

ILLINOIS POLLUTION CONTROL BOARD

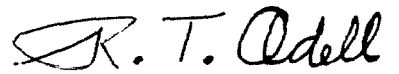
October 24, 1974

J. RUSSEL MILLER,)
Petitioner,)
)
v.) PCB 74-230
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)


DISSENTING OPINION (by Dr. Odell)

I dissent from the decision adopted by Pollution Control Board (Board) for several reasons. First, the facts of the case do not establish that Petitioner has met his test of arbitrary or unreasonable hardship under Section 35 of the Environmental Protection Act. The majority Opinion admits in the second paragraph of page three that "Petitioner's hardship . . . was largely self-imposed." While it is clear that a denial of the variance will impair the Petitioner financially, and will delay service to the City of North Chicago, it is not the responsibility of the Board to see to it that every community has dental care by granting variances to the first contractor -- albeit financially constrained -- who makes such care possible. Second, the case sets a bad precedent. While the majority through "very close weighing of the particular balancing considerations" obviously wants the decision to quietly evanesce, it cannot be so. Not only may the decision encourage others to take unnecessary risks in expectation of Board rescue, but the decision also may be a disservice to more needy individuals who have been denied variances in the past. To dilute the test of arbitrary or unreasonable hardship leaves the Board standardless; it lowers the public's estimation of and confidence in the Board.

I would deny the variance for the above reasons stated.


Russell T. Odell

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 12th day of November, 1974.


Christan L. Moffett

Dr. Ron Stanczak, D.D.S., for the remaining floor. Petitioner further claims that he has previously built two commercial buildings (a Yankee Doodle Hamburger Restaurant and a Pizza Hut Restaurant) on the land for which the variance is sought; and that these were connected to the sewer after the rezoning, but prior to the sewer ban. It is further claimed that the increase in sewage load will be very low, and that two-thirds of the proposed load is now entering this sewer. Petitioner alleges that the only alternatives to connecting onto the said public sewer are to haul the sewage away or to construct a septic system, either of which, it is alleged, would be a costly expense in comparison to the requested sewer connection.

From the Amended Petition and discussions with Petitioner, the Agency has gathered the following information:

- a) The subject building has been completed.
- b) Petitioner has let one floor of the three-story building to two dentists at a monthly rental of \$1200. Their lease begins November 1, 1974.
- c) Petitioner plans to let no other space in the building until the sewer ban is lifted.
- d) Petitioner has investigated the use of a holding or septic tank and has found that the City of North Chicago will not permit these alternate systems.
- e) Petitioner is in deep financial trouble due to this business venture and another in which he has invested \$70,000 of his own money. He is well over \$350,000 in debt and is having a difficult time selling condominium units (the subject of the other venture) due to the present tight money situation. Of 21 units which comprise the condominium structure built by Petitioner, ten have been sold. Three others have been purchased but they have been unable to obtain financing. All of the money received as payment for the condominiums has gone to the bank to pay off the loan.
- f) Petitioner estimates that the additional load on the North Chicago treatment plant will be about 40 gallons per day.

The Agency states that the additional load that Petitioner's proposed connection will add to the North Chicago sewage treatment plant is minimal. In addition to the fact that only forty gallons per day of wastewater is estimated, many of the dentists' patients reside in the area served by the North Chicago waste treatment plant and would thus add no additional load to the plant.

The Agency believes that Petitioner has established a substantial hardship. The lack of available alternative methods of treatment leaves Petitioner the choice of either obtaining a sewer connection or allowing his building to remain vacant until the ban is lifted.

We are disposed to grant this variance for connection, subject to the condition that said connection shall service only the floor leased by the two dentists. A balancing of Petitioner's economic hardship, minimal additional sewer load, and service provided to the community weighs in favor of a grant of the subject petition. A denial of this variance would impair Petitioner financially, further delay a needed service to the City of North Chicago, and do little to protect the environment.

In reaching the decision to grant this limited relief, we are not unmindful that Petitioner's hardship, onerous as it may be, was largely self-imposed. We note also that this Petition could have been and should have been filed at a much earlier date. It was only after very close weighing of the particular balancing considerations detailed above and the specific facts presented that we decided to grant the minimal relief necessary to sustain Petitioner.

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

IT IS THE ORDER of the Pollution Control Board that J. Russell Miller be granted a variance to allow connection of the subject property; provided that said connection shall service only the floor leased by the two dentists.

Mr. Dumelle and Dr. Odell dissent and Mr. Dumelle will file a dissenting opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 24th day of October, 1974 by a vote of 3-2.

