

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1973

IN THE MATTER OF:)
)
THE PETITION FOR VARIANCE OF:) PCB 73-273
)
RONALD H. AND CAROLYN BOWER)

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

On July 25, 1973, Petitioners, Ronald H. Bower and Carolyn Bower, filed their Petition for Variance, seeking permission to connect a sewer extension to the sanitary sewer system of the City of Carthage, County of Hancock, Illinois. Petitioners seek such relief to enable development of 31 residential housing units on a 27 acre subdivided tract located in Carthage (R.90). The sewage treatment plant of the City of Carthage is hydraulically overloaded and the Agency has imposed a ban on construction and operation of sanitary sewer extensions. A public hearing was held on this cause on August 21, 1973.

On June 26, 1970, the Sanitary Water Board, predecessor of the Environmental Protection Agency, notified the City of Carthage that future extensions to its sanitary sewers would be restricted until progress toward providing adequate treatment facilities was well advanced. On October 9, 1969, the City of Carthage submitted plans to the SWB for a new sewage treatment plant. The Agency approved the plans on March 8, 1971.

General obligation bonds totalling \$200,000.00 have been approved to defray the cost of the new facility (R.11). However, various new Agency requirements resulted in additional plans having to be submitted, each set resulting in additional costs (R.11). A final permit to construct was obtained from the Agency on March 30, 1973 (R.12). The lowest bid for the proposed plant, submitted on May 15, 1973, was \$527,837.30 (R.13).

No estimate can be made as to when the City's upgraded facilities will be completed and operational since construction is dependent upon the availability of federal and/or state funding. The Priority Number of the City of Carthage on the Illinois Priority List for Federal Grant Applications for Municipal Waste Treatment Works for Fiscal Year 1974 cannot be ascertained, since the 1974 List has not yet been approved by the U.S.E.P.A.

The property purchased by Petitioner is wholly within the corporate limits of the City of Carthage. Petitioners allege that prior to the purchase of the subject property they telephoned the Permit Section of the Springfield office of the Environmental Protection Agency and indicated their intent to purchase the subject property and develop it as a residential subdivision (R.73). The identity of the person to whom Petitioners allegedly spoke is unknown. Of this alleged conversation, Petitioner, Ronald H. Bower, testified as follows (R.73):

Q. What, if anything, did you learn as a result of this conversation?

A. I talked about where the ground was, that it was in the city limits, how many lots were in it, and he said - told me what I had to do to get a permit and I asked him specifically if he thought there was any reason why it would be denied, and he said no, none that he knew of.

Q. As a result of this conversation, was there anything said that would indicate that the person you contacted was aware of the sewer ban problem that the city had at this time?

A. I told him that I was asking because I had understood there was some problems in this area, and he said he didn't know, they had just granted one and it didn't appear there would be any problem. He also said something about -- I don't know, I think he said something about the city of Carthage was going along pretty good on their plans.

Q. Approximately when did this conversation take place?

A. June of 1971.

Q. Now, as a result of that conversation, did you do anything toward the purchase of this property?

A. Well, I signed the contracts for an option to buy and deposited \$500.00.

Petitioner further testified that he made a subsequent, personal visit to the Agency Permit Section in Springfield in order to obtain the necessary forms for permit application. On that occasion an Agency employee, again unknown, allegedly indicated that "he thought there would be no problem" in obtaining a permit to connect to the existing sewer system (R.75). Petitioners thereafter, purchased the subject property for a total consideration of \$18,000.00. Since acquisition, Petitioners have expended approximately \$20,000.00 for improvements (R.82).

Petitioners contend, therefore that prior to the above-mentioned purchase and additional expenditure of \$20,000, they received an oral assurance from the Agency that due to the City's progress toward construction of sewage treatment facilities, sewer system permits would be available when the subdivision required such connections. Petitioners imply that the purchase and expenditures were made in reliance on this alleged Agency assurance. The Agency has no record of any such assurance nor has it been able to corroborate that claim. Assuming arguendo such an assurance was made to Petitioners, it would be inoperative since no Agency employee has the authority to make such a statement short of the issuance of a construction or operating permit.

Petitioner, Ronald Bower, earns approximately \$13,000 per year as a construction foreman (R.104). Petitioners' \$40,000 expenditure has been financed through a mortgage and certain other loans. Mr. Bower testified that he cannot borrow any more money unless a variance is granted (R.104). Petitioners are making mortgage payments of \$246.00 per month, plus taxes, insurance, etc. (R.103). Other sizable obligations remain outstanding and unfinanced.

The Board is disposed to grant relief under this particular set of circumstances, though not to the extent Petitioners have requested. We cannot find from the facts presented that Petitioners' actions in alleged reliance were justifiable or even prudent. However, we have sympathy for Petitioners' plight. It appears that if Petitioners cannot begin at once to construct and sell homes, they will suffer a severe financial loss. Petitioners have limited means and cannot continue to meet their obligations without income from the sale of sites.

We will, therefore, grant a variance which will enable Petitioners to connect five houses to the City of Carthage sewer system. This will not add significantly to the overload and will help Petitioners to retain their property until the sewer ban is lifted.

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 Petitioners, Ronald H. and Carolyn Bower, be granted a variance from the subject sewer ban to connect five houses located upon the above-described property to the sewer system of the City of Carthage.

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 18th day of October, 1973 by a vote of 5 to 0.

Christan L. Moffett