

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1973

VIKING INVESTMENT CORPORATION)

v.)

ENVIRONMENTAL PROTECTION AGENCY)

PCB 73-236

OPINION OF THE BOARD (by Mr. Dumelle)

Robert Cohen, of Giffin, Winning, Lindner, Newkirk and Cohen,
appeared on behalf of the Petitioner,
Thomas A. Cengel, Assistant Attorney General, appeared on behalf
of the Respondent

This opinion is in support of an order of the Board issued
August 30, 1973. Petition for variance from an Agency sewer
connection ban was filed on June 4, 1973. Public hearing was held
on July 16, 1973.

Viking Investment Corporation ("Viking") owns 20 acres of
land in Springfield between South By-Pass Road and Wabash Avenue
and east of Illinois Route 4. The development consists of 320
apartments distributed as follows:

72	three bedroom units
144	two bedroom units
104	one bedroom units
<u>320</u>	units

The apartments are contained in 19 buildings all of which are
under construction and virtually complete. A community building
is planned together with an outdoor swimming pool. The community
building is under construction (R. 76). The average hydraulic loading
is estimated at 40,000 gpd and the maximum flow at 139,840 gpd
all consisting of domestic sewage.

The development has a 27-inch sanitary sewer installed by
special assessment to serve it which connects to an interceptor
sewer along Outer Park Drive. The Agency has placed a ban on
development in this area because of inadequate transport capacity
in the Outer Park Drive sewer system and overloading of the Spring
Creek sewage treatment plant. The sewage treatment plant problem
is expected to be solved by the opening of the new Sugar Creek plant
expected to be on June 20, 1973 according to the petition (later
given as July 30, 1973 by the Agency).

The mortgage commitment on the project is listed at \$4,000,000 at 8.5% with a \$40,000 fee to secure it (R. 17). By September 15, 1973 when the last 56 apartments are completed, the rents going uncollected are alleged to amount to \$70,560 per month. The monthly interest cost to the petitioner is given as \$23,056. Later, the mortgage is given as \$4,300,000 (R. 33).

The situation then is one of a virtually completed multi-million dollar residential development which cannot connect to the sewer system. The case has been before us in PCB 72-300, October 3, 1972, which we then dismissed as moot, without prejudice, because Viking could then proceed with an "install only" sewer permit and all then available intelligence pointed toward no problem, either sewer transport or sewage plant capacity, by the time of completion.

What happened in this proceeding was an "on-off-on" sequence of sewer transport bans. The Agency first placed a ban in this area on July 12, 1972. On August 29, 1972 it permitted "install only" permits based upon reports showing that some 3.0 MGD of stormwater flow would be eliminated from the area in question by December 1, 1972. On March 15, 1973 the Agency banned any new "install only" permits and banned operating permits for those who had installed sewers. This action was taken because of overflows and basement flooding still occurring from January 1973 on in spite of the hoped-for solution by December 1, 1972.

The Agency recommendation, filed July 17, 1973 is for denial. The health hazard of the overflows is cited. Those overflows go from manholes to the streets to a stormwater channel in front of the Ben Franklin Middle School. Children have been observed playing in this channel. The channel flows to the Jacksonville Branch, then through Washington and Pasfield Parks then to Spring Creek and the Sangamon River. The basement flooding which occurs in the area may cause a health hazard from hepatitis, polio and salmonella as well as cause property damage and create electrocution hazards, according to the Agency.

The petitioner makes much of the doctrine of reliance which we do not accept. It stated that the Board opinion in PCB 72-300 said there would be no sewer transport problem by mid-1973. The opinion, however, clearly discussed the risk undertaken by a developer who accepts an "install only" permit. Indeed, the very nomenclature of the "install only" permit is enough to put any reasonable man on notice that to "install" is not the same as to "operate". The petitioner then brings forth the Agency letter of October 4, 1972 in support of its reliance doctrine. But the Agency letter in turn refers to permit conditions which still required adequate sewer transport capacity.

We must then balance the hardship which we would adjudge to be almost certain mortgage forfeiture to the petitioner against additional surface and perhaps basement flooding. Vandalism has occurred to the buildings (R. 77). Viking has invested some \$250,000 (R. 34).

One alternative followed in part by Viking was to install 5-1750 gallon holding tanks to serve 32 apartments for \$10,000 total (R. 87-89). The operating cost is given as \$40 to empty 1000 gallons from a holding tank. The capital cost for the entire development (320 units) would then be \$100,000 (R. 91). Using the petitioner's flow estimate of 40,000 gpd, some 40 trips per day at \$40 each would be required or \$1600 per day or \$48,000 for a 30-day month. This additional cost almost equals the rental losses of \$70,560 per month. Rental losses were incorrectly given as \$180,000 a month for 140 apartments (R. 78).

A variant of the holding tank alternative which is not discussed in this record is to use the tanks only during and immediately after rainfall or thaws. This would necessitate only 2-3 days storage and only occasional pumping out and the costs would be far less than \$48,000 per month. But we hesitate to order this type of installation without some expression from both parties as to its applicability.

The testimony by Agency engineer Mr. Abe Loudermilk, Agency sanitarian James Frost, and citizen witnesses substantiates the overflow and basement flooding conditions. But both Mrs. Barbara Harry and Mr. Lawrence Schneider mentioned the "plugs" they had installed on their plumbing openings. Evidently these people had solved their problem at a cost perhaps as low as six dollars (R. 131). There is nothing in the record to indicate that others plagued by basement flooding in the area could not use the same solution. Also we have no idea of the extent of basement flooding. Is it just the homes of the persons who testified (two of whom had solved their problems with plugs) or is it far greater?

Because of the financial hardship involved in keeping these isolated buildings from connecting we grant the variance from the Agency sewer ban. We point out the dangers inherent in the use of "install only" sewer permits and urge careful weighing of their use by any developer.

We will require that Viking keep its flows to a minimum from its buildings and that public laundry facilities not be installed while the sewer transport ban is still in effect. We shall require monthly reports of water consumption and tenant occupancy from Viking to the Agency in order that actual apartment house data may be gathered now for future design use. And we deny a variance as to connecting a community building or swimming pool to the sewer system. Both of these facilities will bring guests to the development

and lead to higher flows.

One last word. The permanent solution as advanced by Agency engineer Loudermilk is for a "new main trunk sewer system" paralleling the existing one (R.111). 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.

Mr. Odell abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 6th day of September, 1973 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board