule 962(a) is sufficient to grant the requested relief.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

1. Westown Lands West Subdivision and the Village of Lombard are hereby granted variance from Rule 962(a) of Chapter 3: Water Pollution, for the purpose of connecting the 4 lots in the subdivision identified in the variance petition in this matter to have malfunctioning septic systems to the sewer system of the Village of Lombard.

2. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (we), _____, having read the Order of the Illinois Pollution Control Board in PCB 82-57, dated ______, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Title

Date

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21^{27} day of 4142, 1982 by a vote of 5-0.

Christan L. Moffett, Clerk Illinois Pollution Control Board