

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

KENNETH and ANGELA BOZEMAN,)
)
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 § 32.1-164.1:01 and § 2.2-4000 et seq. Based upon the entirety of the record of this matter presented at the January 12, 2011 hearing, the Board finds as follows:

FINDINGS OF FACT

This case is an administrative appeal of the decision of the State Health Commissioner for the Virginia Department of Health (“Department”) to deny an indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to Kenneth and Angela Bozeman (the “Bozemans”). Mr. Bozeman appeared at the January 12, 2011 hearing with counsel, Janet Boyd, Esquire, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

The Bozemans are and were at all times pertinent to this matter the owners of 10508 Springwood Drive, Spotsylvania, Virginia, located in Spotsylvania County, Virginia (the "Property").

On January 11, 2000, the Spotsylvania County Health Department ("SCHD") issued a sewage system construction permit for the Property.

On July 15, 2009, the Bozemans contacted SCHD and notified SCHD that their sewage disposal system was failing.

On January 7, 2010, the Bozemans applied for indemnification from the Department for their failed sewage system.

The evidence did not indicate that the sewage system on the Property failed within three (3) years of its construction permit.

CONCLUSIONS OF LAW

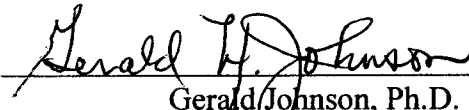
The Board is authorized to determine whether a decision of the State Health Commissioner to refuse payment from the indemnification fund complies with the requirements contained in Va. Code § 32.1-164.1:01.

Because the Bozemans failed to provide sufficient evidence that the Property's onsite sewage disposal system failed within three (3) years of its January 11, 2000 construction permit, the Board denies the Bozemans request for indemnification.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision

of the State Health Commissioner to *deny* any indemnification award to Kenneth and Angela Bozeman.

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: February 4, 2011