

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

Joanna and M. Todd Pitts, )  
 )  
 Appellants, )  
 )  
 v. )  
 )  
 VIRGINIA DEPARTMENT OF HEALTH, )  
 )  
 Appellee. )

**ORDER**

This matter comes before the Sewage Handling and Disposal Appeal Review Board (“Board”) pursuant to Virginia Code § 32.1-166.6 and § 2.2-4000 *et seq.* Based upon the entirety of the record of this matter presented at the September 21, 2016, hearing, the Board finds as follows:

**FINDINGS OF FACT**

1. This case is an administrative appeal of two decisions issued by interim Southside District Health Director Kerry Gateley, M.D., on behalf of the Virginia Department of Health under authority delegated by 12VAC5-610-40. The administrative appeal of these two case decisions was heard before the Board on September 21, 2016, and both Joanna and M. Todd Pitts (Pitts) and the Department appeared. The Pitts were not represented by counsel. Both parties presented testimony, documentary evidence, and argument.

2. The Pitts are the current owners of a lot and home in Mecklenburg County, Virginia located at 443 Locust Lane, Buffalo Junction, Mecklenburg County, Virginia (the “Pitts Property”).

3. Bunny and Philip Propst (Propsts) own property located at 427 Locust Lane, Buffalo Junction, Mecklenburg County, Virginia (the “Propst Property). The Propst Property is adjacent to the Pitts Property.

4. The local health department issued an onsite sewage system permit to a previous owner of the Propst Property on March 27, 1967. At an unknown time, a previous owner of the Pitts Property connected the Pitts Property to the onsite sewage system on the Propst Property. *Appellants’ Exhibits 4, 17, 20. Transcript 20-22.*

5. The Pitts acquired the Pitts Property in 2008. *Appellants’ Exhibit 20.*

6. On July 22, 2013, a representative of the local health department was asked by Matthews Sanitation, a private contractor, to come to the Propst property. Matthews Sanitation advised the local health department that it was pumping the septic system because sewage was backing up into the Propst home. In addition, the distribution box was damaged. A subsequent visit by a representative of the local health department revealed roots and debris in the distribution box and moisture and sewage around the distribution box. *Department’s Exhibit 5.*

7. By letter dated March 9, 2016, the Department of Health revoked the permit for the onsite sewage disposal system on the Propst Property. *Appellants’ Exhibit 16. Department’s Exhibit 1.*

8. The Pitts disconnected their home from the onsite sewage system on the Propst Property and installed an onsite sewage disposal system on their property. *Department’s Exhibit 8.*

9. The Propsts and prior owners of the Pitts Property entered into a Deed of Easement on December 1, 1995, which is recorded in the land records of Mecklenburg County. *Department’s Exhibit 10.*

10. On March 9, 2016, the Department of Health, Dr. Gateley recommended that the Pitts “provide an evaluation by a licensed onsite sewage system professional to determine whether the current design of the system can meet the capacity with conditions or whether a new design should be submitted for the reissuance of a permit as provided for on page 9 of this case decision.” That case decision was appealed by the Pitts. *Department’s Exhibit 1.*

11. The Pitts contend that they cannot apply for a re-issuance of a permit for the onsite sewage system on the Propst Property because they are not the owners of the Propst Property. *Department’s Exhibit 1. Transcript 17-19.*

12. On March 26, 2016, Dr. Gateley determined that the Pitts could not reconnect their home to the onsite sewage system located on and also serving the Propst Property. That case decision was appealed by the Pitts. *Appellants’ Exhibit 11. Department’s Exhibits 2, 7. Transcript 18-19.*

### **CONCLUSIONS OF LAW**

13. The Board is authorized to review case decisions of the Virginia Department of Health.

14. The Board finds that it is unable to determine the rights and responsibilities of the Pitts and the Propsts for the onsite sewage disposal system on the Propst Property, including who may be authorized to apply for an onsite sewage system permit, because such matters are governed in part or in whole by the Easement, a matter in which the Board has no jurisdiction.

15. The Board upholds the decision of the Department to deny the Pitts’ application to re-connect to the onsite sewage system on the Propst Property. The Department properly denied the request of the Pitts to reconnect to that system because the permit had been revoked.

**WHEREFORE**, for the foregoing reasons, the Board finds that interpretation of the Easement is necessary to determine the rights and responsibilities of the Pitts and the Propsts under the Easement, including which party has the right and responsibility to apply for an onsite sewage disposal permit, and this is a matter over which the Board has no jurisdiction. The Board upholds the decision of the Virginia Department of Health to deny the Pitts request to connect their home to the onsite sewage system located on the Propst Property because the permit has been revoked.

**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.**

  
Chairman

Dated: October 6, 2016