

ILLINOIS POLLUTION CONTROL BOARD
August 18, 1977

MICHAEL STEVEN PLAZA SHOPPING CENTER,)
)
)
Petitioner,)
)
)
v.) PCB 77-40
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
)
Respondent.)

JOHN MCGUIRE OF WALKER, GENDE, HAKDER, BERZ & GRAMMACO,
SPRINGFIELD, represented Petitioner,

JOSEPH SVOBODA, OF THE AGENCY, represented Respondent.

OPINION OF THE BOARD (by Mr. Dumelle):

This Opinion is in support of an Order entered by the Board on August 4, 1977.

On February 2, 1977 Petitioner filed for a Variance requesting relief to allow the Michael Steven Plaza (Plaza) to remain connected to the City of Carlinville's presently restricted sewer system. An Amended Petition was filed on May 5, 1977 seeking a Variance from Rule 962(a) of Chapter 3: Water Pollution of the Board's Rules & Regulations. The Agency's Recommendation to deny the variance was filed on March 28, 1977. The Agency re-submitted its Recommendation with some modification on June 9, 1977, in response to the Amended Petition. A hearing was held on June 19, 1977 at the Methodist Church Hall in Carlinville; no members of the general public testified.

John Schien owns a 32 acre tract in northeast Carlinville and constructs buildings as the need arises. (R. 6). In 1974 he constructed an eight inch sewer connecting the Plaza Truck Service on the northeast part of his tract to the City's sewer system, (R. 7) which is currently on restricted status until completion of its proposed facility scheduled for September, 1978.

Since the sewer line was installed, Mr. Schien has constructed a shopping center and has connected the individual stores to his sewer. (R. 15) All of these connections and installations were performed without Agency permits because Mr. Schien believed he didn't need to apply for them. This variance request arises because

27-170

~~26-331~~

27-231

once the connections were completed, it was discovered that Mr. Schien had been mistaken and that the connections and installation required Agency permits. (R. 15) Since the city sewer system was on restricted status, the Agency wouldn't have been able to issue permits to allow these connections without a variance from the Board. This variance would excuse Mr. Schien for his past mistake and legalize the connections.

Section 35 of the Act states that variances cannot be granted unless the Petitioner demonstrates that compliance with the Board's Rules and Regulations would impose an arbitrary or unreasonable hardship. In this case Mr. Schien's hardship would be the expense of \$18,600.00. (R. 16) This money would have to be spent to construct individual sewer lines from each building in the shopping center to the city's sewer line, paralleling his own eight inch sewer line. These individual connections would not require Agency permits. This hardship would appear to be self-imposed and therefore insufficient to justify a variance without analyzing how this unfortunate situation developed.

In January 1974 Mr. Schien's engineer was advised by the Agency that no permit was needed for the eight inch sewer if it was designed to serve only one building or would eventually transport sewage of 15 people or less. (Pet. Ex. 1) Armed with this information Mr. Schien concluded that he could go ahead and install the sewer line because initially it would be connected only to his service station. Mr. Schien designed the sewer in such a way that future connections to it would be possible. The line was routed around his property to provide for development. When the shopping center was built, Mr. Schien was again advised that individual connections that served one building or handled no more than 1500 gallons of wastewater each day would not require Agency permits. (Pet. Ex. 2,4,6,7) Since each of the connections to the eight inch line fit this specification, the connections were completed. The Agency had apparently been indicating through its correspondence that Mr. Schien's conclusions were correct. When the Agency was finally apprised of the complete situation and understood that an eight inch line with a number of commercial connections was being connected without any permits to Carlinville's overloaded sewer system, it stated quite plainly that these connections had in fact been illegal. (Pet. Ex. 10)

The Agency contended at the hearing and in its recommendation that Mr. Schien's eight inch sewer line had been intended all along for future connections and that any hardship suffered in this case was the Petitioner's own fault. Mr. Schien admitted that he had intended future development when he installed the sewer. His argument was that at each step of the way, he believed that he was justified in proceeding without a permit. (R. 18) The size of the sewer was explained as necessary because of the slope involved. (R. 8) The Agency correspondence and its misinformed conclusions

formed the basis for Mr. Schien's decision to connect the individual stores.

The Board finds that construction of additional individual sewer lines that would parallel the present eight inch line would impose an arbitrary or unreasonable hardship on the Petitioner. The confusing correspondence in the record adequately explains Petitioner's errors in judgment. It should be noted that neither granting nor denying this variance would result in any significant adverse environmental impact on the city's sewer system. The same volume of sewage will flow whether it goes through new individual lines or the existing eight inch line.

No further connections, other than those for existing buildings, may be made.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 18th day of August, 1977 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board