

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1973

FIELDS, GOLDMAN AND MAGEE)
PETITIONERS)
)
)
v.) PCB 73-362
)
)
ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)
)

MR. JERRY SMITH, ATTORNEY, in behalf of FIELDS, GOLDMAN AND MAGEE
MR. FREDERICK HOPPER, ASSISTANT ATTORNEY GENERAL, in behalf of the
ENVIRONMENTAL PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This action involves a variance request on the part of Fields, Goldman and Magee. Relief is requested from a ban imposed by the Agency on construction and operation of additional sanitary sewer extensions in an area tributary to the city of DuQuoin's (City) sewage treatment plant. The Agency recommends denial.

Fields, Goldman and Magee are an architectural firm which was contracted to provide architectural services for an 80-unit housing development in the City of DuQuoin. The project includes a five-story high-rise building of 40 units and a cluster of 30 additional units. These facilities are to be used by elderly and low-income people.

This petition for variance is a result of an earlier petition dismissed without prejudice by the Board. In PCB 73-219 the petition was dismissed for a number of reasons. Questions were raised and left unanswered as to the status of the city's sewage treatment plant, both from a point of effluent quality and from a point of sewer line hydraulic capacity. Question as to whether Fields, Goldman and Magee was the proper party to petition for this variance was also a key unanswered question. In PCB 73-219 the Board stated:

"We feel the best course is to dismiss the instant case without prejudice as being inadequate. The Petitioner can refile and provide more adequate information in a new proceeding."

A new petition was filed by Fields, Goldman and Magee and is the issue in the instant case. Much correspondence from PCB 73-219 was

incorporated into the instant case, and was made part of the variance petition. The case was set for hearing, after denial of Motion for Waiver of Public Hearing filed by the Petitioner. Said denial was on order of the Board, dated October 4, 1973. Hearing was held on October 17, 1973, at which time a large amount of clarifying evidence was elicited.

Perhaps the most pertinent question which must be answered is:

Has Petitioner proven that it has fulfilled its statutory obligations under which it would be an acceptable party to file a variance petition?

Title IX, Section 35, of the Environmental Protection Act clearly states that:

"The Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship."

The Petitioner must therefore prove that it would suffer the above-mentioned arbitrary or unreasonable hardship, or be the legal representative of the party which incurs a hardship.

To best understand which parties are involved in the planning, development, construction and financing of this project the following list was elicited from testimony. This interrelationship was given by Mr. A. Henderson (R. 4-7):

- A) City of DuQuoin - Applied to Department of Housing and Urban Development (HUD) for a housing allotment and funds in 1967.
- B) H.U.D. - Granted to local housing authority, in 1971, a grant for the project.
- C) Perry County Housing Authority - This party would own the project under the H.U.D. grant.
- D) Midwest Mortgage Consultants - Arranged financing for project (bonding).
- E) DuQuoin Lease Housing Corporation (D.L.H.C.) - a non-profit organization formed at the request of Midwest Mortgage to act on behalf of the Perry County Housing Authority.
- F) Paul Pieper Construction Company - Firm hired by D.L.H.C. to construct the actual facilities.
- G) Fields, Goldman and Magee - Architects for the project hired by the D.L.H.C.

At present the project is ready for occupancy, save sewer connections. Bonds are outstanding and payment will be required. It is alleged that if the ownership of said project is not transferred to the Perry

County Housing Authority by November 1, 1973, expenses in the amount of \$400 per day will be incurred. The following line of questioning is a key factor in whether Fields, Goldman and Magee would itself suffer a hardship. Mr. Bersch is hearing officer and Mr. Siros is an employee of Fields, Goldman and Magee.

- Mr. Bersch: Will Fields, Goldman and Magee have any loss if the petition is not granted?
- Mr. Siros: No.
- Q. The loss would fall on whom?
- A. This I will leave up to the attorneys. I am not sure how the money situation is established.
- Mr. Hopper (attorney for the Agency):
Mr. Siros, as a matter of fact, it might turn out to be a dogfight between the construction company and the DuQuoin Lease Housing as to who gets the lucky \$400 a day prize.
- A. I really have no opinion on that.

On the basis of the above Petitioner has clearly failed to comply with the statutory requirements as to a show of hardship upon itself and must therefore prove that it represents the party who would indeed suffer said hardship.

Fields, Goldman and Magee has stated that they are suffering from a mislabeled petition in that they are actually seeking relief for the Paul Pieper Construction Company and the Perry County Housing Authority (R. 22). Petitioner also states (R. 21) that he was not aware that the petition was in its name, and when this fact was brought to his attention the clerk of the Board suggested that the name remain Fields, Goldman and Magee to avoid confusion. The above relates to the original petition PCB 73-219. However, both the Agency recommendation and the Board's order in PCB 73-219 were very clear as to the fact that Fields, Goldman and Magee was possibly not the correct party to pursue this matter. The Petitioner has responded by filing a new petition with the same caption.

