

ILLINOIS POLLUTION CONTROL BOARD
August 14, 1986

BRAVO-ERNST DEVELOPERS,)
)
 Petitioner,)
)
 v.) PCB 86-10
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY and COUNTY)
 OF DUPAGE,)
 Respondents.)

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on a January 16, 1986, Petition for Variance filed by Bravo-Ernst Developers ("Bravo-Ernst"). Supplemental filings were made by Bravo-Ernst on either the Board or the Illinois Environmental Protection Agency ("Agency") on March 5, 1986, March 31, 1986, April 10, 1986 and May 20, 1986. No hearing was held. The Agency Recommendation that the Board deny the requested variance was filed July 15, 1986.

Bravo-Ernst has requested a variance from 35 Ill. Adm. Code Section 309.241, to allow it to connect a proposed development, the Macedonian Heights Subdivision, to sewers owned by the DuPage Utility Company ("DUC") with ultimate discharge to the DuPage County Department of Public Works ("DPCDPW") Lisle-Woodridge sewage treatment plant.

The segment of the sewer system owned by DUC is presently on restricted status. During the period that Bravo-Ernst has owned the subdivision property the Lisle-Woodridge STP has been put on and taken off restricted status, but it is the current restricted status of DUC which now prevents sewer connections to the subdivision. The DUC system has been experiencing problems with broken sewers, basement back-ups, manholes surcharging and illegal downspout connections.

The Macedonian Heights Subdivision, as proposed, would be comprised of 12 single family dwellings located at the intersection of 59th Street and Dover in unincorporated DuPage County. The facts in this proceeding are extremely lengthy and convoluted but a brief description is appropriate. Bravo-Ernst purchased the property in question for development purposes on April 1, 1977. At that time neither the DUC sewers nor the DPCDPW sewage treatment plant were on restricted status. Also, Bravo-Ernst had been assured that DUC was capable and willing to accept sewage from the Macedonian Heights Subdivision (Petition,

Exhibit C). On March 30, 1978, Bravo-Ernst made formal application to DUC but the application was rejected. Bravo-Ernst filed an action before the Illinois Commerce Commission seeking an order requiring DUC to provide service. However, while that action was pending DUC's sewers were placed on restricted status. Bravo-Ernst's 1981 attempt to secure sewerage from the Lisle-Woodridge sewage treatment plant were similarly frustrated by the imposition of restricted status.

In evaluating a request for variance, this Board must balance any arbitrary or unreasonable hardship suffered by petitioner, if variance were denied, against the potential for environmental harm. The Board believes the Agency has succinctly stated Bravo-Ernst's hardship:

Bravo-Ernst has been unable to develop its property for the last nine years through no fault of its own...The developers of this tiny subdivision have become enmeshed in a bureaucratic morass of unusual complexity. They have been faced with two areas of restricted status, two state agencies and three utility companies. They have had to bear not only the carrying costs on this property and the costs of proceeding through the above-described maze, but the frustration of clearing each hurdle in their path only to find another one in their way. It is the agency's opinion that because of the exceptional circumstances involved in this case, if the developers could show that their proposed subdivision would not aggravate existing sewer problems then denial of this variance would constitute arbitrary and unreasonable hardship. (Recommendation, pp. 5-6)

The Board agrees that except for the environmental consequences, denial of variance would constitute arbitrary or unreasonable hardship.

The proposed Macedonian Heights Subdivision is located generally at the southeast corner of a residential area whose sewers flow to the northwest. In a 1978 Order (Petition, Ex. B), the ICC found that in dry weather, the sewage system runs at about 50% capacity; however, in wet weather, about five days per year, the system has a considerable overload problem which leads to sewage back-ups in the homes of the Meadows Subdivision (along the western edge of the service area). The Agency notes recent complaints of sewage back-ups in basements in the area. Also, the Agency contacted one of the complaining citizens who confirmed sewage back-ups as recently as November 1985.

Additionally, the Agency has been informed of manhole surcharging in the area. Bravo-Ernst's proposed development would be directly tributary to these problem areas.

In summary, the record discloses and the Board finds that basement back-ups and manhole surcharging in the Meadows Subdivision are pervasive and severe, that these problems continued as recently as two months before the present petition for variance was filed, and that Bravo-Ernst's proposed development would be directly tributary to the problem area and would exacerbate the problem. Further, the Board finds that the back-ups and surcharge problems are certain to continue as long as DUC fails to identify and correct the illegal sewer connections (sump pumps and drains) which cause the problem. The Board is aware that raw sewage back-up in a basement presents problems of the spread of disease and electrocution, as well as property damage. Regardless of the economic hardship suffered by Bravo-Ernst, the Board finds that its hardship is not sufficient to be arbitrary or unreasonable in light of the increase in the health and safety risk to the people in the Meadows Subdivision. Consequently, the Board, on balance, denies the petition for variance.

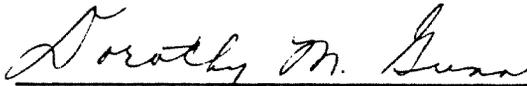
This Opinion constitutes the Board's findings of fact and conclusions of law on this matter.

ORDER

Bravo-Ernst Developers' request for variance from 35 Ill. Adm. Code Section 309.241 is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14th day of August, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board