

ILLINOIS POLLUTION CONTROL BOARD

December 20, 1973

HENRY BERKQUIST)
PETITIONER)

v.)

PCB 73-412

ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

On October 1, 1973, Mr. Henry Berkquist filed a petition for variance from Order #7 of League of Women Voters v. North Shore Sanitary District, PCB 70-7, 12, and 14, to allow a future sewer connection to a presently unimproved lot located in Knollwood, Illinois. The Agency vigorously objected to this variance, in its recommendation filed November 20, 1973. No hearing was held.

Mr. Berkquist has stated he is the owner of Lot #2, Block 17, at 803 Foster Ave., Knollwood, Illinois. He is unable to care for the property or maintain a vigil against vandalism because of the need to constantly attend his ailing wife.

Mr. Berkquist also stated that he is a "senior citizen," who has been retired from Fansteel Metallurgical Company since 1959, after 39 years' service. He now lives in Waukegan, Illinois, in order to be close to a hospital, as Mrs. Berkquist has a "serious" heart condition and must be rushed to the hospital when necessary.

Mr. Berkquist has a prospective buyer for the lot, but their agreement is subject to obtaining a sewer permit.

The Agency objects to the granting of this variance because of the possibility that the Clavey Road treatment plant might be forced to operate at over its rated capacity when the flow from 3 lakefront plants is diverted to Clavey in February, 1974. The Clavey plant is scheduled to reach an operating capacity of 18 mgd by March 1, 1974. The plant now has a rated capacity of 10 mgd and the latest figures on the plant operation are as follows:

<u>Date</u>	<u>Flow (MGD)</u>	<u>BOD (mg/l)</u>	<u>TSS (mg/l)</u>
Sep/73	6.72	7	18
Aug/73	6.33	11	13
Jul/73	6.34	19	23
Jun/73	7.64	23	20
May/73	8.19	30	31
Apr/73	10.31	28	22
Mar/73	9.21	35	21
Feb/73	6.87	33	20
Jan/73	7.56	18	17
Dec/72	7.30	21	12
Nov/72	7.63	35	13
Oct/72	7.89	30	16
Sep/72	10.41	41	14

(Cited from John Marco, former acting director of Illinois Environmental Protection Agency, Comment of the Environmental Protection Agency Concerning the Present Status of the North Shore Sanitary District.)

With the increased flow from the lakefront plants estimated by the Agency in its recommendation, the plant will still not go above its rated capacity of 10 mgd based on the last three report months. The above data shows a trend of clear improvement in the last few months.

Since Mr. Berkquist indicates that his buyer will want to occupy his house in late spring or early summer, 1974, it is the opinion of the Board that there will be no adverse effect to the water quality of the area should Mr. Berkquist be granted a variance.

The Agency next contends that Mr. Berkquist is not suffering an unreasonable hardship. The Agency contends that all Mr. Berkquist is losing is one potential buyer. We feel that the above, taken with Mr. Berkquist's advanced age and the health of his wife, are substantial grounds for a showing of unreasonable hardship.

This case is similar in the facts to that of Roach v. Environmental Protection Agency, PCB 73-324. In the Roach case, we determined that the only way to relieve Mrs. Roach of her severe hardship was to grant her a variance that ran with the land. The Agency argued that because a variance is granted for hardship reasons, when the property is transferred then the variance holder's hardship ends and the variance should cease to operate.

The Agency has argued the same position in this case. The Agency's position puts us in the untenable position that when we determine there is an unreasonable hardship because a petitioner cannot sell his property without a sewer permit variance, if he does sell the property he loses the variance. In effect we have put him back in the position he started, because a buyer who wants a sewer permit will not buy the property if he knows the variance will be null when he obtains title. We

We cannot live with this conclusion. When we grant a sewer ban variance to allow a petitioner to sell his land, we do not then take it away because he then sells the land in question.

The Board concludes that because of the uniqueness of a sewer ban variance, as opposed to other Section 33 variances, sewer ban variances run with the land.

Under Section 36 (B) of the Environmental Protection Act, the Board may only grant a variance for one year. Just a cursory view of a sewer ban variance shows that a one-year limit on it would be totally inappropriate. Once the hook-up is completed, it is impractical to end the right of use after one year. A sewer ban variance runs for the life of the improvement on the land.

The Agency's argument would have us draw the distinction between a person who is granted a sewer ban variance to build a home, and then sells it upon completion or after a few years, and the person who cannot afford to develop the property, but one who still must sell the land and needs the right to hook up to the sewer before a buyer will take the land. To uphold this argument would discriminate and deny equal protection to persons without the means to develop their property.

We have allowed a condominium developer to obtain sewer ban variances for the sale of developed condominium units (Exchange National Bank & Katz-Weiss Construction Corporation v. Environmental Protection Agency, PCB 73-15). We have also allowed a developer to obtain sewer ban variances for resale of property that would add 910 population equivalent to the system (Mid-City Developers v. Environmental Protection Agency, PCB 72-274).

It is grossly inequitable to allow these developers a variance because they have the resources to build on the land and then sell the property, and not allow Henry Berkquist to sell his land with a sewer ban variance because he can't afford to build a house and sell it complete.

The Board finds that a sewer ban variance granted because of hardship, when the hardship is such that Petitioner's land cannot be sold without the variance, runs with the land and will be valid for subsequent holders of the fee.

The Board finds that Mr. Berkquist is suffering an unreasonable hardship under Order #7 of the League of Women Voters v. North Shore Sanitary District.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that variance is hereby granted to Petitioner from the Board's Order #7 in League of Women Voters v. North Shore Sanitary District, PCB 70-7, 12, 14, to allow a

future sewer connection to the presently vacant lot.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 20th day of December, 1973, by a vote of 5 to 0.

Christan L. Moffett