

ILLINOIS POLLUTION CONTROL BOARD
March 28, 1977

NORTH SHORE SANITARY DISTRICT,)
)
 Petitioner,)
)
 v.) PCB 76-244
)
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Dumelle):

This matter comes before the Board on an Amended Petition For Reconsideration filed by Petitioner North Shore Sanitary District (NSSD) on January 11, 1977. The original Petition for Variance concerning the subject matter of this case was designated PCB 76-194, was filed on July 19, 1976, and dismissed as inadequate on July 22, 1976. NSSD refiled its Petition for Variance on September 3, 1976 as PCB 76-226. This Petition also was dismissed as inadequate on September 16, 1976. NSSD once again refiled a Petition for Variance on September 30, 1976. This Petition was designated PCB 76-244 and was dismissed on October 14, 1976 as inadequate. NSSD filed a Petition to reconsider this latest dismissal on October 25, 1976. After the Board denied reconsideration on December 2, 1976 NSSD filed the instant Amended Petition For Reconsideration.

After 3 dismissals and 1 denial of reconsideration the Board decided to disregard the demonstrated inability of NSSD to file a Petition for Variance which complies with the requirements of the Act and the Board's Procedural Rules. In the hopes that the Agency's Recommendation in this matter would remedy some of the inadequacies of the NSSD Petitions, the Board reinstated NSSD's Amended Petition for Reconsideration. The burden, of course, rests with NSSD. The Agency filed its Recommendation on March 16, 1977. Even given the Agency's willingness to recommend a grant of the requested Variance, the Board could not grant a variance on the basis of the record in this case without being arbitrary and capricious. There still remains two issues regarding which the Petitions (all five of them) are woefully inadequate. NSSD has simply failed to provide sufficient allegation of facts or conclusions to support a finding that a denial of the requested variance would force it,

or anyone else, to bear an arbitrary or unreasonable hardship. NSSD seeks a variance to allow the connection of somewhere between 25 and 100 homes onto its overloaded sewage system. No facts or conclusions are alleged on the issue of hardship other than that someone, somewhere, may not be fully enjoying their property rights. NSSD has not identified those parties upon whom the alleged hardship will fall. Neither has NSSD given any evidence on the extent of this alleged hardship. Have these 25-100 homes been built? If so, when were they built? Are they all currently on septic systems? Are they purchased and occupied? These very basic issues have not been addressed.

The Act and the Procedural Rules give ample direction to potential applicants for variances. The Board's Order of December 2, 1976 detailed its reasons for dismissal and, for the fourth time, directed NSSD to follow Procedural Rule 401. The Board directly asked "...how many, if any, of the houses to be connected were constructed after the sewer ban went into effect. Information should also be provided how these houses are presently disposing of their wastes". NSSD did not respond to this request. NSSD chose to rest with a Petition which is clearly inadequate on its face.

Inasmuch as the NSSD has repeatedly failed to supply crucial information and the Agency's Recommendation failed to adduce that information, the Board must dismiss the instant Petition for Variance.

The record in the instant case was disjointed and poorly organized. If NSSD again chooses to file a new Petition for Variance such Petition shall represent a consolidation of all pertinent information and argument. No incorporation by reference to documents in past proceedings in this matter will be permitted. There is no reason for the Board to waste its resources screening and analyzing repeated, patently inadequate Petitions, especially from attorneys who have appeared before the Board before. The Board has made use of substantial effort and substantial restraint in dealing with the present case. Yet the apparent unwillingness of NSSD to submit even a colorably adequate Petition for Variance is unreasonable. The instant Petition for Variance is hereby dismissed as inadequate. The dismissal, this time, is without prejudice to the filing of a new case in accordance with the instructions above.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 28th day of March, 1977 by a vote of 5-0.


Christan L. Moffett Clerk
Illinois Pollution Control Board