

ILLINOIS POLLUTION CONTROL BOARD
September 23, 1983

TIMBERLAKE ESTATES)
SANITARY DISTRICT,)
)
Petitioner,)
)
v.) PCB 83-82
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board upon a July 11, 1983 petition for variance from 35 Ill. Adm. Code 309.241(a) filed by the Timberlake Estates Sanitary District (TESD) which requested that the Petitioner be allowed to connect 33 single family homes, the Emmanuel Baptist Church and Christian School to a sewer which is tributary to the DuPage County Department of Public Works' Marionbrook treatment facility. The Marionbrook plant was placed on restricted status on April 30, 1979 by the Illinois Environmental Protection Agency (Agency) primarily because of hydraulic overloading and effluent quality problems due to excessive inflow and infiltration. The variance request filed by the TESP is essentially the same as previously requested by the County of DuPage and Charles R. Specking, et al. in PCB 81-126 which was dismissed without prejudice on February 4, 1982 at the request of the petitioners. The Agency filed a Recommendation on August 11, 1983 which recommended that variance be granted. No hearing has been held in this matter.

The Petitioner, the TESP, was recently organized and established as a sanitary district on May 3, 1983 pursuant to the Sanitary District Act of 1936, Ill. Rev. Stat. 1981, ch. 42, sec. 411.99 et seq. (See: Exhibit C). The properties encompassed by the TESP are all located in Downers Grove Township in Du Page County, Illinois. The Hinsdale Timberlake Estates subdivision was platted in 1954 and the first homes were constructed in 1957. (Pet. 3; see: Exhibits A and B). The Emmanuel Baptist Church has 350 members with 150 students in attendance at its affiliated Christian School. Sewer flows from this church and school are estimated to be equivalent

to flows from 10 single family homes. (Pet. 3). The TESD has estimated that the requested connection will result in an initial daily quantity of approximately 13,400 gallons per day of raw domestic sewage or 134 population equivalents (PE) */ (Pet. 4). Under present zoning, there will be no industrial or commercial wastes discharged. The raw wastewater is estimated to have a flow of 0.013 million gallons per day; BOD of 23 lb/day and suspended solids of 27 lb/day. (Pet. 4).

The Petitioner has indicated that the requested connection is necessary because many of the existing homes are served by defective or marginal septic systems which cause environmental problems. (Pet. 10-15; See: Exhibits D through S-2). In 1981, the Du Page County Health Department conducted inspections which revealed that 13 homes located in the Hinsdale Timberlake Estates subdivision had malfunctioning private sewage disposal systems and stated that, because of the lack of the requisite public sewers, it was unlikely that repairs alone could correct such malfunctions. (See: Exhibits Q-1 and Q-2).

The Petitioner has also stated that: (1) although the slough (i.e., Lake Timberlake) is "posted" by Du Page County Health Department, children often swim in the lake; (2) sewage backups into basements and living quarters frequently occur; (3) unfavorable soil conditions exist (thereby causing periodic storm-water inundation in low-lying areas); and (4) failures of even "high ground" septic systems indicate that some tile fields may have been laid in solids that are unsatisfactory to support the systems. (Pet. 10-14). These environmental hardships tend to support the Petitioner's contentions that the requested connections are necessary in the present case.

The TESD has noted that, pursuant to an order issued on December 4, 1980 by the Eighteenth Judicial Circuit in People of the State of Illinois v. County of Du Page (Docket Number 80 MR 432), Du Page County was ordered to construct and operate an interim package treatment plant (i.e., the Knollwood interim facility). The construction of this interim plant, along with the interceptor tributary to the facility, will allow Du Page County to reduce the loading at the Marionbrook plant by diverting a portion of the wastewater flows from the Marionbrook facility to the Knollwood interim treatment plant. (Pet. 7).

*/ On page 2 of the Variance Petition, the Petitioner estimates that the proposed sewerage will handle initial flows of 138 population equivalents (PE). The Agency's Recommendation also refers to the 138 PE figure. However, on pages 4 and 6 of the Variance Petition, the Petitioner refers to a figure of 13,400 gallons per day which would indicate that the 134 PE figure (which is utilized in a mathematical formula on page 6 of the Variance Petition) is actually accurate.

