

ILLINOIS POLLUTION CONTROL BOARD  
May 1, 1980

PHILIPSBORN EQUITIES, INC., )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 79-86  
 )  
 ) ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

MR. JOHN M. CREGOR, JR., APPEARED ON BEHALF OF THE COMPLAINANT;

MR. DOUGLAS P. KARP, ASSISTANT ATTORNEY GENERAL, APPEARED  
ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

On April 17, 1979 Petitioner filed for a variance from Rule 962(a) of Chapter 3: Water Pollution to allow the issuance of permits for construction and operation of sewer connections for sixty of 391 proposed apartment units. Amended petitions were filed on September 14, 1979 and February 6, 1980. The Illinois Environmental Protection Agency (Agency) has recommended that a variance be granted as to the issuance of sewer construction permits and that operating permits be issued for sewer connections for four model apartments subject to conditions. A hearing was held on January 30, 1980 in Des Plaines, Illinois.

Petitioner is the owner of property located in the Village of Barrington, Cook County. On October 22, 1973, permits were issued by the Agency to construct and operate sanitary sewers which were to serve Petitioner's 391 apartment unit complex. Construction was to be completed within two years. Petitioner and co-joint venturers had been issued local building permits for the construction of 60 units of the complex on March 20, 1974.

Due to adverse economic conditions in 1974 the project was halted. Petitioner states that prior to the expiration of Agency permits, a substantial amount of work on the project had been completed, including foundations for four 12-unit buildings and sewer extensions and manholes to serve a population of 842. On April 14, 1976 the Village of Barrington's treatment plant was placed on restricted status due to its being overloaded. A three-phased plan to upgrade

these sewage treatment plant facilities was subsequently begun. Petitioner now seeks permits to complete construction and to operate connections for the first 60 units of its project beginning in March, 1980 with estimated occupancy of the units occurring in August, 1980.

Without the variance it is claimed that Petitioner will suffer substantial hardship through potential loss of four foundations constructed at a cost of \$400,000 and additional improvements at a cost of \$150,000. These improvements were tested in 1979 and found fit for use. No information was supplied to indicate that substantial deterioration would occur prior to completion of rehabilitation of the Village sanitary sewer system.

Petitioner filed an Objection to Amendment to Amended Recommendation of the Agency on March 31, 1980, stating that should the Agency Recommendation be followed, Petitioner will be forced to seek another variance for operating permits when the work affecting its project is complete toward the end of 1980. The Agency's Amended Recommendation filed December 14, 1979 indicates that upon completion of the rehabilitation of the sewage treatment plant and sanitary sewer, Petitioner will not need a variance from Rule 962(a) to obtain permits to operate its connections.

At the hearing, testimony was given that Phase I of the sewer system rehabilitation had been completed and that Phase II was within approximately one month of being completed (R.27). The project manager for expansion and improvement of the Village's present system agreed with Petitioner that completion of Phase I and the Hager Avenue sewer work of Phase II would result in sufficient capacity to accommodate the additional flow from the 391-unit complex (R.15-16). However, it was also pointed out that in order to protect public health and safety the problem created by manhole overflows and hydraulic overloading of the system both Phases I and II of the sewage treatment plant program as well as Phase I and the Hager Avenue extension of Phase II of the sewer system rehabilitation must be completed prior to operation of the requested sewer connections (R.29).

In its Amendment to First Amended Petition for Variance filed February 6, 1980 Petitioner requested that connection to the sewage system be permitted for four model apartments in the first building constructed in order to facilitate rentals of the apartment units. The models are not to be used for residential purposes. Testimony at the hearing indicated that such connections would result in undetectable sewage flow increases (R.31).

The Agency supports the variance from Rule 962(a) of Chapter 3 to allow issuance of permits for construction only

for sewer connections to the sixty apartment units which are the subject of the petition. The Agency also supports the issuance of a permit to operate a sewer connection to the four model apartments only.

The Board finds that a denial of the variance to issue permits to construct would constitute an arbitrary and unreasonable hardship. However, Petitioner will not be permitted to operate sewer connections to its proposed project until the wastewater can be adequately transported and treated by the Village. The Board does not view the denial of issuance of operating permits as imposing a hardship since Phase II of the sewage treatment plant rehabilitation and Phase I of the sanitary sewer rehabilitation are scheduled for completion at approximately the same time as completion of the 60 units of Petitioner's project.

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

ORDER

- 1) Petitioner is hereby granted a variance from Rule 962(a) of Chapter 3 to allow issuance of permits for construction only of sewer connections to the sixty apartment units which are the subject of this petition.
- 2) Petitioner is hereby granted a variance from Rule 962(a) of Chapter 3 to allow issuance of a permit to operate a sewer connection to four model apartments only, in the first building constructed by Petitioner, subject to the following conditions:
  - a) the four units shall not be used for residential purposes during the term of the variance and
  - b) the water supply to the other units in the building housing the models shall not be connected.
- 3) A variance from Rule 962(a) of Chapter 3 to allow issuance of permits to operate sewer connections other than those described in (2)(b) is hereby denied.
- 4) Within 45 days of the date of this Order Petitioner shall execute a certification of acceptance and agreement to be bound by the terms and conditions of this variance. This 45 day period shall be held in

abeyance if this matter is appealed. The certification shall be forwarded to the Illinois Environmental Protection Agency, Division of Water Pollution, 2200 Churchill Road, Springfield, Illinois 62706 and shall read as follows:

CERTIFICATION

I, (We), \_\_\_\_\_, having read and fully understanding the Order in PCB 79-86 hereby accept that Order and agree to be bound by all of its terms and conditions.

SIGNED \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

IT IS SO ORDERED.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 15<sup>th</sup> day of May, 1980 by a vote of 5-0.

  
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Christian L. Moffett, Clerk  
Illinois Pollution Control Board