

VIRGINIA:

**BEFORE THE STATE HEALTH DEPARTMENT
SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

In Re: Gary L. Sitzman

ORDER

Mr. Sitzman appeals the Health Commissioner's denial of his application for a permit¹ for an onsite sewage disposal system on his property, Lot 31C, Mount Ringold Farm Subdivision, in Stafford County.

Mr. Sitzman does not directly challenge the Department's assertion that the proposed site is not suitable for the installation of a conventional drainfield because of the presence of a seasonal water table and the presence of restrictive layers ("fragipans").² Neither does he dispute the Department's detailed account

¹ Code § 32.1-164.B.1 authorizes the Board of Health to adopt regulations to include "[a] requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system" Section 2.12 of the Board's *Sewage Handling and Disposal Regulations* (the *Regulations* now are codified at 12 VAC 5-610-10 *et seq.*; § 2.12 is codified at 12 VAC 5-610-240) imposes that requirement. Section 1.4 of the *Regulations*, 12 VAC 5-610-40, authorizes the Commissioner to delegate his authority under the *Regulations* (except for variances and orders) to the Department and appoints the Department as the primary agent of the Commissioner for the purpose of administering the regulations. Pursuant to that authority, the Commissioner has delegated the authority to issue and deny permits; he has not delegated the authority to issue variances. Denials of permits and variances may be appealed to this Board for the final administrative decision pursuant to Code §§ 32.1-164.1 and 32.1-166.6.

² Mr Sitzman does argue that he lived on lot 31A without problems for many years and that other nearby lots are served by successful drainfields. Whatever inferences might be drawn - and the Board is reluctant to reach any conclusion based on nearby lots in the absence of any soils information or of any professional evaluation whether the systems in

of the history of this lot. In that respect, the Board adopts the Department's proposed Findings of Fact Nos. A through G.

The heart of Mr. Sitzman's appeal is that he had a subdivision approval in 1983, and he wants the Department to abide by its "contract" with him. Unfortunately, the subdivision approval is not a contract, and it clearly does not bind the Department in the current situation.

This is not Mr. Sitzman's first time around this track. On November 15, 1994, he requested a formal hearing on the denial of permits for both lots 31B and 31C. He then elected to pursue the appeal only on lot 31B. The Board heard that appeal on May 24, 1995, and heard Mr. Sitzman make the same case for Lot 31B he now makes on lot 31C.³ The Board must overrule the present appeal for the same reason as the former appeal. Indeed, Mr. Sitzman is collaterally estopped to raise the issue again.

Accordingly, the appeal is OVERRULED.

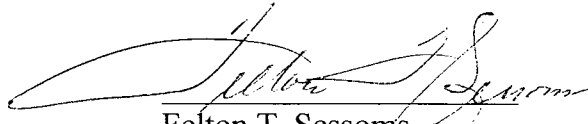
The Board does request that the Department continue to work with Mr. Sitzman, and make every effort to issue 3-bedroom permit for the Puraflo system.

If Mr. Sitzman wishes to appeal this decision, they may do so by filing a notice of appeal with the Board's acting Secretary, Mr. Gary Hagy, Division of

question are functioning properly - it is contradicted by the Department's strong and uniform evidence that the soils on Lot 31C are not suitable.

³ *In re Sitzman* (1995).

Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219
within thirty-three days of the date of mailing of this order to him. Other require-
ments 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.



Felton T. Sessoms
Acting Chairman

Dated: March 18, 1998

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