On January 7, 1982, the Circuit Court amended its order in 80 MR 432. In this amended court order, various conditions are mandated for those who did not hold a permit from the Agency as of the date of the original Court Order (i.e., December 4, 1980) until such time as the Knollwood permanent facility is completed, which includes the Petitioner. (See: Willowbrook Motel Partnership v. IEPA and The County of Du Page, PCB 81-149, July 14, 1983).

Three of the most important court-imposed conditions are that new connection requests may be: (1) considered only from those who have received a variance from the Board allowing the Agency to issue a sewer permit; (2) filled only to the extent of those PE earned under the provisions of the specified allocation system; and (3) filled only to the extent of those PE off-loaded from the Marionbrook sewage treatment plant. (Rec. 2-3).

In its Recommendation, the Agency notes that it is TESD's responsibility to obtain, at the discretion of the Du Page Department of Public Works, the appropriate number of PE's necessary for its project if the requested variance is granted. (Rec. 3).

The Petitioner has stated that its proposed construction of sanitary sewers will proceed about the same time that Du Page County is working on the construction of its new interceptor sewer "so that, when the Department's interceptor becomes operational, Petitioner will be ready to immediately ask permission to connect (operate) its new sewerage to the system tributary to Marionbrook." (Pet. 7). TESD asserts that the environmental impact on Sawmill Creek, the receiving stream, from the Petitioner's planned discharges will be minimal. (Pet. 9). The Petitioner notes that Du Page County plans to phase out the Marionbrook plant and replace it with a permanent new regional Knollwood facility which is scheduled to become operational in the middle to late 1980's depending on funding. (Pet. 5-7).

The Petitioner has indicated that the cost of its proposed sewerage project will be approximately \$336,000.00. In addition to the project cost, the cost to connect each property to the public sewer will range between \$750.00 and \$1,250.00 depending on the location of each septic tank. The entire construction cost of the Petitioner's sewerage project will be paid by TESD with funds generated by either general obligation or revenue bonds or by special assessments to the property owners (Pet. 8). Du Page County, which is bearing none of the actual project costs, is planning to assess a connection

("tap-on") fee of about \$600.00 per single family dwelling. The individual property owners will be solely responsible for paying this tap-on fee and for the expenses of disconnecting their homes from the septic tanks currently in use. Each home will utilize its own private well for domestic water supply. (Pet. 8).

The Agency notes that the interim Knollwood facility was allowed to provide limited growth while the permanent Knollwood plant is in the process of being designed and constructed. Moreover, the Agency emphasizes that the completion of the interim Knollwood plant and the Knollwood East Interceptor will not result in the Marionbrook plant coming into compliance nor will it result in the restricted status being lifted on Marionbrook. (Rec. 4).

However, the Agency has concluded that "the public health hazard of the malfunctioning septic systems is such that granting a variance to allow connection to a wastewater treatment facility which is currently overloaded but anticipating relief in the form of off-loading would be the lesser of environmental evils." (Rec. 4).

Accordingly, the Agency has recommended that the Board grant the Petitioner's requested variance, conditioned upon compliance with the terms of the Circuit Court's order in 80 MR 432.

The Board finds that denial of the requested variance would cause an arbitrary or unreasonable hardship and, in particular that, on balance, the connection to the treatment facility would result in less of a threat of environmental harm than the continued operation or upgrading of the septic systems. Thus, the Board concludes that variance should be granted. However, the Board will not include the specified condition requested the Agency. (See: Board Orders dated November 19, 1981 and January 7, 1982 in Willowbrook Motel Partnership v. IEPA and the County of Du Page, PCB 81-149).

This Opinion constitutes the Board's findings of fact and conclusion of law in this matter.

ORDER

The Timberlake Estates Sanitary District is hereby granted a variance from 35 Ill. Adm. Code 309.241(a) to allow connection of 33 single family dwellings, the Emmanuel Baptist Church and Christian School to a sewer which is tributary to the Du Page County Department of Public Works' Marionbrook treatment facility, subject to the following conditions:

1. Before any sewerage connections are actually made, the Timberlake Estates Sanitary District shall have obtained all the requisite permits from the Agency.
2. Within 45 days of the date of this Order, the Timberlake Estates Sanitary District shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of the variance. Said Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) _____, hereby accepts and agrees to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 83-82 dated September 23, 1983.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 23RD day of September, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board