

Bravo-Ernst alleges financial hardship caused by the interest on the purchase price loans made to acquire the property, the costs of engineering, and the pursuit of the Commerce Commission order. Specifically, an expenditure of approximately \$13,000, in addition to the original investment and the interest payments on the loan, is alleged. Bravo-Ernst feels that if the sewers were in place, the property would be more salable notwithstanding the fact that the sewers could not be connected until the restricted status is lifted. The partnership states that it would sell the individual lots in question without homes to those financially better able to wait and the contract for sale would contain a statement that no connection could be made to the sewer system until such time as sufficient treatment capacity was available at Lisle-Woodridge.

The Agency recommends that the variance be denied. In its recommendation the Agency cites an August 13, 1980 Order entered by the Circuit Court in Corporate West Development, Inc. v. Illinois Environmental Protection Agency, County of Du Page, Village of Lisle and Village of Woodridge, 79 MR 257. The Lisle-Woodridge Treatment Plant was found in violation of its NPDES permit and this Order set forth a plan allocating sewer connections as increased treatment capacity of the facility becomes available. It is the Agency's opinion that this Order renders useless the variance Bravo-Ernst now seeks, because the Order bars any sewer connections by parties not considered in its plan. In addition, the Agency points out that subsequent owners of the homesites could request individual variances to connect, subjecting the Board to a multiplicity of petitions likely to result in further overload of the plant.

The Board finds that the Circuit Court Order cited by the Agency does not affect the Board's duty to consider a variance petition on its merits as mandated by the Illinois Environmental Protection Act. Whether or not a petitioner who receives a variance will subsequently be able to utilize that variance is, of course, subject to petitioner's ability to satisfy permitting requirements and overcome any other legal obstacles. The Board, however, does agree with the rest of the Agency's analysis. There is no showing other than economic hardship, and this appears to be largely self-imposed and not in excess of that suffered by any other land investor under recent economic conditions. Lastly, the Board agrees with the Agency that a contract condition stating the unavailability of hook-up would be no bar to a subsequent petition for variance to the Board. The Board will, therefore, deny Bravo-Ernst's Petition for Variance.

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


ORDER

It is the Order of the Illinois Pollution Control Board that the Petition for Variance of Bravo-Ernst Developers herein be and is hereby denied.

IT IS SO ORDERED.

Board Member N. Werner abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 3rd day of December, 1981 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board