

ILLINOIS POLLUTION CONTROL BOARD

August 5, 1971

THOMAS KAEDING et al.)
)
 v.) # 71-133
)
ENVIRONMENTAL PROTECTION AGENCY)

Opinion and Order of the Board (by Mr. Currie):

This opinion explains our order denying a request for a variance in this case July 19. Mr. and Mrs. Kaeding seek a variance to permit them to connect a new house to sewers in the Village of Lake Bluff serving an overloaded treatment plant. We forbade such connections in League of Women Voters v. North Shore Sanitary District, #70-7, March 31, 1971.

Recognizing the serious impact of our decision and the desirability of obtaining additional facts, we have scheduled inquiry hearings, to be held in September, in which the question of a sewer ban such as that imposed in the North Shore case will be fully explored. In the meantime we shall continue to decide individual variance cases on the basis of guidelines set down in our earlier decisions on the subject. The governing principle is that a variance will be allowed only in a case of arbitrary or unreasonable hardship, and we have held that the hardship experienced by one who had not commended construction or otherwise substantially changed his position before our order was entered is not sufficient. Wachta et al. v. EPA, #71-77 (Aug. 5, 1971); Monyek v. EPA, #71-80 (July 17, 1971); Wagnon v. EPA, # 71-85 (July 26, 1971). To hold otherwise would be to repeal the sewer ban in its entirety, and a variance proceeding is not the proper vehicle for doing that.

In the present case there is no allegation of any expenditures or other change of position before the date of the sewer ban; the petitioners state that they purchased the lot on which they hope to build after the ban was imposed. Under our prior decisions the petition must be denied. Even if all the facts alleged were proved we would not grant the petition, and therefore no purpose would be served by holding a hearing. The hearing originally scheduled in this case is therefore cancelled, and the petition for variance is denied.

The inquiry hearing, of course, may lead to a new regulation that will supersede this order to the extent of any inconsistency.

I, Regina E. Ryan, Clerk of the Pollution Control Board certify that the Board adopted the above Opinion this 5th day of August, 1971.

