

ILLINOIS POLLUTION CONTROL BOARD

January 10, 1974

ERNEST H. LIDSTROM,)
)
 Petitioner,)
)
 v.) PCB 73-434
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

Ernest H. Lidstrom appeared pro se
Lee A. Campbell, Assistant Attorney General for the EPA

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

Petitioner Ernest H. Lidstrom seeks variance from Order No. 7 of League of Women Voters vs. North Shore Sanitary District, PCB 70-7, 12, 13 and 14 in order to permit sewer connections on 13 unimproved lots in Gurnee, Illinois. The lots are located on Harper Avenue between Ferndale and Delaney Roads. The proposed connections would be tributary to the Sanitary District's Clavey Road Sewage Treatment Plant.

Petitioner, a full-time contractor and housebuilder, began purchasing the lots in 1964 and finally acquired 23 lots. Following the installation of water service in 1965 and sewer extensions in 1967, Petitioner began construction of single family dwellings. A total of 7 houses have been completed with another nearing completion. Four of the houses were built prior to our sewer connection ban of March 31, 1971. Petitioner obtained permits for the other three houses when additional permits were made available by our Order in PCB 71-343 (Jan. 13, 1972). Petitioner has completed the foundation and backfill on the eighth dwelling but has been refused further financing by the Deerfield Savings and Loan Association (Petitioner Exhibit No. 8). Deerfield Savings and Loan advised Petitioner on November 5, 1973 that his application for construction funds was being held pending receipt of a sewer permit.

Lidstrom builds two or three quality houses annually. The quality of the houses was verified by Robert Trigg, Administrator for the Village of Gurnee (R. 34). Petitioner has about \$95,000 invested in the entire project--\$65,000 in lot purchases, sewer

water service, taxes and \$30,000 in equipment and materials. About \$19,000 of this cost relates to lots other than the 13 for which the variance is sought. Lidstrom testified that he will lose a significant portion of the remaining \$76,000 if he cannot obtain sewer permits for the 13 lots. He states that the investment represents his "entire cash" over the last 10 years.

The Lake County Health Department has been "extremely adamant" in opposing the installation of septic tanks (R. 30). Robert Trigg testified that the Village of Gurnee also would not encourage the installation of septic tanks. Trigg added that a Village ordinance on septic tanks required the use of two lots (one for the septic tank and one for the dwelling) when a septic system was installed (R. 36). Therefore, sewer connection is the practical answer for Lidstrom.

The EPA recommended denial of this variance. The Agency concluded from the fact that Lidstrom waited 5 years to begin construction that Petitioner's hardship was self-imposed. Lidstrom claimed that he could have obtained sewer permits for all 16 lots at the time he obtained the 3 permits. He testified that he chose not to do so because of his building schedule and because he did not want to be greedy (R. 8).

Petitioner appears to have adhered to his initial building schedule and testimony indicated that he did not plan to speed up the schedule even if permits were available. At the rate of two houses per year it would be expected that the next dwelling would be completed about mid-1974.

In a related matter, the Board has today accepted a Stipulation submitted jointly by all parties involved in PCB 73-134, North Shore Sanitary District vs. EPA. Part 8 of the Stipulation calls for the issuance of 2,000 permits (8,000 P.E.) authorizing sewer connections to the Clavey Road plant. One of the conditions involved in issuing these permits would be that actual connection be delayed until July 1, 1974. Coincidentally this is about the time that Lidstrom would actually need the connection for the first of his planned 13 dwellings.

We believe the record supports Petitioner's claim that compliance with the sewer ban order would cause an arbitrary and unreasonable hardship. Substantial improvements at the Clavey Road plant have already been made and additional sewer connections will be acceptable. Lidstrom will be able to fulfill his requirements from the allotment of 2,000 sewer connections which is being authorized today.

We could dismiss the variance petition as moot but that would apparently not solve Lidstrom's problem with financing. We will, therefore, grant the variance but specify that the sewer permits shall come from those 2,000 authorized by our Order in PCB 73-134.

ORDER

It is the Order of the Board that Ernest H. Lidstrom be granted variance from Order No. 7 of League of Women Voters vs. North Shore Sanitary District, PCB 70-7, 12, 13 and 14 in order that he may secure sewer connection permits for 13 unimproved lots in Gurnee, Illinois. Petitioner's 13 sewer permits shall be a part of the 2,000 permits allotted by our Order adopted this date in PCB 73-134. Petitioner shall not make actual connection to the sewer system prior to July 1, 1974.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 10th day of January, 1974 by a vote of 5 to 0.

Christan L. Moffett