

ILLINOIS POLLUTION CONTROL BOARD  
March 17, 1977

Mr. J. D. TURNER, )  
 )  
 ) Petitioner, )  
 ) PCB 76-240  
 )  
 ) v. )  
 )  
 ) ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on a Petition for Variance filed by Petitioner J. D. Turner on September 27, 1976. That Petition was filed with the Board by Mr. Turner in response to various communications between himself and the Environmental Protection Agency (Agency). Specifically, the Agency informed Mr. Turner by letter that because of an existing Restricted Status applicable to the City of Girard, no sewer connection permit could be issued for a mobile home park proposed by Mr. Turner.

Although received late, the Agency Recommendation in this matter, filed December 7, 1976, disputed certain allegations in Mr. Turner's Petition, and raised issues of fact to be decided before a Variance could be granted. Specifically, the Agency disputed the existence of the hardship necessary for a Variance grant, and alleged that Petitioner proceeded with sewer connections without a permit during the pendency of his Variance Petition. On December 16, 1976, the Board entered an Interim Order authorizing a hearing for the resolution of contested matters.

On January 6, 1977, Mr. Turner filed a waiver of the 90-day decision period set by the Environmental Protection Act. Mr. Turner also stated that he wished to, "Petition for the provision of cost of a transcript at a hearing..." The Board thereupon further deferred consideration of the matter, and instructed the Clerk to contact the Hearing Officer and the Petitioner regarding further information concerning Mr. Turner's Petition for Board payment of hearing costs.

Although Mr. Turner's Petition for Board payment of costs was plainly inadequate, and the record indicates that no further information in this regard was received, that issue has been mooted by subsequent events. Principally, no proper hearing was held.

Pursuant to proper notice, the Hearing Officer set a hearing to be held in the City of Girard on February 8, 1977. Although the Agency was represented by counsel at that hearing, and Mr. Turner appeared pro se, Mr. Turner neither expanded upon his petition for Board payment of hearing costs, nor provided a court reporter. As a result, the Board has before it only the Hearing Officer's summary of events which transpired at the February 8, 1977 "hearing." While this procedure is plainly inadequate under the Procedural Rules, we do not find that any further hearing will be necessary on the matter. The Board finds that, in light of Mr. Turner's failure to provide a court reporter or an adequate petition for Board payment of cost, and his subsequent actions (including the filing of an additional Amended Petition), our decision on the stipulated pleadings in this matter will not be prejudicial to Mr. Turner. Any possible prejudice has been waived by his own actions.

Mr. Turner's mobile home park was constructed in an area recently annexed to the City of Girard. Mr. Turner's original Petition contained copies of the annexation ordinance and the permits applied for and obtained by him in connection with construction of the park. Mr. Turner obtained permits from the Illinois Department of Public Health for the construction of sewers within the mobile home park, and from the City of Girard for connection to the city's sanitary sewer system. Unknown to Mr. Turner, however, the latter permit from the City of Girard was effectively without force: The City of Girard was at that time (and still is) under Restricted Status imposed by the Agency.

The reason for Girard's Restricted Status is detailed in a prior record before the Board, Brethren Home of Girard v. EPA, PCB 75-193 (July 24, 1975). As noted there, the sewage treatment plant of the City of Girard receives at least 4 per cent more than its designed average loading during normal periods of operation, and has additional problems, including bypassing during wet weather. For additional information, our Opinion and the record in Brethren Home of Girard, supra, should be consulted.

The only additional information in the instant record concerning the status of the City of Girard indicates that, at the earliest, construction resulting in compliance by the City of Girard will not be completed until at least one year past July 30, 1978 - the earliest date feasible for the award of a Step III construction grant by the Agency. Stipulated Exhibit Q, February 8, 1977.

Based against the likelihood of environmental harm as shown in Brethren Home of Girard, we must balance any hardship shown by Mr. Turner in his (pro se) pleadings. Mr. Turner alleges that he has invested his life savings and has incurred a considerable mortgage in this mobile home park. His allegation that, absent the income from the mobile home park, he would lose the property on default, is uncontested. Exhibit J to Mr. Turner's Petition of September 27, 1976, indicates that the State Bank of Virden holds a mortgage on Mr. Turner's development in the amount of \$66,200.00.

