

2. The Habermachers are the current owners of a lot and home in Albemarle County, designated as Tax Map #058CO-11, 2711 Gray Fox Spur, Charlottesville, Virginia 22901 (the "Property").

3. On July 23, 1984, private sector evaluators completed a site and soil evaluation of the subdivision.

4. On June 27, 1985, the subdivision developer applied for an onsite septic system permit. After an evaluation of the site and soil, the Albemarle County Health Department (ACHD) issued a permit.

5. On September 13, 1985, the ACHD inspected and approved the onsite system construction.

6. On October 3, 1985, the installation contractor submitted a Completion Statement to the ACHD.

7. On October 4, 1985, the ACHD issued the Operation permit to the prior property owner.

8. The Habermachers acquired the Property in 2009.

9. On March 1, 2012, the ACHD visited the Habermachers to evaluate the onsite system in response to the Habermachers' contractor reporting effluent on the ground surface. At that time, the ACHD determined that property improvements, installation of utility lines, and local ordinance stream setback requirements had reduced options for onsite system repair.

10. On March 8, 2012, the Habermachers' agent submitted an application for a septic system repair.

11. On March 16, 2012, the ACHD, issued a septic repair construction permit. The design consisted of five trenches to be installed between the existing failing trenches.

12. On July 27, 2012, the Habermachers' contractor installed the repair drainfield.

13. On March 12, 2013, the installation contractor notified the ACHD that he observed effluent on the ground's surface.

14. On March 19, 2013, the ACHD and the installation contractor inspected the trenches and found that all five lines were saturated. A reassessment by the ACHD on May 3, 2013 revealed that trenches 1 and 2 were dry and that trenches 3 and 4 were saturated.

15. Following his inspection on July 2, 2013, Virginia Tech soil scientist Steve Thomas recommended an alternative onsite sewage system (AOSS) consisting of pretreatment of effluent followed by dispersal to a drip field.

16. On September 9, 2013, the Habermachers submitted the repair application for the AOSS. Construction of the AOSS was completed and certified by the Habermachers' contractor on December 20, 2013, and a completion statement was submitted to the ACHD on January 28, 2014.

17. On April 24, 2014, the ACHD issued an operation permit for the AOSS to the Habermachers.

CONCLUSIONS OF LAW

18. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse payment from the indemnification fund complies with the requirements contained in Va. Code § 32.1-164.1:01.

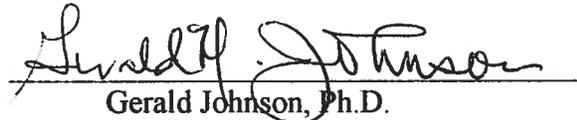
19. The Board finds that the ACHD should have undertaken additional evaluation of the soil in the initial backyard repair area (repair lines between existing trenches) where there were indications of "redox" and water table issues and that failure to do so was negligent.

20. Because the final repair (installation of the AOSS) would have been required even if the backyard repair had not been installed and failed, reimbursement for those expenses is not appropriate.

21. The Board awards reimbursement from the indemnification fund for those costs directly required and expended by the Habermachers for the installation of the failed initial backyard repair (repair lines between existing trenches).

WHEREFORE, for the foregoing reasons, the Board hereby *reverses* the decision of the State Health Commissioner to *deny* any indemnification award to the Habermachers for the failed backyard repair (repair lines between existing trenches) and awards the reasonable costs to install the conventional onsite system repair as completed on July 27, 2012; and *upholds* the decision of the State Health Commissioner to *deny* any indemnification for the costs of the installation of the AOSS as completed on January 28, 2014.

If the Appellants wish to appeal this ORDER, they may do so pursuant to Va. Code § 2.2-4000 et seq. and the Rules of the Supreme Court of Virginia by: (1) filing a Notice of Appeal with the Secretary of the Board within thirty (30) days of service of this ORDER as required by Rule 2A:2; and (2) filing a Petition for Appeal in the Circuit Court within (30) days of filing the Notice of Appeal in accordance with Rule 2A:4 of the Rules of the Supreme Court of Virginia.


Gerald Johnson, Ph.D.
Chairman

Dated: December 16, 2014