

ILLINOIS POLLUTION CONTROL BOARD
June 28, 1977

CITY OF PONTIAC and PONTIAC REALTY,)
INC.,)
Petitioners,)
v.) PCB 76-250
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

MR. JOHN A. BEYER OF SATTLER, EWING & BEYER, APPEARED ON BEHALF OF
PETITIONER;
MR. JOSEPH E. SVOBODA, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on a Petition for a Variance from Sections 12 and 39 of the Environmental Protection Act and Rule 962(a), Chapter 3: Water Pollution of the Board's Rules and Regulations to allow connection and operation of a sanitary sewer presently serving two eight unit condominiums.

On December 15, 1975 Petitioner applied for a "construct only" permit to install this sewer extension. At that time the projected date for completion of the improvements of the overloaded Pontiac Sewage Treatment Plant was September, 1976. This permit was issued by the Agency on the condition that no permit to operate this sanitary sewer would be issued until the treatment plant improvements were completed.

Petitioner applied for a Variance to connect the sanitary sewer line while the treatment plant improvements were still underway. The Agency filed its Recommendation, pursuant to Rule 405 of the Board's Procedural Rules, that the Variance be denied. A hearing was held on March 1, 1977.

Petitioners feel that they are being forced to suffer an arbitrary and unreasonable hardship because:

1. Possession of the condominium units is being held up and the purchasers are being forced to live in motels at the developer's expense,
2. The developer is forced to make more interest payments because the units cannot be occupied, and
3. A housing shortage exists in Pontiac and connecting these units could help to relieve that shortage.

The only evidence of motel payments by the developer is in an affidavit that was attached to the Petition for Variance. That affidavit stated that as of October 1, 1976, one couple and two single persons were being accommodated at the developer's expense. At the hearing it was disclosed that six of the condominium units were occupied as of March 1, 1977. There was no evidence at that time that any of the purchasers were being housed in motels, or that any, hardship was being suffered in disposing of the domestic waste from the purchasers who had moved in.

The housing shortage and the developer's construction and interest expenses were not controverted at the hearing, however it was established that the chief reason for the housing shortage was the inability of the Pontiac Sewage Treatment Plant to take effluents from any new construction.

Petitioners claimed that granting this variance would not cause any additional loading on the City's sewer system because most of the purchasers who would be moving in were Pontiac residents. Their argument was that these people would either be living in their own homes or in Pontiac motels if they were not allowed to move in. The logic of this reasoning fails when it is related to the Petitioners' argument that the condominiums should be connected to help relieve the housing shortage and allow the purchasers to sell their homes to others.

Throughout the hearing, Petitioners showed that possession of these condominium units was contingent upon completion of the improvements to the Pontiac Sewage Treatment Plant. At the time of the hearing, the projected date for completion was May 15, 1977. The issue may be moot. Throughout the record there is nothing to show that the Petitioners' hardship was anything but self-imposed. Construction was undertaken, units were sold, and buyers were allowed to move in in spite of the clear understanding and permit

conditions that sewer connections had to wait for improvements to the sewage treatment plant.

This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

It is the Order of the Pollution Control Board that the Petition for Variance of the City of Pontiac and Pontiac Realty, Inc. be denied.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of June, 1977 by a vote of 4-0.

Christian L. Moffett, Clerk
Christian L. Moffett, Clerk
Illinois Pollution Control Board