

ILLINOIS POLLUTION CONTROL BOARD
June 13, 1985

TIMBERLAKE ESTATES)
SANITARY DISTRICT,)
)
Petitioner,)
)
v.) PCB 85-6
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on a January 16, 1985, petition for amendment to variance filed by Timberlake Estates Sanitary District ("Timberlake"). In a prior proceeding (PCB 83-82, September 23, 1983), Timberlake received a variance allowing connection of 33 single family dwellings, a church and school to a sewer tributary to the Marionbrook Wastewater treatment facility ("Marionbrook") which was on restricted status. The present petition seeks to amend that prior variance to include four single family homes and four vacant lots which were inadvertently not included in the original variance petition. On April 30, 1985, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that variance be granted for the four single family homes, but denied for the four vacant lots. No objections were received; no hearing was held.

The Marionbrook facility, which is owned and operated by the DuPage County Department of Public Works ("DuPage") has a design average flow of 5.0 million gallons per day ("MGD"). On April 30, 1979, the Agency placed the Marionbrook facility on restricted status due to poor effluent quality and hydraulic overloading. The Department's long range plan to correct this problem is to phase out the Marionbrook facility and construct a new regional plant (Knollwood) with adequate capabilities near Madison Street on the Des Plaines River. Completion is expected by late 1980's. Pursuant to an Order of the Eighteenth Judicial Circuit in People of the State of Illinois v. County of DuPage (Case No. 80 MR 432), January 7, 1982, the Department was ordered to construct and operate an 0.25 MGD interim package treatment plant (Knollwood interim facility) adjacent to the planned regional facility. The Court Order allowed new sewer hook-ups to the Marionbrook facility based on a formula that considers effluent quality from the Marionbrook facility, as well as the amount of flow off loaded from the Marionbrook facility to other permitted facilities. Treatment capacity "earned" under this formula can be utilized by the County to authorize new hook-ons only to entities holding sewer permits issued by the Agency prior

to December 6, 1980 or those that receive a variance from this Board subsequent to that date.

In July, 1983, Timberlake filed a petition for variance with this Board seeking variance for 33 single family homes, the Emmanuel Baptist Church and Christian school so that sewer hook-ups might be permitted once the Court-ordered formula of off-loading and effluent quality had been met. Timberlake and the Agency asserted that existing septic systems were malfunctioning due to poor soil conditions, frequent inundation of low-lying areas, and improperly laid tile fields. The Board, in a September 23, 1983, Opinion and Order, PCB 83-82, found that connection to the treatment facility would result in less of a threat of environmental harm than continued operation or upgrading of the existing septic systems, and granted the variance.

In this proceeding, Timberlake seeks to add four existing single family residences and four vacant, but buildable lots, which were "inadvertently omitted" from the variance request in PCB 83-82. Timberlake has not specifically identified the four existing single family residences. Nor has Timberlake attempted to demonstrate that the existing residences suffer from identifiable problems of malfunctioning septic systems caused by the previously cited problems. Rather, Timberlake relies on the pervasive nature of the problems in the area which result in standing water contaminated with raw sewage. This is supported by responses to a homeowner-survey (Exhibits E through N), citations by the DuPage County Health Department (Exhibits O and R) and photographs (Exhibits S and T). The Agency concurs for the four existing single family residences (Rec., 17 & 21).

Timberlake also requests variance for four vacant but buildable lots. Although these lots have been identified (Exhibit C), Timberlake has not identified any existing problem for these vacant lots which might be balanced against the environmental harm from additional flows which would be added in the future. Nor has Timberlake identified any economic hardship incurred from commitments made prior to the imposition of restricted status. Consequently, Timberlake has not made a persuasive case for a variance applicable to these vacant lots.

The Board finds that denial of variance would cause an arbitrary or unreasonable hardship for the four existing single family residences in that the connection to the treatment plant would result in less of a threat of environmental harm than the continued operation or upgrading of these systems. Thus, the Board will grant a variance for the existing residences and deny a variance for the vacant lots. The Board notes that Timberlake must secure Agency permits and comply with the Court Order prior to hook-up for these residences.

This Opinion constitutes the Board's findings of fact and conclusions of law on this matter.

ORDER

1. Timberlake Estates Sanitary District is hereby granted a variance from 35 Ill. Adm. Code 309.241 for the four existing single family residences specified in their petition for amendment to variance in this matter. Timberlake shall obtain the appropriate permits from the Illinois Environmental Protection Agency.
2. Timberlake Estates Sanitary District is hereby denied a variance for the four vacant lots specified in their petition for amendment to variance in this proceeding.
3. Within 45 days of the date of this Order, Timberlake Estates Sanitary District shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. Said Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45 day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 85-6, June 13, 1985.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of June, 1985, by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board