ILLINOIS POLLUTION CONTROL BOARD
August 13, 1971

HOWARD WEINSTEIN AND BARBARA WEINSTEIN, his wife	)	
	)	#PCB71-107
v.	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
ROBERT D. CHARLES	)	
	)	
v.	)	#PCB71-122
ENVIRONMENTAL PROTECTION AGENCY	)	
BARTOLOMEO BIONDI AND CAROLINE BIONDI, his wife	)	
	)	
v.	)	#PCB71-192
ENVIRONMENTAL PROTECTION AGENCY	)	

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DELBERT HASCHEMEYER, ATTORNEY FOR ENVIRONMENTAL PROTECTION AGENCY

ROBERT D. CHARLES, PRO SE
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THEODORE A. PASQUESI, ATTORNEYS FOR PETITIONERS BARTOLOMEO BIONDI, ET AL

OPINION OF THE BOARD (BY MR. KISSEL):

The petitioners in the above-captioned cases have all filed petitions for variance with the Pollution Control Board asking that they be permitted to build a house in the area served by the North Shore Sanitary District (the "District") and connect to the sewers of the District. They seek a variance from an order of the Board entered in the case of the League of Women Voters, et al v. North Shore Sanitary District, PCB 70-7, 12, 13 and 14, dated March 31, 1971, which order provides, inter alia, the following:

> "7. The District shall not permit any additions to present sewer connections, or new sewer connections to its facilities until the District can demonstrate to the Board that it can adequately treat the wastes from those new sources so as not to violate the Environmental Protection Act or the Rules and Regulations promulgated thereunder."

Each of the cases considered in this opinion present similar facts, and a short recitation of the facts is in order here.

In the Weinstein case (PCB71-107), the petitioners bought a lot in Highland Park on March 30, 1971. Prior to that they had had plans and specifications drawn for a home to be built, and although they thought it would be on the present lot, they did not have title in hand until the day before the Board's order from which they seek a variance was issued. In their petition, they stated that they had entered into a binding contract to sell their house, but at the hearing, the purchasers in that transaction agreed that the Weinsteins would not have to sell their house. There is also an allegation that Mrs. Weinstein has a chronic knee problem and they seek to move into a ranch-type home, which the new one was supposed to be. The present home in which they live has multi-levels.

In Charles case (PCB71-122), the lot was purchased in Knollwood in late 1968. Mr. Charles did nothing between the time he bought and paid for the lot until now, except for negotiating a construction loan which was done after March 31, 1971. He says that the hardship imposed on him will be the loss of the commitment of the construction loan and the lack of a place to live, since he believes that his present house, being in an area which is zoned commercial, will be torn down in the near future.

In the Biondi case (PCB71-192), the lot was acquired in April of 1970, and according to the Petition for Variance, nothing was done toward constructing the building, or even planning it, except to get a letter in January, 1971 from the City of Highwood that committed the City of Highwood to allow the connection of the Biondi home, when built. No other hardship is alleged.

In deciding any variance case, the Board must determine from the evidence in the record whether compliance with the law or the regulations or orders of the Board will impose an "arbitrary or unreasonable hardship." In making this determination, the Board employs a balancing process that is the harm done to the environment if the variance is granted versus the benefit received if the variance is denied. Merely proving an inconvenience or a slight hardship is not enough to be granted a variance by this Board. In fact, the hardship must be substantial for it to outweigh the damage to be caused by its allowance. In the three cases to be decided in this opinion, the facts are relatively the same. A person buys a lot, does virtually nothing to begin construction, then hears of the sewer ban and seeks a variance. These cases are governed by the rule set forth in the Monyek case which denied a variance to an individual who wanted to build a home in the District's area. There the Board properly reasoned that the test of whether variances should be granted is as follows:

"In cases where a house has been completely built before the date of the order (March 31, 1971) or where substantial steps toward completion have been taken we can clearly judge the hardship of non-connection to be unreasonable."

In none of these cases, has there been, in the opinion of the Board, "substantial steps taken toward completion". Just holding the lot is not enough to give a person the right to build in opposition to the sewer ban.

This Board has granted some variances because, notwithstanding the fact that substantial steps had not been taken, the petitioner showed an individual hardship which substantially outweighed the harm to be caused by allowing the sewer connection. But such is not the case here. All of the people here are required to delay the construction of their home for a time. This is not hardship enough to allow the degradation of Lake Michigan and the Skokie River to continue.

One other point should be made. The Board has scheduled inquiry hearings into the entire question of "sewer bans". The petitioners should participate in those hearings to further express their views, if they so desire. It may be that the hearings will produce regulations which, in fact, lift sewer bans, and if they do, the decision of the Board at this time will not prejudice the later granting to the petitioners of the right to connect to the District's sewers.

The variances in the following cases are hereby denied:

1. Howard Weinstein and Barbara Weinstein, his wife v. Environmental Protection Agency; #PCB71-107;

2. Robert D. Charles v. Environmental Protection Agency; #PCB71-122;

3. Bartolomeo Biondi and Caroline Biondi, his wife, v. Environmental Protection Agency; #PCB71-192.

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

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion on the 13th day of August, 1971.

Regina E. Ryan