VIRGINIA:

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

In Re: Dennis Dinneen

ORDER

Mr. Dinneen appeals the State Health Department's denial of an on-site sewage disposal permit for Lot 6, Parcel 31J, Tax Map 74, Fauquier County. This lot was one of six deeded out to Hakola family members in 1976.

In 1990, Mr. Dinneen proposed to subdivide an adjacent property into two lots of approximately 1.4 acres each, and he sought onsite permits for Lot 6 and the two adjacent lots. In the course of the proceedings, the soils on Lot 6 have been examined by Dennis Brown, Mr. Dinneen's expert; Parker E. Bullard, an Environmental Health Specialist with the local Health Department; W. R. Russell, Environmental Health Specialist for the County; and Richard S. Joslyn, the County Soil Scientist. Following the informal hearing at which the Department upheld the denial, Phillip Cobb, a VPI Soil Scientist on contract with the Department, also examined the lot.

Grandfather

Mr. Dinneen first asserts that the lot is grandfathered under § 1.7 of the Sewage Handling and Disposal Regulations (1989) (the "Regulations").

The grandfather clause governs two kinds of approvals granted prior to the 1982 version of the Regulations: First, where the Department has previously issued a permit for an individual lot, the permit is to be reissued if the site, soil conditions, design requirements are in accordance with the 1971 Regulations of the Board of Health governing the disposal of sewage. Second, where the Department has earlier approved the subdivision plat, any permit decisions are made under the 1971 Regulations, except that the current regulations apply where the percolation rate exceeds 60 minutes per inch.

Mr. Dinneen does not seriously assert that the Department has earlier issued a permit for Lot 6. He testifies that the family members sought permits for these lots as they desired to build on them, and he states that he first sought a permit in 1990. Instead, Mr. Dinneen points out that he had to obtain a soil report when the lot was subdivided and that the Health Department "must have known" of the subdividing. Yet, Mr. Dinneen also states that in 1976, the County did not require a full subdivision approval for a small subdivision among family members.

The only document bearing on this issue is a letter of June 28, 1976, from Dwight L. Caster, Soil Scientist. Dinneen Exhibit No. 1. This letter discusses the soil on three lots, numbers 4, 5, and 6, and states that on Lot 6 there is an area approximately 100 x 100 of Fauquier silt loam type soil. Mr. Caster states that this soil is "favorable for septic fields." In light of the 1976 date and the fact the plat shows that Hakola lots 4, 5, and 6 were created in

1976, it appears that Mr. Caster's letter speaks to the lot at issue here. There is no indication from Mr. Caster's letter or from any other record, however, that the Health Department was involved in this process. Plainly, there is no Health Department signature on the plat.

The Board finds that the lot is not grandfathered by a Health Department approval of the subdivision.

Suitability of the Soils

Mr. Dinneen next asserts that the lot is suitable under the current regulations. He relies on his expert, Mr. Brown, who testifies that the soil is suitable. He estimates a percolation rate of 65 minutes per inch and he attributes the pale colors in the soils to weathering of the greenstone rock. In contrast, Mr. Cobb estimates a percolation rate of greater than 90 minutes per inch, and he finds yellowish brown or yellowish red soil colors at 20 and 26 inches, and chroma 2 or less mottles at 31 inches in pit 3 and 26 inches in pit 1. Mr. Cobb testifies that the coloration is entirely consistent with a seasonal water table: The pale colors begin as yellowish and pale brown and increase with depth, turning to grays. The other soil evaluations by the Department and the County are consistent with Mr. Cobb's evaluation.

The Board notes that by every estimate the percolation rate is greater than 60 minutes per inch. Accordingly, even if the lot were grandfathered, it would have to be evaluated under the current regulations because the percolation rate exceeds 60 minutes per inch. Regulations, § 1.7.A.1.b.

As the Department asserts, the 14% slope on this lot leads to a minimum installation depth of 20 inches. Regulations, § 4.30.C.1. Using Mr. Brown's estimated percolation rate, the minimum depth from trench bottom to the water table is 15 inches; using Mr. Cobb's estimate, the depth is 18 inches. Table 4.5 of the Regulations. Thus, the minimum depth to water table required under the Regulations is 35 to 38 inches.

Gray soils and gray mottlings indicate a seasonal water table for at least three weeks. Regulations, § 3.5.A.2. Mr. Cobb noted gray mottles at 26 and 31 inches. Department Exhibit 6, profiles 5 & 6. Mr. Russell found gray mottles at 16, 36, and 24 inches. Department Exhibit 2 (handwritten addenda). Mr. Bullard found the seasonal water table at 28 inches. Department Exhibit 3. Mr. Joslyn found grays at 27 to 36 inches. Department Exhibit 4. It is clear that these soils do not meet the requirement of the Regulations as to depth to seasonal water table. Section 4.30.A.3.

Accordingly, the Health Department's decision denying the permit to Mr. Dinneen will be AFFIRMED.

Mr. Dinneen may initiate a judicial appeal of this decision 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.

William F. Sledjeski
Chairman

Dated: March 28, 1993

F:\JRB\WP\601\DINNEEN