

ILLINOIS POLLUTION CONTROL BOARD
November 2, 1978

THOMAS B. ROSSETTER,)
STEVEN W. FITZSIMMONS and)
THE CITY OF ST. CHARLES,)
)
Petitioners,)
)
v.) PCB 78-147
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

OPINION OF THE BOARD (by Mr. Goodman):

This Opinion is in support of the Board Order entered herein on October 4, 1978.

On May 18, 1978, Thomas B. Rossetter and Steven W. Fitzsimmons (Rossetter) filed this Petition for Variance requesting relief from Rules 604, 951 and 962 of Chapter 3: Water Pollution Control Rules and Regulations (Regulations), to allow sanitary sewer extensions to the St. Charles Sewage Treatment Plant in St. Charles, Illinois for a 93.6 acre residential housing development known as "Timbers." On August 24, 1978, pursuant to a motion by the Illinois Environmental Protection Agency (Agency), the City of St. Charles was joined in this action as a party. Subsequent to a decision in a similar case, PCB 78-173 (Kent Shodeen & the City of St. Charles v. EPA), the parties herein filed a stipulation of fact and motion for decision without a hearing. The Board will grant the joint motion for decision without a hearing and accepts the stipulation of fact.

The stipulation of fact, as in Shodeen, indicates that Rossetter participated in the R.J. Environmental Associates, Inc., computer modeling study of wastewater bypass in the City of St. Charles. Based on this report, it is stipulated that the existing St. Charles bypassing has a minimal effect on the Fox River which is not detectable, and that additional flows from Rossetter's development will have no additional effect. The stipulation of fact further notes that the cause of the overflows is apparently the hydraulic head in the force main or sewage treatment plant and not the condition of the pumps, as previously suspected.

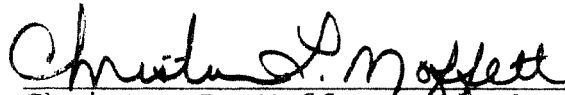
The Board takes official notice of its Opinion in PCB 78-173 (Shodeen) and finds here, as in that case, that no environmental harm will result from the grant of the requested variance. Rossetter alleges, as did Shodeen, that the City of St. Charles will be deprived of taxes and sewer connection fees should the variance not be granted. In addition, a delay of the development will result in a substantial cash flow problem, and financial loss to the developers, estimated by Petitioners to be between \$100,000 and \$1,000,000, depending on the length of the ban. The Board finds that it would be an arbitrary and unreasonable hardship to deny the proposed variance in this case.

As in Shodeen, the Agency recommends grant of the variance only if the City of St. Charles, added as a party, agrees to certain conditions concerning its sewage delivery system. The Board reiterates its position as held in Shodeen that, under the conditions existing in this case, it can not force such conditions on the City. The Board hereby grants Petitioners Thomas B. Rossetter and Steven W. Fitzsimmons variance from Rules 604, 951 and 962 of Chapter 3: Water Pollution Control Rules and Regulations to allow sanitary sewer extensions to the St. Charles Sewage Treatment Plant in St. Charles, Illinois for a 93.6 acre residential housing development known as "Timbers."

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

Mr. James L. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 2nd day of November, 1978 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board