

ILLINOIS POLLUTION CONTROL BOARD
August 20, 1981

RAYMOND BIANUCCI, ET AL.,)
)
) Petitioners,)
)
) v.) PCB 81-64
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On May 11, 1981 Petitioners filed an amended petition for variance from Rules 951 and 962(a) of Chapter 3: Water Pollution Rules and Regulations in order to connect a restaurant and bar to the sanitary sewer system of the Village of Lisle, DuPage County. The village owns the intermediate sewer system and the county Department of Public Works (County) owns the treatment plant. Hearing was waived. The Board has received no public comment. On May 1, 1981 the Board ordered that the filing of this amended petition evidence the joinder of the County as a necessary party.

The restaurant can seat 125 people and employs six people. The discharge flow of the restaurant is 2,400 gallons per day. The property's septic system is not functioning properly and discharges effluent to the land surface. Petitioners allege that compliance can be achieved only by connection to the Village's sewer system because of "substantial effluent overflow, lack of area to expand the septic field ... high impractical costs of attempted field expansion and soil conditions not favorable to good percolation." The cost of connection would be less than \$6,385 (Pet., p.2). No data assessing the impact upon human, plant and animal life is given.

On April 17, 1981 Petitioners met with the County to discuss methods of compliance alternative to connection to the Village system. County authorities felt that expansion of the septic field would not comply with standards of the Health Department.

The arbitrary and unreasonable hardship alleged by Petitioners is that a business has been operating on the site since 1910; that a design to expand the septic field on an adjacent 47,000-square-foot lot owned by Petitioners "probably would not function"; that the cost of "attempted compliance" would exceed \$15,000; that an alternative compliance plan (the same steps which Petitioners allege will be taken to minimize impact during the period of

variance) costs \$12,000 yearly, which "said restaurant cannot economically support"; that the present condition of the septic field constitutes a serious health problem according to the DuPage County Health Department; that hardship is imposed upon the tenant; and that if Petitioners lose income from the present rental of the property they would lose their major livelihood income (Pet., pp.4-5).

The Agency's recommendation is to deny variance. The Agency points out that the County treatment plant involved in the proposed connection is connected to a second plant owned by the County, located in the Village of Woodridge, by an interceptor sewer. The two plants are combined as one treatment facility ("Lisle-Woodridge") for purposes of permits, which both discharge to the east branch of the DuPage River. Over two years ago the Agency notified the County that a restricted status determination had been made for these plants.

The Agency had in 1975 issued a permit to the Village to construct a sewer extension to serve Petitioner's property and to allow a loading from it of up to 12,800 gallons per day. The extension was completed but Petitioners never connected to it. The Agency states that the petition lacks discussion of expanding the septic system by extending the laterals in order to use more of the 47,000-square-foot adjacent lot.

Since 1974 the Agency has been aware of the potential for a serious environmental hazard by the malfunctioning of Petitioners' septic system. Recently it has noted that the area of seepage is continually saturated and that it constitutes a serious health problem and a nuisance. Operation of the Lisle plant is expected to cease upon completion in 1983 of the County's expansion of the Woodridge plant's capacity (to be called the Woodridge-Green Valley plant).

The Agency concludes that the Lisle plant would inadequately treat the wastewater generated by the proposed connection, that the imposition of restricted status alone does not demonstrate arbitrary or unreasonable hardship upon Petitioners, and that Petitioners offer no explanation both as to why the problem has not been corrected since 1974 and as to why Petitioners declined to connect to the completed extension which had been constructed to serve the restaurant and bar.

On April 21, 1981 the Board received a letter from the Du Page County Health Department stating that the septic system serving the subject restaurant have progressively deteriorated to a point that it has become a serious health problem and nuisance. It is the Department's opinion that a reconstructed septic system would probably fail to function and that connection of the restaurant to the sanitary sewer would be a smaller liability to the State than having the saturated condition in the seepage field area.

On July 15, 1981 the Board received what is termed amendment to the amended petition from the petitioners alleging that the only means available to handle the problem is a periodic pumping of the septic tank at a cost of approximately \$150 each time the tank is pumped. Bianucci claims that pumping might occur as frequently as once each week during wet weather and that the expense would result in the closing of the restaurant or that the operator and his six employees would be unemployed and petitioner would lose his only source of income.

There is some question in this case whether the hardships alleged by Bianucci are self-imposed since he failed in 1975 to take advantage of the opportunity to connect to the sewer extension that was constructed at least partially for his benefit. However, the Board in the past has granted variance in the face of insufficient evidence of personal hardship to petitioner where as here the health and welfare of the people of the State of Illinois is threatened due to the adverse conditions caused by a malfunctioning septic system. The Board finds that the combination of the hardship alleged by Bianucci and the prospect of an enhanced environment with the abandonment of the existing septic field is sufficient to convince the Board to grant the variance.

This Opinion constitutes the finding of facts and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that Raymond Bianucci and Pauline Bianucci be granted variance from Rules 951 and 962(a) of Chapter 3: Water Pollution Control Rules and Regulations in order to connect their restaurant facility to the Lisle sewage treatment plant, owned and operated by the Du Page County Department of Public Works in Woodridge, Illinois.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of August, 1981 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board