

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 1984

AMERICAN NATIONAL BANK OF CHICAGO, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 83-106  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION )  
 AGENCY, COUNTY OF DUPAGE; AND )  
 CITY OF DARIEN, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a March 13, 1984 filing submitted on behalf of the American National Bank of Chicago which is encaptioned "Petition For Rehearing" but which appears to be a motion for reconsideration. On April 11, 1984 American National filed a motion to file supplemental affidavit, which motion is hereby denied in that so far as any new evidence is presented, there is no showing that such evidence was unavailable prior to the Board's decision in this matter. Further, such new evidence merely quantifies expenses which the Board has held were self-imposed or irrelevant (e.g. were expended on a project other than that for which variance is now requested). No new evidence which is inconsistent with the February 9, 1984 Opinion and Order in this matter is presented, and the Board has fully considered the arguments advanced in the motion to reconsider except to the extent that American National argues that variance should, at a minimum, have been granted for the first 20 units of Phase I. Therefore, reconsideration is denied except as to that issue.

It is not "a worshipping of form over substance" to deny variance as to those units.\* On November 18, 1983 the Board amended 35 Ill. Adm. Code 309.202(b)(2) to insure that the exemption under that section applies only to single buildings (See R82-5,-10, cons. pp. 4-5). Using American National's reasoning, variances would have to be granted to entire subdivisions consisting of units which discharge less than 1500 gallons per day so long as they are capable of each being connected to a public sewer system "since the flowage would be identical" if they were all

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The Board notes that while American National attributes the quoted language to the hearing officer, the remark was actually made by American National's attorney (R.98, but cf.R115).

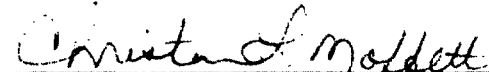
interconnected prior to connection to the public system. Such an argument runs counter to the intent of the exemption which is based upon administrative convenience where the discharges are so small that the potential for environmental harm fails to justify the expense of permitting. For the most part, the exemption is directed toward single family homes. Finally, while the record is somewhat vague, the second amended petition does not request relief for the Phase I units. However, American National, at hearing, did suggest that the Board consider including 3 of the 5 Phase I buildings (12 units) for variance (R.100-101).

The motion to supplement is denied. The motion to reconsider is granted in part and denied in part, and the Board's Order of February 9, 1984, is affirmed.

IT IS SO ORDERED.

Board Members J. T. Meyer and W. Nega dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 3<sup>RD</sup> day of May, 1984 by a vote of 4-2.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board