

ILLINOIS POLLUTION CONTROL BOARD

August 5, 1971

John Ciancio and)
Margaret Ciancio, his wife)
)
)
v.) PCB 71-100
)
)
Environmental Protection Agency)

Hercules Paul Zagoras, Attorney for John and Margaret Ciancio
Delbert Haschemeyer, Attorney for Environmental Protection Agency

Separate Opinion (by Mr. Kissel):

In a letter dated April 30, 1971, John and Margaret Ciancio (the "Petitioners") requested a variance of the Board from Paragraph 7 of the Order entered against the North Shore Sanitary District (the "District") on March 31, 1971, League of Women Voters of Illinois, et al v. North Shore Sanitary District, PCB70-7, 70-12, 70-13 and 70-14. The Petitioners state that they presently reside in Waukegan, Illinois in a four room house with one bathroom. The house is grossly inadequate for the Petitioners' family because they have five children. As the letter puts it: "We just can't take it any more ...". The Petitioners wish to construct a new house at another location and they wish to install an extension of an existing sewer line and connect to it. The sewage would go to the Waukegan plant of the District. The Environmental Protection Agency (the "Agency") filed a recommendation asking that the Variance Petition be denied. A hearing on the Petition was held in Waukegan on June 25, 1971.

The Petitioners have lived in the Waukegan area for at least eleven and one half years, at apparently the same home site. In 1968 the Petitioners entered into an agreement to purchase the property on which they now wish to build. The total cost of the lot, located on Colorado Avenue, was \$5,000, but the down payment was only \$500.

The Petitioners paid for the property and received a warranty deed from the sellers dated February 5, 1969, Petitioners' Exhibit A. At the time of purchase of the property by the Petitioners, the property was not located in any city, but by ordinance on September 2, 1970, the property was annexed to Waukegan. At the time of the annexation there was no sewer line running by the property, but one existed about 375 feet away. The Petitioners went to the intervening land owners and asked them if they would be willing to share in the cost of having the sewer extended, but they said no. The Petitioners then sought the services of an engineer who could design the extension of the sewer. In September, 1970, they hired Avedis Soghigian who did just that. In addition, the Petitioners made an agreement with the City of Waukegan whereby the City agreed to pay for one half of the cost of the sewer extension. The engineer prepared the plans and specifications and charged a total cost of \$625, of which the Petitioners paid half in December, 1970. The plans and specs were submitted in December, 1970, so that a permit to construct the sewer could be received. He was led to believe that he would receive approval from the City and other governmental agencies. On February 2, 1971, he received a copy of a letter directed to the District from the Agency in which the Agency advised the District that the permit for the extension of the Colorado Avenue sewer was denied. Subsequent to receiving a copy of this letter, the Petitioners investigated the possibility of installing a septic field. It was determined that a septic field could be installed, but its installation would require a seepage field of about 1,200 square feet. Because of the layout of the property, this field would require the removal of a small oak forest which presently exists on the property. Some of the trees in the forest are over 70 feet high. The cost of the septic field would be about \$2,000, and the Petitioners had to agree that when the sewer was made available, they would have to tie into it notwithstanding the fact that they had previously installed and used the septic field.

We believe that the variance should be granted to the Petitioners to construct the sewer extension and tie onto the sewer after it has been constructed. Based upon the previous cases before this Board, we have held that

if the person seeking the variance had done something in reliance upon the fact that they could use the property for the construction of a home (or homes) and tie onto the sewer, that person would be considered to have a vested right to attach to and use the District facilities. We believe that that is the case here. The Petitioners received title to this property in early 1969 and since that time have been going forward with plans to use the property. They have annexed to the City of Waukegan, they have had plans and specs drawn for the extension of the sewer line and they have paid money for those plans to be completed. This effort on behalf of the Petitioners certainly indicates a complete reliance on the fact that they could use their property to build a private family dwelling for their own use, and they could attach to the District's facilities.

O R D E R

The Petition for Variance in this case is hereby granted, and the Petitioners are hereby allowed to build the extension to the sewer system as described in the record, and further, will be allowed to connect their home to that system. This order is applicable to the property described in the record in Petitioners' Exhibit A.

I, Regina E. Ryan, Clerk of the Board, certify that the Board has approved the above Order this 5th day of August, 1971.

