

ILLINOIS POLLUTION CONTROL BOARD
January 17, 1974

GRIFFITH & HOLLEY)
PETITIONERS)
)
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v.) PCB 73-443
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ENVIRONMENTAL PROTECTION AGENCY)
)

CARL E. KASTEN, ATTORNEY, in behalf of GRIFFITH & HOLLEY
FRED HOPPER, ATTORNEY, in behalf of the ENVIRONMENTAL PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This case comes to the Board on Petitioners' petition for variance from a sewer ban placed on Carlinville, Illinois, by the Environmental Protection Agency pursuant to Chapter 3, Rule 921 (a) of the Water Pollution Regulations of Illinois. The Petition was filed on October 19, 1973. The Agency responded by its recommendation on November 26, 1973, with a recommendation that a variance from Rule 901 (a) of Chapter 3 be denied, and that relief from the sewer ban be denied unless Petitioners show the transport capacity of the High Street sewer is adequate to handle its present load and that which will be generated by the nursing home, and that the future residents of the facility would be persons already serviced by the Carlinville sewage treatment plant. Hearing was held December 3, 1973. Members of the public were present to object to the grant of a variance.

A motion was made to strike the recommendation of the Agency, as the recommendation was filed later than the 21 days required by the Procedural Rule 703 (a). This motion is denied. In City of Carbondale v. Environmental Protection Agency, PCB 73-430, the same contention was pressed, and the Board held that unless a showing of prejudice is shown by the Petitioner, the recommendation will not be stricken. The Board has here determined that Petitioners are not prejudiced by the late filing of the recommendation.

Petitioners are two married couples in partnership for the purpose of owning a certain tract of land at 826 High Street, Carlinville, Illinois and a corporation whose stockholders are Mrs. Holley and Mr. and Mrs. Griffith, which is incorporated for the purpose of operating the Friendship Nursing Home at 826 High Street. The Friendship Nursing Home is presently ready for occupancy and is a forty-nine bed facility.

The chronology of events in this action is vital to our determination in this case.

In November of 1972 Petitioners decided to carry out a plan to build a nursing home on High Street. Also during that month, Messrs. Griffith and Holley went to Springfield to talk to various state agencies as to the requirements to build a nursing home in Carlinville. In December of 1972 Mr. Holley carried around a petition (Pet. Ex. 1) to be signed by residents living within 400 feet of the proposed site, stating there were no objections to a 49-bed nursing home. This petition was submitted to the city council in Carlinville, which approved Petitioners' request for leave to build the home on April 2, 1973 (Pet. Ex. 1). On April 4 application was made to the Comprehensive Health Planning Agency, in order to allow for a capital expenditure for which Social Security would give approval. To achieve this approval, proof is necessary that there is need for nursing care facilities in the area. Petitioners submitted two letters to verify the need for more nursing care beds. Petitioners' Exhibit #10 is a letter from the State Department of Public Health certifying to the need for 388 beds in the Litchfield Service Area, in which Carlinville is located. Petitioners' Exhibit #18 is a letter from the County Department of Public Aid certifying to the need of 180 beds in Carlinville. On May 5, 1973, Petitioners signed a contract to build the facility (Pet. Ex. #2). On May 7 approval was received from the Comprehensive Health Planning Agency to build the facility. On Friday, June 1, the Environmental Protection Agency sent a notification letter to Carlinville informing the governing council that no more sewer tap-ons could be allowed to the sewer system that feeds the Carlinville sewage treatment plant. On June 6 the city granted Petitioners a sewer permit and Petitioners tapped into the High Street sewer. On October 18, and after consultation with the Agency, and at the advice of Ms. Barbara Sidler, attorney for the Agency, Petitioners filed this variance petition. On November 27, 1973, the State Department of Public Health certified the structure as adequate for a nursing home.

The land the home is built on is a parcel 144 feet front footage by 186 feet (R. 26). It was purchased at a cost of \$6500 (Pet.) by Mr. Ted Holley. The cost of constructing the facility was \$325,000 (R. 32). Another \$8000-10,000 was expended out of pocket to cover initial expenses for the project cost (P. 32). Another \$20,000 was spent to supply and furnish the home (R. 37). This brings in a total of \$361,500 that Petitioners have committed to the venture.

Testimony showed a great need for nursing home facilities in the area. Margaret Bloomfield is a caseworker for the Department of Public Aid for the county (R. 106). She testified that in 1971 new standards for nursing home facilities were enacted (R. 108). Nursing homes in old structures were to be phased out by granting these homes provisional licenses to operate (R. 108). These regulations also barred recipients of public aid to enter these homes at all. 65% of those in nursing home facilities in the county are public aid recipients (R. 109). The situation is so tight that many of the public aid recipients are being sent to homes out of the county (R. 109). Even the county nursing home does not meet the requirements as set forth by the state (R. 109). After the provisional licenses expire in 1974, no nursing home in the town will be able to

have nursing care patients (R. 110). The town will have 145 beds phased out in 1974 (R. 109). There are no empty beds for nursing care patients available in the county at this time (R. 112). Mrs. Bloomfield testified that in her opinion the opening of the home in question is an absolute necessity (R. 113). The bulk of those entering the home will be transferring from those already in the city (R. 117).

Mrs. Beatrice Ruth Lick of Carlinville testified that her 73 year old mother lives with her. She has been trying to place her in a home for two months (R. 81-82) but has been informed that no beds were available in the county (R. 84). She applied to the Woodlawn Nursing Home but was informed there that they could not take public aid cases (R. 82).

