

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1971

Robert C. Wagnon)

v.)

PCB 71-85)

Environmental Protection Agency)

Robert C. Wagnon, Pro Se

Lee Zelle, Attorney for Environmental Protection Agency

Dissenting Opinion by Mr. Kissel:

I disagree with the majority of the Board in this case.
I would grant the variance.

The record indicates that the Petitioner bought a lot over twenty years ago, and waited until recently (after he was discharged from the Army) to develop the property. It is undisputed that the Petitioner entered into a contract for the construction of his home and had paid \$500 for the preparation and completion of plans and specifications for the construction of his home. This commitment by the Petitioner seems to fall clearly into the rule of the majority of the Board found in the Monyek case, recently decided by the Board:

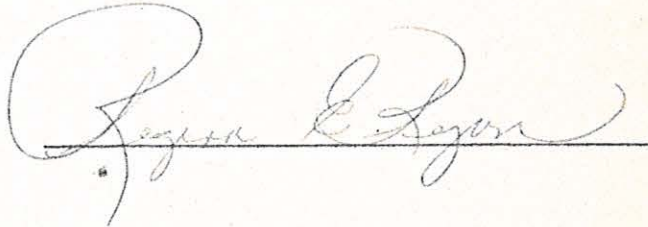
"In cases where a house has been completely built before the date of the order (March 31, 1971) or where substantial steps toward completion have been taken, we can clearly judge the hardship of non-connection to be unreasonable." Monyek v. Environmental Protection Agency, PCB 71-80, dated July 19, 1971.

The sole question in this case, as is true with other cases of this kind, is whether the Petitioner had taken "substantial steps toward completion" of his home. I do not think

that this requires that the Petitioner had actually started the construction of his house because an individual can commit himself "substantially" before the ground is even touched. Rather, I think that we must look at each case and see what steps, even before construction, an individual had taken before the March 31 date. In this case, plans and specifications were drawn and paid for, and even more, the Petitioner had entered into a contract with the builder to have the house constructed. The Petitioner had done everything he could to get the house built. Are we to penalize this person because the builder did not walk out to the property and scoop a shovel of dirt? I don't think that this Board should make such fine, and unconstitutional, distinctions.

I would grant the variance.

I, Regina E. Ryan, Clerk of the Board, certify that Mr. Richard J. Kissel submitted the above dissenting opinion on the 5th day of August, 1971.



Regina E. Ryan