The possible environmental damage to be weighed against this alleged hardship is decreased somewhat, however, in a further Amended Petition filed by Mr. Turner on February 18, 1977. In that Petition, Mr. Turner reduces his request for Variance from 29 mobile home spaces to 14. In addition, Mr. Turner notes that he has installed a pump station holding tank with 5,000 gallon capacity, which would be run only during periods of low flow into the Girard sewage treatment plant. Mr. Turner also alleges in this most recent Amended Petition that less than 50 per cent of the residents of his mobile home park would be "new to the community." We are left to infer that the remainder, being local residents, would not represent an additional load upon the sewage treatment plant.

A final issue to be considered in the weighing of the alleged hardship against the possibility of environmental harm is the good faith of Mr. Turner and the reasonableness of his action to date. First, Mr. Turner alleges that he proceeded with construction of the mobile home park - without an Agency permit - in the good faith belief that no Agency permit was necessary. He alleges that he spoke with at least three employees of the Agency, who referred him to the Department of Public Health for appropriate permits, but did not inform him of the Agency permit requirement. Although several affidavits were submitted by the Agency stating that none of the individuals concerned have any memory of discussion with Mr. Turner, the possibility that such discussions were had nonetheless remains. See, Amended Agency Rec., February 22, 1977, Ex. A, ¶6; Ex. B, ¶6; Ex. C, ¶6. Nor is it clear from the permit issued by the Illinois Department of Public Health that additional permits from the Agency would be necessary. See, Ex. G of February 8, 1977, ¶10. Further, the permit issued by the City of Girard contains no limitation with regard to Agency permits. Id., Exhibit H.

In determining Mr. Turner's good faith, it is finally necessary to note that he has apparently allowed the connection of two mobile homes to the sewer system during the pendency of this Variance proceeding. Id., Ex. T. Such actions cannot be condoned.

However, in weighing all the above factors, the Board finds it entirely possible that Mr. Turner could have, as he alleges, relied on the various permits which he did receive when making a substantial investment in the mobile home park. Although all persons are charged with knowledge of the law, including this Board's Regulations, it would seem that Mr. Turner has arrived at his present situation as a result of simple inadvertency, as opposed to bad faith. Under the circumstances, we do not feel that Mr. Turner's actions were unreasonable, and we will not find that the hardship alleged in this matter is self-imposed. And, although Mr. Turner has stipulated, Exhibit T, that he allowed two trailers to connect to the sewer system during the pendency of this matter, which action we cannot condone, we do not find that this constitutes sufficient bad faith - under the circumstances - to significantly affect our decision here.

Weighing the various factors, we find that Mr. Turner's allegations of hardship are sufficient to support the grant of the requested Variance (as amended February 18, 1977), without significant danger of environmental harm. See, Ex. U.

We shall grant the limited Variance requested by Mr. Turner in his most recent Amended Petition. The Variance grant will be strictly conditioned, so as to minimize the possibility of environmental damage.

Finally, the Board recommends that the Environmental Protection Agency examine the possibility that such permit issuance by municipalities on Restricted Status might constitute violation of the Act or this Board's Rules and Regulations. If that is the case, prosecution of past or future violators may prevent the recurrence of such situations.

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

#### ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Petitioner J. D. Turner be granted a Variance from Rule 962 of Chapter 3: Water Pollution, of this Board's Rules and Regulations for the construction and connection of a mobile home park in the City of Girard, Illinois, tributary to the City of Girard's sanitary sewer system, subject to the following conditions:

a. No more than fourteen (14) mobile homes shall be tributary to the Girard sanitary sewer system until the completion of Step III grant funded construction of the Girard sewage treatment plant.

b. Petitioner shall maintain a pump station holding tank of 5,000 gallons capacity, said pumps to be operated only during periods of low flow into the Girard sewage treatment plant and only between 11:00 P.M. and 6:00 A.M.

c. If at any time the pump station procedure affects the efficient operation of the Girard sewage treatment plant, Petitioner shall have his 5,000 gallon capacity holding tank pumped by other legal means until the Girard sewage treatment plant is capable of assuming Petitioner's waste volume.

2. Petitioner shall, within thirty (30) days of the date of this Order, submit a Certificate of Acceptance, in the format shown, to the Environmental Protection Agency at the following address:

Environmental Protection Agency  
Control Program Coordinator  
2200 Churchill Road  
Springfield, Illinois 62706

CERTIFICATE OF ACCEPTANCE

I, (We), \_\_\_\_\_ having read the Order of the Illinois Pollution Control Board in case No. PCB 76-240, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17<sup>th</sup> day of March, 1977, by a vote of 4-0.

Christan L. Moffett

Christan L. Moffett, Clerk  
Illinois Pollution Control Board