The Agency recommends denial of the variance basically because of the overloaded conditions at the Carlinville sewage treatment plant. This plant is a trickling filter facility, with a design average flow of .55 mgd and a design maximum flow of 1.01 mgd (Agency Rec. P. 2). The plant bypasses sewage at two points. The first is about 200 feet outside the plant and diverts raw sewage into the Blackburn Branch of Macoupin Creek (R. 148 (R. 175) and the second after primary treatment in the clarifier (R. 149). Data from Agency samples are as follows:

Agency Effluent Grab Samples (Agy. Rec. P. 2)

<u>Date</u>	<u>BOD</u> (mg/l)	<u>Suspended Solids</u> (mg/l)	<u>Fecal Coliform</u> (Counts/100 ml)
Mar 8/73*	312	80	88,000
Mar 13/73	33	39	180,000
Aug 7/73	60	27	750,000
Sep 24/73	27	41	700,000

* Raw sewage bypassing occurring

This data shows a failure of the plant to meet the requirements of Rule 405 of Chapter 3 and of Rule 404 (a) to meet the 30 mg/l BOD and 37 mg/l suspended solids standards consistently. Testimony by James Leimicke (R. 150) showed discoloration of the receiving stream and visible fecal solids in the water indicate a violation of Rule 203 (a) of Chapter 3.

The plant's design calls for a population equivalent of 5500 and a hydraulic loading of 550,000 gpd. Reports filed by the city to the Agency indicated continued loading in the area of 1.0 mgd (Resp. Group Ex. #3) and an average of 964,000 gpd (Agency Rec. P. 3). The Agency contends, and this is not rebutted, that under the Environmental Protection Act it cannot issue a permit for a sewer extension to an overloaded plant (Agency Rec. P. 4).

There is a dispute as to the gallonage that the home will produce. The Agency contends that it will be 125 gpd per bed, based on the Man-

ual of Septic Tank Practice, published by the U.S. Department of Public Health. When Petitioners examined James Leimicke of the Agency, he testified to his belief that the facility would use 75-100 gpd per bed (R. 170).

There are plans for upgrading the Carlinville plant. Laurence Boente, representing the mayor of Carlinville, testified that plans have been approved for funding of an upgrading of the plant. Contracts are to be let in the spring of 1974 (R. 74), depending on the availability of federal funds. Carlinville is 49th on the priority list and both Mr. Boente (R. 89) and Mr. Leimicke (R. 102) agree that the town will get funding.

The Agency also contends that the High Street sewer fronting Petitioners' facility is inadequate to carry the flow that it would generate. Citizens testified as to their problems with the sewer. Carmelita Selvo (R. 184), Lois Undercoffer (R. 191), and Edwin Walter (R. 193) testified as to one or two backups in the sewer in the last three years. The hearing officer in his statement concerning the credibility of witnesses filed December 18, 1973, stated that this testimony was of a very general nature, not leading to an understanding of where their problems originated and how Petitioners' variance would affect them.

Charley Jackson of the Carlinville Water and Street Department testified that the sewer in question is an 8" sewer that feeds a 10" sewer that flows into a 12" sewer that ends in a 21" main. From observation and a test run on the flow in these sewers starting at Buchanan Street, it was indicated that there was no problem with its flow (R. 121). There also have been no complaints registered with his department in 3 1/2 years for this area (R. 122).

Petitioners' Exhibit #20 is a letter from the city engineer, Harold D. Meisenheimer, stating that an 8" sewer has the capacity to serve 350 lots or 1200 P.E. The letter goes on to say, and there is no testimony contradicting this, that the sewer now serves 50 homes.

It seems from the record that Petitioners never applied for or were granted a permit as required by Rule 901 (c) of Chapter 3. The Agency contends that had Petitioners done so, this situation would not have reached its present stage, as they would never have been granted a permit.

The Board will allow a variance from the Agency's sewer ban. This is based not only on the financial hardship that Petitioners will undergo if not allowed to operate, but also because the evidence has shown a severe need for this type of facility in Carlinville. The hardship to the senior citizens of the community outweighs the lack of Petitioners' checking into the need for a permit or other culpable acts by Petitioners, and the environmental impact of the facility's discharges. The quality of life for these people, who are least able to care for themselves, should be protected. Petitioners have a facility which will meet the needs of these people. To deny this variance would put a great hardship on the community. The need for more nursing bed facilities out-

weighs the harm that the source will cause (C-W Enterprises v. Environmental Protection Agency, PCB 73-205).

The evidence also shows that most of the residents will come from the nursing homes in the area that will be closing down because they will lose their provisional licenses, and from the city of Carlinville. Where a new source to an overloaded plant will house people already served by the plant, a variance may be granted (New Hope Missionary Baptist Church v. Environmental Protection Agency, PCB 72-417; Foss Park District v. Environmental Protection Agency, PCB 72-447; and Fields, Goldman & Magee v. Environmental Protection Agency, PCB 73-362). Petitioners were not sure how many residents would be from the area serviced by the Carlinville plant, but the Board suggests that the population of the home be restricted so that 90% of it consists of those already served by the Carlinville sewage treatment plant.

The testimony about the local sewer indicates to the Board that it is adequate to meet the needs of the facility. Testimony shows that to cut down on water use, paper plates, etc., would be used at the home. The use of such disposable products will be ordered.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

Petitioners are granted a variance from the sewer ban order of the Illinois Environmental Protection Agency dated June 1, 1973, to connect a nursing home facility located at 826 High Street, Carlinville, Illinois, to the sanitary sewer system, subject to the following condition:

1. The operators of the facility shall use disposable paper products wherever possible and reasonable, in order to cut down the use of water in the subject facility until such time as the Carlinville sewage treatment plant is upgraded to handle the additional load.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 17th day of January, 1974, by a vote of 5 to 0.

