

however, is not in an overload condition, either hydraulically or organically. The problem, therefore, lies in the delivery system to the sewage treatment plant.

Shodeen alleges that the addition of its waste to the existing sanitary sewer overflows would not substantially impact water quality in the Fox River. To support this allegation, Shodeen contracted R.J. Environmental Associates (R.J.) to prepare a computer modeling study of the wastewater bypass in St. Charles. Evidence presented indicates that the problem is not with the capacity of the sewage treatment plant in St. Charles, but rather with the inadequacies of transport system, particularly the sewage pipes to the plant. There appears to be no question but that the addition of wastewater generated at the proposed shopping center would pose no problem during dry weather and would be de minimis with regard to overflows during periods of heavy storms. The Board, therefore, finds that no significant harm to the environment would result if the proposed variance were granted.

Shodeen alleges that arbitrary and unreasonable hardship would result should the proposed variance be denied. Evidence adduced at the hearing, unrebutted by the Agency, indicates that Shodeen acquired an interest in the land which he proposes for commercial development in 1972. Proposed zoning was obtained by Shodeen in May of 1975, after which Shodeen obtained a commitment from K-Mart, Jewel-Osco, and Spiess Department Stores with regard to tenancy in the proposed center. The lease agreements include occupancy dates of June 1, 1979 for K-Mart, and September 1, 1979 for Jewel-Osco. Final zoning was granted in January of 1978, at which time Shodeen was still advised that there would be no problem in obtaining appropriate sewer connection permits because the St. Charles wastewater treatment plant was only at one-third of its organic and hydraulic capabilities. Shortly thereafter, Shodeen learned for the first time that he would be unable to connect to the wastewater treatment plant due to the wastewater bypass situation in his area.

Shodeen was subsequently advised by his tenants that they would be forced to look elsewhere if it became apparent that Shodeen could not meet the contract occupancy dates. Shodeen alleges that considerable funds had been expended and contractual commitments made in good faith prior to any actual or constructive notice of the restricted status of the sewers in his area. Total out-of-pocket expenses alleged by Shodeen are approximately \$450,000 for soil tests, topographical surveys, traffic studies, real estate taxes, mortgage interest, architectural engineering and legal fees in addition to the cost of the land. Loss of potential profit is indeterminant, but is probably in excess of \$1,000,000. In addition, the record indicates losses to the City of St. Charles of tax revenue and potential employment.

Balancing a lack of environmental harm which would accrue due to the establishment of the proposed shopping center against the potential financial losses to Shodeen and the loss of tax revenue and potential employment to the City of St. Charles, the Board finds that denial of the proposed variance would result in an arbitrary and unreasonable hardship. The Board will therefore grant Shodeen's Motion for Expedited Consideration in this matter, and will grant the proposed variance from Rules 604, 951 and 962 of Chapter 3: Water Pollution Control Rules and Regulations, to allow sanitary sewer extensions tributary to the St. Charles Sewage Treatment Plant in St. Charles, Illinois. In its recommendation the Agency proposes to grant the variance on the condition that the City of St. Charles, which has been added as a party by the Board on its own motion, present a plan for eliminating all sanitary sewer overflows and take immediate measures to assure that the maximum practical flow is transported to the sewage treatment plant until such time as all sanitary sewer overflows can be eliminated. The Board finds that, when the City of St. Charles was joined into this action, the Board did not contemplate the City's participation beyond that of notice of the proceeding, since the action does affect its sewer system. Since the Board action did not contemplate any involvement other than notice, the Board can not now invoke conditions upon the City of St. Charles.

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

Mr. James Young concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 2ND day of November, 1978 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board