

ILLINOIS POLLUTION CONTROL BOARD
September 18, 1975

SKYWAY REALTY,)
)
 Petitioner,)
)
 v.) PCB 75-249
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

The Petitioner, Skyway Realty, filed a petition for a sewer connection variance, which was received by the Illinois Pollution Control Board (Board) on June 23, 1975. Petitioner (Skyway) seeks a variance from Rule 951(a) of Chapter 3: Water Pollution Regulations of Illinois, to connect four (4) single family dwellings to the Village of Lansing sewer system. This system is currently under a sewer ban imposed by the Environmental Protection Agency (Agency) pursuant to Section 39 of the Environmental Protection Act [Il.Rev. Stat., 1971, Ch. 111 1/2, Sect. 1039], and Rule 962(a) of Chapter 3: Water Regulations. The ban resulted from an organic overload of the Lansing Treatment Plant. Skyway's initial petition was inadequate. Pursuant to a Board Order, Skyway filed an amended petition on July 16, 1975. An Agency Recommendation was received on July 31, 1975. No hearing was held.

Skyway response in its Amended Petition was inadequate and incorrect. The Board's Order of June 30, 1975, required Skyway to provide among other things, a statement of the biological condition of the receiving stream. Skyway, in its amended petition, merely advanced a simple assertion that the receiving stream, "... Is not polluted, has no septic condition and no smell." This is not correct. The receiving stream is the Little Calumet. A comprehensive biological survey of the Little Calumet conducted by the Agency on October 12, 1973, upstream and downstream of the Lansing outfall indicated a generally degraded stream condition. The Agency indicates that this survey remains typical of current stream conditions.

Skyway has failed to demonstrate that denial of a variance would create an unreasonable hardship. The Board is required when ruling on a variance, to balance environmental impact against hardship to the Petitioner. The Agency admits in its Recommendation that the grant of a variance here would have a minimal impact on the Little Calumet. However, the Agency also indicates this stream is already in poor condition. For its part, Skyway started construction of the homes in question in 1974, after being denied a sewer connection permit. Skyway thus proceeded with full knowledge of the sewer ban. Skyway now claims that the denial of a variance will impose a hardship by forcing it to evade the ban by constructing a separate sewer line from each home to the existing sewer at a cost of \$3000.

This course of action may be open to Skyway, but it has not shown that this cost is an unreasonable hardship. Moreover, the ability to evade a regulation is no justification for the granting of a variance.

Finally, any hardship here would be wholly self-imposed. The impending September, 1975, diversion of the Lansing flow to the Metropolitan Sanitary District of Greater Chicago will eliminate the organic overload situation which necessitated the ban and thus permit additional connections to the Lansing system. A delay for the short period of time remaining until the diversion will negate any need for Skyway to construct individual sewer lines.

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

ORDER

The Board hereby denies Skyway Realty a variance from Rule 951(a) of Chapter 3: Water Pollution Regulations of Illinois.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of September 1975 by a vote of 30.


Christan L. Moffett, Clerk
Illinois Pollution Control Board