

ILLINOIS POLLUTION CONTROL BOARD  
July 9, 1981

CENTURY 21 AG REALTORS AND ST. CLAIR TOWNSHIP, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 81-8  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

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

This matter comes before the Board on the petition for variance of Century 21 AG Realtors (Century 21) and St. Clair Township (St. Clair) filed January 29, 1981 and amended March 18, and April 13, 1981. (St. Clair was joined as a party pursuant to the Board's Order of February 5, 1981.) Variance is sought from Rule 962(a) of Chapter 3: Water Pollution to allow issuance of sewer construction and operation permits for a proposed multi-phased condominium development to be located in St. Clair County. In its Recommendation of June 1, 1981, the Illinois Environmental Protection Agency (Agency) states that the hardship shown if variance is denied "will be minimal, if any", but nonetheless recommends that variance be granted. Hearing was waived, and none has been held.

Century 21 is participating in a proposed plan to develop the 130 unit "San Carlos Condominium Development" construction of the first phase, the 25 units for which this variance is sought, was originally projected to begin March 15, 1981 with the final units of this first phase to be completed by September 15, 1982. Each unit would add 300 gallons per day (3 P.E.) of ordinary domestic sewage to St. Clair's sewer system, which is tributary to the St. Clair Township Lincolnshire Treatment Facility (Lincolnshire).

Lincolnshire was placed on critical review May 26, 1978, as its loadings were then 96% of its design capacity of 1.0 million gallons per day. On June 15, 1979, the plant was placed on restricted status based on the determination that the load tributary to the plant was 112% of its design capacity. In addition, St. Clair believes its sewer system is subject to heavy infiltration and inflow during wet weather periods; during such periods, the plant discharges effluent into Loop Creek and often fails to meet the 10/12 mg/l standard for BOD<sub>5</sub> and suspended solids contained in its NPDES permit. St. Clair has, however, been engaged in the process of upgrading and expanding the Lincolnshire plant, and has been awarded a Step 2-3 federal construction grant. Construction is anticipated to begin in the summer or fall of 1981 with final completion expected one year later.

Century 21 states that there are two alternatives to a direct hook-on to Lincolnshire. The first, construction of treatment units on each lot, is said to be feasible. Century 21 believes that, while connection to the upgraded Lincolnshire would eventually occur, due to funding limitations it could not be expected to occur in less than 10 years, and would in 1991 cost St. Clair taxpayers and San Carlos residents \$120,000. The second option is installation of a septic tank and buried sand filter system to serve all 25 units, at an initial cost in excess of \$35,000 and yearly operational costs of \$1,200. Construction and operation of this system would require formation of a utility company pursuant to ICC rules, with its attendant difficulties.

Century 21 alleges that delay in initiation and completion of this project for 1½ years would increase its costs approximately \$90,000 in interest expense, based on an anticipated financing of \$600,000 for proposed realty acquisition, and \$23,000 in increased construction costs based on a 10% inflation rate. It states that this would increase the cost for each lot by \$4,640, rendering the lots unmarketable. Should this occur, it would lose the benefit of \$7,500 already expended in development fees. In making its hardship presentation, Century 21 has not alleged that it had begun any work on this project prior to imposition of restricted status in June, 1979, and does not state when it made the expenditures of \$7,500.

While the Agency believes that Century 21 has shown only minimal hardship, it recommends grant of variance based on the failure of other permittees to utilize connection permits, P.E. loadings for which were included in the Agency's computations regarding loading to the Lincolnshire plant. In further support of this Recommendation, the Agency notes that it has received no reports of sewer overflows on the sewer trunk to which petitioners' flow would be tributary.

This record does not support grant of variance as requested. As the Board has recently stated, the hardship alleged here is that which restricted status was designed to impose--"a moratorium on new construction, planned but not started, which would create additional loading to an overloaded sewer system and/or sewage treatment plant." Crook Development Co. et al. v. IEPA, PCB 80-230 (June 10, 1981). The showing of arbitrary or unreasonable hardship is indeed minimal.

The Board must have proof, not mere speculation, as to whether connection permits already issued by the Agency will continue to remain unused, or evidence of sufficient hardship, in order to establish a proper basis for considering grant of variance for issuance of a permit for operation of new sewers. Variance from Rule 962(a) is therefore denied. The Board notes that Century 21 is free to file another petition with new facts.

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

ORDER

Petitioners are denied variance from Rule 962(a) of Chapter 3: Water Pollution to allow issuance of sewer permits for 25 condominium units to be known as San Carlos Condominium Development to be located in St. Clair Township.

IT IS SO ORDERED.

Mr. Anderson abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 9<sup>th</sup> day of July, 1981 by a vote of 7-0.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board