



July 12, 1972 Agency notified City of Springfield and Springfield Sanitary District that further sewer permits could not be issued in southwest Springfield.

August 29, 1972 Agency announced issuance of "Conditional Installation" permits on basis that 3.0 MGD of stormwater flow would be eliminated from sanitary sewerage system in the Outer Park drainage area by December 1, 1972.

December 22, 1972 A "Conditional Installation" permit was issued to Vredenburg Home Building Company, the contractor for the development at issue.

March 15, 1973 The Agency notified the Springfield Sanitary District that neither "Conditional Installation" or Operating Permits would be issued.

April 13, 1973 Denial issued for Operating Permit in this case.

The Agency's Recommendation details City and District programs to mitigate stormwater infiltration in the Outer Park Drive drainage area. It also states that the newly opened Sugar Creek (South) sewage treatment plant has not relieved completely the bypassing experienced at the older Spring Creek (North) sewage treatment plant.

The injury to the public as detailed by the Agency is an aggravation of downstream sewer overflow and basement flooding conditions during wet weather periods. The Bank's development would connect to the Springfield Sanitary District's Southwestern Interceptor (36-inch sewer) through the Outer Park trunk sewer at Outer Park Drive and Cherry Road.

Details as to manholes along Outer Park Drive overflowing onto streets are given by the Agency with dates from March 6, 1973 through August 13, 1973 and listing from 2 to 15 manholes. The overflows are said to enter an open, paved stormwater channel in front of the Ben Franklin Middle School. Children have been observed playing, swimming and lying in the sewerage contained in this channel (Respondent Ex. #4, R. 189). The Agency also states that this same storm channel, containing sanitary sewage from the overflowing manholes, flows through Washington Park and Pasfield Park and thence to Spring Creek and the Sangamon River.

The basement flooding in the Outer Park area is causing property damage and electrocution hazards, plus health hazards from the viruses of hepatitis and polio and from salmonella.

The Petitioner, in testimony, stated that the full 102 lots were not at issue since 22 have access to an existing sewer which is not under the sewer ban (R. 28, 29). Of the 80 lots remaining, the Petitioner is willing to build on 1/3 of them each year (about 27 lots per year).

The exact monetary hardship to the Petitioner is not absolutely clear from the record. The purchase price of the total land is given as \$209,270.00 at an interest rate of 9-1/2% (R. 35). At the time of the imposition of the sewer ban by the Agency, the full land purchase price and engineering costs of \$2,340.00 was incurred. The total cost of the 102 home sites in the park area is given as \$531,954 (Petitioner's Ex. #1), which would include the land costs, engineering costs, and improvement costs. Petitioner states that the "Total Cost to Develop" is \$521,354 (Petitioner's Ex. #1). A further deduction for the cost of the 8 acres of park land would give \$490,572 as the cost for developing 102 home sites minus costs attributable to the park. Petitioner stipulated that the total cost could be reduced by a factor of 80/102 which corresponds to the number of sites covered by the sewer ban (R. 45, 46); this would give \$408,905 as the total cost of developing the 80 sites. By applying a factor to the costs minus all park costs, the total costs would be \$384,762.

It is not clear what portion of the costs were incurred during the short period of time Petitioner held a "Conditional Installation Permit." Mr. Richard Gibbs testified that at the time of the hearing \$363,000 had been spent out of the total costs and that Petitioner was obligated to pay the balance (R49). (R. 49). Mr. Gibbs further testified that some "half million dollars" in building materials had been inventoried for the development (R. 36). No evidence was presented showing the possibility of liquidating that proportion of the building materials not used in the construction of 22 homes through the Vredenburgh Lumber Company or other suitable outlet.

Petitioner's development is in the same area as the apartment development which was the subject of a prior variance petition in Viking Investment Corporation v. EPA, PCB 73-236, (Order of August 30, 1973; Opinion of September 6, 1973). The Board granted Viking a variance to connect the 19 apartment buildings with 320 apartments because, in that case the actual building construction was substantially complete. In the present variance petition, there has been no construction of the homes.

In Viking we treated at length the doctrine of reliance, which we rejected. A "Conditional Installation" permit is just that and is not an operating permit. Petitioner's own engineer, Robert E. Oglesby, initialled the eight conditions to a grant of a conditional permit found on page 3 Petitioner's application for a "Conditional Installation" permit (Respondent Ex. #1, Page 3). Condition 3 states:

The Agency will not grant permission to operate until:  
a) the receiving sanitary district, municipality or other owner notifies the Agency that it has completed construction of the additional or upgraded facilities that serve as the basis for the grant of this limited permit and that the additional facilities have been placed in operation and are operating as designed; and b) the Agency has inspected these facilities in operation and notifies the owner in writing that the facilities are actually operating successfully as designed.

Condition 5 states:

Since the Agency will not grant permission to operate until the conditions set in paragraph 3 above have been met, the installation of sewers under this permit and any related real estate improvements are done solely at the applicant's risk.

The developers took a business risk by proceeding to install sewers and streets with only a "Conditional Installation" permit.

The citizen testimony as to property damage is full and persuasive (R. 77-144). Instances are reported of appliances damaged and "geysering" of sewage from manholes.

We deny the variance without prejudice. The building materials "inventories" for the development can undoubtedly be sold or used at locations not under a ban. The ultimate solution to the problem appears to be adequate sewer relief capacity. And as we said in Viking:

The parties involved in the sewer problem are the City of Springfield and the Springfield Sanitary District and they are not before us in this case. We urge that they bend every effort to solving the sewer transport problem by infiltration correction and/or polymer usage as soon as possible.

This opinion constitutes the Board's findings of facts and conclusions of law.


ORDER

The variance is denied without prejudice.

IT IS SO ORDERED.

Mr. Henss dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13<sup>th</sup> day of December, 1973 by a vote of 4-1.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board