

VIRGINIA:

BEFORE THE STATE HEALTH DEPARTMENT SEWAGE  
HANDLING AND DISPOSAL APPEALS REVIEW BOARD

In Re: Charles C. Himelright

**ORDER**

Mr. Himelright appeals the Health Commissioner's denial of a permit for an onsite sewage disposal system on his property at TM 23-A-56P in Shenandoah County.

This 3 acre lot is part of a 13 acre tract owned by Mr. Himelright. He proposes to subdivide to construct a residence for his daughter. The history of Mr. Himelright's application is set out in §§ I-V of the Department's proposed findings of fact, which the Board adopts.

The parties agree that the proposed site is in a drainage way, and that it is the only potentially suitable site on the 13 acre tract. The *Sewage Handling and Disposal Regulations* (State Board of Health, May, 1989) provide that "[s]ubsurface soil adsorption systems shall not be placed at a position in a drainage way subject to intermittent flooding.

Mr. Himelright's expert, George Swecker, testified that the highland portion of the 13 acre tract is too shallow to rock. He turned last to the present site, which is on a shallow rise in a bottom. Mr. Swecker and the Department's expert, Mr. Cobb, recognize that drainage ways generally are unsuitable because

the flooding of the drainfield halts aerobic treatment of the sewage effluent, creating contaminated groundwater that poses a threat to public health.

The watercourse in the drainage way on Mr. Himelright's property runs northeast, generally along the property line adjacent to State Rt. 623. After an initially steeper descent, the slope decreases and the watercourse splits into two branches, one adjacent to the highway and the other some 40-50' away. Between these branches is a shallow rise, perhaps as high as 12", presently used as a garden; Mr. Himelright proposes to install the drainfield on this rise.

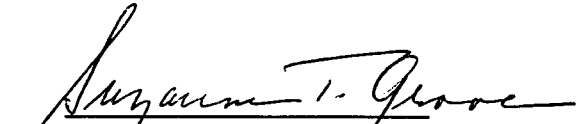
There is no dispute that the soils on this rise are suitable, or that it is located within a drainage way. The only issue is whether the soils are "subject to intermittent flooding." Based upon the soil colors and anecdotal evidence, Mr. Swecker says no. Mr. Cobb, in contrast, points out that the drainfield depth of 18" will be below the level of the adjacent branches and within the path of groundwater in the drainage way. Mr. Cobb finds some pale brown soils, characteristic of "some saturation," and he concludes that the site is unsuitable.

Ordinarily, the Board would resolve this conflict of the experts based upon its understanding of the behavior of subsurface water in drainage ways, the geography of this site, the presence of the brown colors, and the need to protect the public health. However, the record is not complete in one respect: Mr. Himelright offers to install a "French drain," a diversion ditch at the head of the proposed site, to intercept surface and ground water in the drainage way. If such

an interceptor were feasible at this unique site, it would resolve the Board's concerns about intermittent flooding. However, in the absence of the engineering design for an interceptor, neither the Department nor the Board can make an informed judgment about the effectiveness of the proposed interceptor.

The Board remands this matter to the Department to consider plans, drawn up by a professional engineer, for an interceptor trench. The Board anticipates that the project would require approval from the Department of Transportation for the discharge into the highway ditch. The Board requests that the Department report the status of this matter at its April or May meeting, and directs the Secretary to place the matter on the docket for hearing on June 28, 1995 if the matter has not been resolved by June 7.

This is not a final decision, and the Board believes that this matter is not ripe for a judicial appeal. If Mr. Himelright nonetheless wishes to attempt to bring an appeal, he may do so by filing a notice of appeal with the Board's Secretary, Ms. Constance Talbert, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219 within 33 days of the date of mailing of this order to him. Other requirements for perfecting an appeal are set out in Part 2A of the Rules of the Supreme Court of Virginia and in the Administrative Process Act.

  
Suzanne T. Grove  
Chairman

Dated: February 13, 1995

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