

ILLINOIS POLLUTION CONTROL BOARD
August 1, 1972

BRUNO E. FEIGE)
)
) #72-192
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

Petition for variance from the sewer connection ban order entered in case entitled League of Women Voters v. North Shore Sanitary District, #70-7, was requested by petitioner in order to enable construction of a single-family residence, the sewer effluent from which would be tributary to the North Shore Sanitary District. The original petition states that in March, 1971, petitioner obligated himself to purchase two lots in the City of Waukegan at a price of \$14,000.00 and 6% interest to be paid on the unpaid balance. The down payment was \$2,000.00 and \$720.00 has been paid in interest prior to the filing of the petition. Petitioner alleges that the taxes on his existing home were such that he was forced to sell and that he does have a bona-fide buyer. Petitioner alleges financial hardship and stresses that the land purchase was consummated prior to the original sewer ban order which was entered on March 31, 1971.

On May 10, 1972, we entered an order stating that the petition for variance does not contain adequate information upon which the Board could make its decision and requested that either petitioner or the Agency should advise the Board which of the District's plants would receive the effluent from the proposed construction, that the Agency advise the Board if the sewer line which would receive the effluent is over-loaded and that the Agency should file its recommendation with the Board.

On May 28, 1972, we received a short communication from the petitioner stating that to the best of his knowledge, the effluent would enter the Waukegan plant by way of the Sunset sewer line. The recommendation received from the Agency states that the petitioner's proposed connection would be tributary to the Waukegan sewage treatment plant via the Judge Avenue sewer and that petitioner is unable to obtain one of the connection permits previously authorized to the North Shore Sanitary District by our partial lifting of the sewer ban order (entered January 31, 1972, modified March 2, 1972) because the Judge Avenue sewer is classified inadequate to transport additional waste water. These and other sewers have been previously

designated as inadequate because they are subject to excessive flows from storm water run-off during periods of wet weather. These excessive flows, in turn, result in illegal by-passing of untreated wastes into the waters of the State and result in sewer back-ups sending untreated wastes into the connecting residences. The Agency concludes that additional connection to these overloaded sewers will worsen an already bad situation during periods of wet weather.

On this state of the record, we must deny the petition for variance. We do not believe that the character and degree of the hardship alleged by petition outweighs the hardship likely to result to the community from the additional hydraulic and organic load entering an already overloaded sewer. The specific hardships alleged are insufficient for the granting of a variance, and we have so held in cases involving similar facts. Petitioner's use and enjoyment of the property is at most suspended, and not terminated and his plight is characteristic of virtually every property owner in an area affected by a sewer ban. As we said in Monyek v. Environmental Protection Agency, #71-80, dated July 19, 1971:

"Undeniably, petitioner is confronted with some measure of inconvenience in this case. We cannot, however, view petitioner's plight as singular and therefore arbitrary nor can we commiserate to such a degree that we grant rather than deny this request. In cases where a house has been completely built before the date of the order (March 31, 1971) or where substantial steps toward completion have been taken we can clearly judge the hardship of non-connection to be unreasonable. In fact we have done so in the recently decided case of Wachta and Mota, d/b/a Belle Plaine Subdivision v. EPA, #71-77. There the petitioner had seven units completely built, and the Board granted a variance to permit the sewer connections. For the remaining lots in the subdivision the Board ordered the builders to present a program to the Board demonstrating the feasibility of alternatives."

See also Wagnon v. EPA, #71-85, dated July 26, 1971.

We urge the City of Waukegan to take all necessary steps to abate the overloaded condition of all sewers within its jurisdiction.

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

IT IS THE ORDER of the Pollution Control Board that the petition for variance be denied.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 1st Day of August, A. D. 1972, by a vote of 5 to 0.

