

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

WILLIAM C. TICE,)
)
 Appellant,)
)
 v.)
)
 VIRGINIA DEPARTMENT OF HEALTH,)
)
 Appellee.)

ORDER

This matter comes before the Sewage Handling and Disposal Appeal Review Board (the "Board") pursuant to Virginia Code § 32.1-166.6 and § 2.2-4000 et seq. and 12 VAC 5-610-200 et seq. Based upon the entirety of the record of this matter, including documents, presentation, oral testimony, argument, other evidence, and authorities offered by the parties at the January 13, 2010 hearing, the Board finds as follows:

FINDINGS OF FACT

1. This case is an administrative appeal of the decision of the Virginia Department of Health ("Department") to deny William Tice's request for a variance, pursuant to 12 VAC 5-610-596 of the Department's Sewage Handling and Disposal Regulations ("Regulations"), to permit the construction of an on-site sewage disposal system ("System") within fifty (50) feet of condemned shellfish waters.

2. William C. Tice is the owner of property located on Blue Heron Lane, also known as Lots 1 and 2 combined on Tax Map #51G(1) in Gloucester, Virginia ("The Property").

3. The Property is located on a peninsula that is surrounded by Sarah Creek, which is a condemned shellfish waterway in Gloucester County. Because the Property is surrounded by shellfish waters, the Department's Regulations, specifically 12 VAC 5-610-596, require Mr. Tice to construct a System on his Property at least seventy (70) feet from any part of the waterway.

4. A deep water well exists on the property adjacent to Mr. Tice's Property. The Department's Regulations require that any System built on Mr. Tice's Property must be at least one hundred (100) feet away from any deep water well.

5. As a result of the location of the adjacent property's deep water well and given the dimensions of Mr. Tice's Property, it is not physically possible for Mr. Tice to construct a System that will meet both of the requirements set forth above: a seventy (70) foot setback from the shellfish waters and a one hundred (100) foot distance from a deep water well.

6. Mr. Tice requested a variance from the Gloucester County Health Department ("GCHD") in order to permit his construction of a System with a fifty (50) foot minimum setback from the shellfish waters. This would allow him to comply with

the one hundred (100) foot distance requirement from the adjacent property's deep water well.¹

7. Testimony from GCHD indicated that given the soils at the Property and the need to protect the shellfish waters, the denial of the variance to permit at fifty (50) foot setback from the waterway was proper.

8. Mr. Tice testified that as a result of GCHD's denial of a permit variance on the Property, he is unable to develop the Property, which is an undue economic hardship for him

9. 12 VAC 5-610-190 allows the Department's Commissioner to grant a variance to the Regulations when a property owner demonstrates that an economic hardship outweighs the public benefit and does not subject the public to unreasonable health risks. On August 20, 2007, the Commissioner found that Mr. Tice's economic hardship did not outweigh the potential adverse environmental impact that could result if the variance were granted.

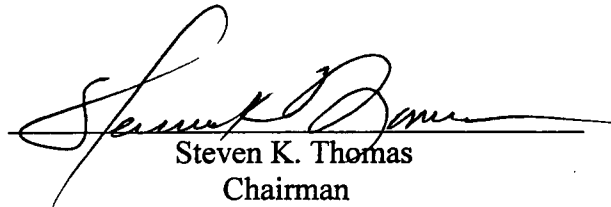
CONCLUSIONS OF LAW

10. Mr. Tice has failed to provide sufficient evidence to the Board to demonstrate that his economic hardship outweighs the protection to the public.

¹ Mr. Tice's neighbor testified that she was unwilling to move her deep water well even though Mr. Tice had offered to pay for the construction of a new well on her property in order that he might be able to construct a System on his Property that would comport with the Regulations.

WHEREFORE, for the foregoing reasons, the Board hereby upholds the decision of the Department of Health to deny the variance request of William Tice to construct a System with a fifty (50) foot minimum setback from the shellfish waters.

If the Appellant wishes to appeal this ORDER, he 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.


Steven K. Thomas
Chairman

Dated: March 2ND, 2010