The Board feels that until title for the project is transferred to the Perry County Housing Authority, the Paul Pieper Construction Company would be the party suffering hardship. On November 28, 1973, the Board received a sworn Affidavit stating that Fields, Goldman and Magee are indeed acting as agent for the Paul Pieper Construction Company in attempting to obtain a variance for the project. On the basis of this Affidavit and the following facts elicited during proceedings, the Board finds that the Petition should be granted.

Status of DuQuoin Sewage Treatment Plant:

The City of DuQuoin owns and operates a sewage treatment facility

consisting of a trickling filter. The final effluent is unchlorinated and discharges into Reese Creek, an intermittent stream. The design flow is 1.0 mgd and has a BOD loading of 14,000 Population Equivalent. The most significant single source of effluent to the plant was the Du Quoin Meat Packing Plant which contributed between 1/3 and 1/2 of the plant's total loading. The following data was taken by the Agency, but may not be indicative of present loading due to the removal of the Meat Packing Company load.

<u>Date</u>	<u>BOD</u> mg/l	<u>S.S.</u> mg/l	<u>F.C.</u> counts/100 ml
October '72	35	110	580,000
Nov.	55	210	16,000
Dec.	55	85	400,000
Jan '73	19	18	21,000
Feb.	24	24	400,000
Mar.	65	24	550,000
Apr.	--	20	500,000
May	50	21	560,000

The applicable rules call for BOD 4 mg/l, S.S. 5 mg/l.

The City has received federal funding and is proceeding towards upgrading their facilities. Testimony (R. 32) is that funds are available and the revisions should be accomplished within one year. One of the major jobs which must be done is replacement of the existing filter beds in the trickling filters. The Environmental Protection Agency has testified (R. 50) that the present filter medium is over 30 years old and is "absolutely not adequate to do an efficient job of treatment."

Status of Sewer Lines Tributary to Plant:

The question was also raised as to the hydraulic capability of the sewage line to handle flow to the plant in any event. The following facts were elicited to clear up this problem.

The DuQuoin Meat Packing plant has stopped flow to the city plant, thereby reducing the flow by some 40% in the existing lines.

The high-rise building can be hooked into an existing sewer with no hydraulic problems.

The other units would require a new lift station in order to function properly. Also a rerouting of the force main would be required. Testimony (R. 66) was entered that the new lift station has been constructed and is ready for operation. The force main could and would be installed within two weeks after a variance or agency permit is granted. It would seem that a viable solution to the hydraulic problem has been achieved. This problem would seem to be moot in view of the evidence presented.

Status of DuQuoin Meat Packing Plant:

The record shows (R. 27) that the packing plant is not now discharging into the city treatment plant. It was, all along, the intention of the packing plant to construct and operate their own treatment facilities. These facilities would have been completed earlier, but due to financial problems brought about by a strike, the completion date was moved up.

Agency investigations of the packing plant (R. 48) show that no flow is now going to the city but that the procedure used to disconnect is temporary and could easily be connected again.

The City of DuQuoin has stated (R. 32) that an ordinance is in effect that would allow the city to block off the packing plant's sewer line if they attempted to use the city's plant. The mayor of the city stated (R. 34) that it is the intent of the city to enforce said ordinance.

From the above it would seem that the adverse effects on the city's treatment plant generated by the DuQuoin Meat Packing Plant no longer seem to be an issue in this case.

Effect of Additional Load on Existing Plant:

As mentioned above, the existing plant, while of sufficient design capacity to handle the influent load (now that the meat packing plant is off stram), still suffers because of degraded filter bed quality. Although no samples of effluent were taken minus the packing plant (R. 54), expert testimony by the Agency indicates that the 4 mg/l, 5 mg/l (BOD, SS) criteria will not be met without the replacement of the filter bed media, and other steps. It was conceded, however, that the total increase (maximum) on the plant would have no significant change at all (R. 49).

The 271 PE figure may indeed be very high. Testimony was entered that about 90% of the applicants are from within the City of DuQuoin (R. 36). It was also added that the applicants are mainly living in what could be considered substandard housing. It is unlikely that these substandard housing units would be reoccupied (R. 37) and the increase in P.E. would not be an increase but merely a relocation of existing sewage sources.

This type of argument has been used before (PCB 72-59 Tennis Development, Inc., v. Environmental Protection Agency, PCB 71-314 Waukegan Park District v. Environmental Protection Agency) and has been accepted by the Board as grounds for a variance grant.

All of the above shows that a good case has been made for the grant of a variance. If this petition were denied, the greatest hardship would fall on the applicants who will be forced to remain in substandard housing until this issue can be resolved.

Because of this, and in spite of the fact that Paul Pieper's

case of hardship may be somewhat weak, the Board will grant the variance.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that a variance be granted to allow sewer hookup of the project in question.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 29th day of November, 1973, by a vote of 5 to 0.

Christan L. Moffett