

VIRGINIA:

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

In Re: Mr. & Mrs. Jessie Ward

ORDER

Mr. and Mrs. Ward appeal the Health Commissioner's denials of two applications for a permit for an onsite sewage disposal system on their property at Lot 13, Gary Hall Subdivision, in Pittsylvania County.

The Wards bought this 5.3 acre lot in 1987 as investment. The history of the Wards' applications is set out in §§ I-VIII of the Department's proposed findings of fact. The Wards do not dispute these facts. The Board heard this appeal on March 8, 1995, in Danville.

The Wards state that they bought this lot in reliance upon a letter of July 8, 1987, by Sanitarian James J. Houser. Department Exhibit 3. The Houser letter states that "suitable soil conditions" for "installation of individual sewage systems" exist on Lot 13. The letter further cautions that

[E]xact location and design of these systems will be determined at the time of the issuance of the permit. Before the permit can be issued, the building site shall be staked out showing the location and specification of the building. At that time it will be determined if this lot can support a septic tank system for the proposed building to be located on this lot.

Id. The approval and cautionary language from this letter also appear on the

subdivision plat. Department Exhibit 3.

The Wards do not dispute the mountain of evidence regarding the soils of Lot 13. Indeed, it is clear that, contrary to the Shelton letter and the statement on the plat, these soils are unsuitable for a drainfield. Instead, the Wards cite their reliance upon the language of the plat, and they ask the Board to authorize some kind of system that would make their lot sellable.

The Board has statutory authority to hear "administrative appeals of denials of onsite sewage disposal system permits." Code § 32.1-166.6. The Board has the jurisdiction to "render a final administrative decision" on a permit application, or to "develop recommendations for alternative solutions to the conditions resulting in denial of the permit . . . and remand the case to the Department . . . for reconsideration." *Id.*

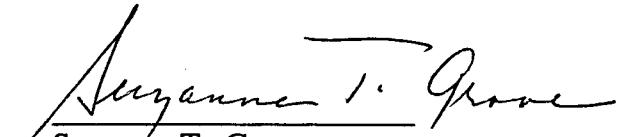
As to the Wards' applications, the Board plainly must sustain the denial of the permit. There is no dispute that the soils are inadequate. To issue a permit in these circumstances only would lead to the installation of a drainfield system that would fail during the first winter of its use.

As to alternatives, the Department already has considered and rejected the elevated sand mound, low pressure distribution system, and variance for shallow drainfield or modified mound. The Department has suggested that the Wards pursue a permit for discharge system. The Wards have now followed that recommendation, in part because of the lack of local expertise in installing such systems

and, it appears, in part because the high cost of a discharge system would necessarily lead to a very low price for Lot 13. After thorough consideration of the information in the record, the Board is not able to recommend any other solution.

Accordingly, the Wards' appeal is OVERRULED.

If the Wards wish to appeal this decision, they 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 them. 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: March 10, 1995

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