

ILLINOIS POLLUTION CONTROL BOARD
October 3, 1972

JOHN W. BENDER)
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)
 v.) # 72-324
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion & Order of the Board (by Mr. Currie):

Mr. Bender seeks permission to connect a new single family dwelling to a Waukegan sewer. Connections to all sewers in the North Shore Sanitary District were forbidden by our order of March 31, 1971 (League of Women Voters v. NSSD, #70-7, 1 PCB 369). Mr. Bender began excavating for his home October 11, 1971, the foundation was erected November 1, and construction is now at least 75% complete.

In cases in which construction was begun before the connection ban was imposed, we have generally allowed variances because of the commitment of substantial resources in good faith reliance on the expectation of ability to connect, and because of the danger of vandalism or other damage to an unoccupied structure. See, e.g., Illinois National Bank of Springfield v. EPA, #72-307, 5 PCB ___ (Oct. 3, 1972). On the other hand, we have held that one who proceeds to construct a home with knowledge that a connection ban has been imposed assumes the risk that the ban will not be lifted in time for him to connect when he desires; to hold otherwise would allow a builder to avoid the ban simply by defying it. Cook v. EPA, #72-178, 5 PCB ___ (Aug. 29, 1972).

Mr. Bender concedes that he took a calculated risk when he began construction with knowledge that no connection could be had until the ban was lifted. However, he argues, the ban was initially imposed on the basis of inadequate facilities for treating sewage once it reached the plant:

It seemed logical to me that by the time I would be in need of a sewer the District's treatment plants would be upgraded to the point where the ban would be relaxed.

As he observes, this prediction was correct, since our orders of January 31 and March 2, 1972 (North Shore Sanitary District v. EPA, #71-343, 3 PCB 541 and 697) did in fact authorize the District to allow additional connections on the basis of treatment plant improvements. What he did not foresee when he began construction was that our later decision would

limit relief from the ban on the ground that certain sewers, later designated by the Agency, were inadequate to transport their present waste loads to the plant for treatment:

I applied for one of these permits from the Sanitary District but was informed by letter 5 June 1972 that my lot was in an area of the city on which the Environmental Protection Agency had placed a ban. This sewer ban was placed on Waukegan 21 April 1972. My house was about 75% complete on this 21st day of April 1972.

As a technical matter, it would be possible for us to take the position that the original connection ban has never been lifted with regard to the sewers in question, although the reason for forbidding connections has changed. But the outcome of this case should depend upon the petitioner's legitimate expectations and not upon technicalities as to whether there was one ban or two. The risk Mr. Bender voluntarily assumed was the risk that treatment plant improvements would be delayed, not that an unforeseen and unrelated problem with the adequacy of the sewer itself might intervene. His expectations with regard to the transport problem were just the same as they would have been if there had never been a ban based on the treatment problem.

Only a single house, with limited wastes, is involved. Mr. Bender has expended considerable personal effort in building it in his spare time. He has alleged substantial and credible hardships resulting from double housing payments and the nonuse of substantial savings if the house must stand empty. His neighbors have filed a petition asking that we grant the variance to protect the neighborhood from vandalism.

We believe we should take the above facts, none of which are disputed, to indicate that Mr. Bender commenced construction before he had reason to know of the present cause of his inability to connect; that he assumed the risk only of a delay in treatment plant improvements; and that we should allow the variance under the doctrine of the Illinois National Bank case cited above.

We note that we were most favorably impressed by Mr. Bender's forthright and forceful presentation of his own case before the Board.

ORDER

John W. Bender is hereby granted a variance to permit connection of his home at 339 Pioneer Road, Waukegan, to the appropriate municipal sewer.

I, Christan Moffett, Clerk of the Pollution Control Board,
certify that the Board adopted the above Opinion & Order
this 5th day of October, 1972, by a vote of 5-0.

Christan Moffett