

ILLINOIS POLLUTION CONTROL BOARD  
June 5, 1986

LAMPLIGHTER REALTY & )  
DEVELOPMENT COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB 83-157  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon the May 7, 1986 filing by Lamplighter Realty & Development Company ("Lamplighter") of a motion to clarify the Board's Orders dated February 22 and March 6, 1984(56 PCB 225, 57 PCB 21). The Illinois Environmental Protection Agency ("Agency") filed its response on the morning of May 22, 1986. The Board by Order of May 22, 1986 ordered Lamplighter to submit a proper affidavit for its motion to clarify and requested that Lamplighter file a reply to the Agency's response. The affidavit and the reply by Lamplighter were filed with the Board on June 2, 1986.

Previously, Lamplighter was granted variance from 35 Ill. Adm. Code 309.241(a), restricted status, as it related to the Marionbrook Waste Treatment Facility ("Marionbrook"). Variance was needed so Lamplighter could develop its 95 acre planned unit development. The result of the grant of variance was to enable the Agency to issue sewer and connection permits for up to 550 population equivalents (PE) for the development.

Since the time of variance issuance, Lamplighter entered into an agreement to sell the first parcel in the development to Adventist Living Center, Inc. ("Adventist"). Adventist applied to the Agency for a permit to construct and to connect a lateral sewer extension which would provide sewer service for Adventist's nursing home. The Agency granted a construct only permit, denying an operating permit (December 19, 1985). Apparently, Adventist chose not to appeal.

Lamplighter represents that the Agency will not issue an operating permit to Adventist until (1) the Knollwood wastewater treatment plant is operating, or (2) Adventist obtains a variance for itself, or (3) the Board decides that Adventist can use some of the 550 PE capacity allotted to Lamplighter.

The Knollwood plant is scheduled to begin operation in the fall of 1986. Meanwhile, Adventist has been constructing the

nursing home and is committed to its completion by the end of July, 1986 with occupancy on August 1, 1986. Lamplighter asserts that Adventist cannot wait for Knollwood to begin operation and that a "whole new variance proceeding would be a waste of...time and resources..." (Motion at 4).

The Agency correctly argues that it does not have the authority to transfer PE allocated by a variance to an assignee of a petitioner; that such authority rests solely with the Board (Agency Response at 2). The Agency states that it joins with Lamplighter in asking for clarification. The Agency would like a determination of whether sewage capacity is generally transferable by permit within a planned unit development and whether the Board intended so in this case. Id.


The Board hereby grants the motion for clarification pursuant to 35 Ill. Adm. Code 103.241(a). In determining that denial of variance would impose an arbitrary or unreasonable hardship, the Board's Opinion noted the loss of land sales by the developer as an element of hardship, and therefore indirectly contemplated the occurrence of such sales once variance was granted. To fail to allow transfer of PE from the developer to the purchaser in this instance would render the variance largely useless to Lamplighter. Therefore, the Board finds that Lamplighter's sewage capacity is transferable to Adventist and any subsequent purchaser(s).

In so finding, the Board is making no general finding of transferability; if transferability is an issue, it should be specifically addressed in the records in future proceedings of this type to allow the Board to make and articulate proper case-by-case findings.

To implement this Order, and noting that a construction permit has already issued, the Agency is directed to issue a permit for sewer extension and connection to Adventist in the amount of 188 PE, such amount to be subtracted from the total of 550 PE allowed to Lamplighter. Lamplighter will then have 362 PE left for use within its planned unit development.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 5<sup>th</sup> day of June, 1986, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board