

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

THOMAS DAMIANO,)
)
 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. 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 February 20, 2008 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 Thomas Damiano's request for a variance to 12 VAC 5-610-980(C)(3) of the Department's Sewage Handling and Disposal Regulations to permit port-o-johns at a primitive campground.

2. Thomas and Jean Damiano (“Owners”) are the owners of a 175 acre farm in Greensville County, Tax Map Number 57-24, located close to the North Carolina line on Forest Road in Skippers, Virginia (“Property”).

3. A hunting club rents the Property from the Owners, and the hunting club has between 11 and 16 RV trailers/campers on the Property. Some of these trailers are equipped with flushable toilets while others are not.

4. Owners testified that the hunting club contracts with the Roanoke Porta-John Company to service the trailer/camper flushable toilets as well as to provide stand-alone port-o-johns on the Property. Owners further testified that by contract the stand-alone port-o-johns are regularly serviced and maintained by Roanoke Porta-John Company and that the hunt club pays for the service.

5. Pursuant to the Department’s Rules and Regulations Governing Campgrounds (“Campground Regulations”), specifically 12 VAC 5-450-10, the hunting club trailers on the Property form a primitive camp, and, as acknowledged by Owners, the primitive camp was being operated without a valid permit.

6. In assessing Owners’ use of the Property for the hunting club, the Department notified Owners in writing that they were in violation of Virginia Code § 35.1-18 and the Department’s Campground Regulations, 12 VAC 5-450-10 et seq., by operating a primitive camp without a permit. Virginia Code § 35.1-18 states, “no person shall own, establish, conduct, maintain, manage or operate any...campground in this Commonwealth unless the...campground is licensed as provided in this chapter.”

7. Further, the Department notified Owners in writing that the Campground Regulations, specifically 12 VAC 5-450-90(A), state in part, “every campground shall be provided with an approved method of collection, conveying, and disposing of all sewage and liquid wastes.” The Department explained that the Owners were in violation of the Department’s Sewage Handling and Disposal Regulations regarding privies, 12 VAC 5-610-970 et seq., noting that portable privies (the port-o-johns) were not permitted at a primitive campground and were not an approved method of collection or disposal of sewage waste. The Department proposed that Owners install vault privies rather than using portable privies to appropriately collect and dispose of the campground’s sewage.

8. Owners subsequently obtained a Special Use Permit for the primitive campground on the Property from Greenville County.

9. Pursuant to 12 VAC 5-610-190, the Owners requested a variance regarding the use of portable privies on the Property, citing the prohibitive cost and maintenance of a vault privy as a hardship. Owners testified that they would shoulder the costs of the installation and maintenance of a vault privy alone and that the hunting club had indicated it would not pay for or share in the cost of the installation and maintenance of a vault privy. Owners stated that the hunting club has also indicated it would continue to contract and pay for the regular servicing of the port-o-johns at the campground.

10. By letter dated July 24, 2007, State Health Commissioner Robert B. Stroube, M.D., M.P.H., denied the Owners’ variance request, finding that the benefits of the Sewage Handling and Disposal Regulations (requiring use of a vault or pit privy) outweigh any hardship imposed.

CONCLUSIONS OF LAW


11. The Department's Sewage Handling and Disposal Regulations at 12 VAC 5-610-970 et seq. govern the use of privies, and 12 VAC 5-610-980(C) permits holding privies, including portable privies, in recreation areas.

12. The Board finds no language in the Sewage Handling and Disposal Regulations prohibiting the use of portable privies in recreation areas, including primitive campgrounds.

13. In this particular case, the Owners would bear a hardship in installing a vault privy. The Owners meet the requirements for a variance to 12 VAC 5-610-190, and one should have been granted.

WHEREFORE, for the foregoing reasons, the Board hereby overturns the decision of the Department of Health to deny the variance of Thomas Daimiano and to permit the use of portable privies on the Property. The case is remanded to the Department to assure Mr. Damiano's compliance with Department regulations.

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 12, 2008