

ILLINOIS POLLUTION CONTROL BOARD
November 5, 1981

WESTOWN LANDS WEST SUBDIVISION AND STELLA ANNES,)
)
) Petitioner,)
)
) v.) PCB 81-43
)
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

DISSENTING OPINION (by D. Anderson):

I dissent from the Board's Opinion and Order of November 5, 1981 for several reasons.

The Opinion indicates that Lombard is a necessary party to this action and orders it joined pursuant to Procedural Rule 303(c). However, the opinion is silent as to whether service of process has been made on Lombard.

The Board's variance could be construed as an order compelling Lombard to allow these connections. The order is unclear as to whether it can refuse to allow these based on its own ordinances or determinations as to the capacity of its sewer.

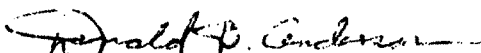
The named petitioners are Westown Lands West Subdivision and Stella Annes, although variances are requested for nine of the thirty-seven lots. The legal character of Westown is not indicated so it is not clear whether it has legal capacity to request a variance. Assuming capacity, it is not clear who has authority to represent it. Assuming Stella Annes is one of the nine requesting a variance, a fact which is not clear, the other eight are not named as petitioners. Section 37 of the Illinois Environmental Protection Act (Act) requires that any person seeking a variance do so by filing a petition. This statutory condition precedent has not been met.

Variance authority is restricted to the grant of individual variances [Section 35(a)]. It is well settled that the Board cannot grant a class variance, but must utilize rulemaking to deal with unnamed classes of people (Section 27; Mercy Hospital and Illinois Hospital Association v. IEPA, PCB 80-218). Although it may not be necessary that these persons be listed in the caption, they should be required to join as petitioners and be identified in the opinion.

The Act authorizes the grant of a variance only upon a showing of arbitrary or unreasonable hardship. How is it possible to find this where the identity of the persons suffering the hardship is not revealed?

The Board's opinion grants a variance to eight unnamed individuals who are supposedly identified in a public health report which has not even been introduced into the record in this proceeding. The Board has thus granted a variance for eight lots, denied it for one and not passed on the rights of twenty-eight. The Board has failed to make a finding on the most elementary fact: who gets the variances and who is denied a variance?

Lastly, the Order does not specify who is to sign the certificate of acceptance. Is it Westown, Stella Annes or each of the eight who are granted variances?



Donald B. Anderson, Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Dissenting Opinion was filed on the 18th day of November, 1981.



Christan L. Moffett, Clerk
Illinois Pollution Control Board