

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

GEORGE ALCARAZ,)
)
 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 5-610-230. 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 April 1, 2009 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 George Alcaraz's request for a construction permit pursuant to 12 VAC 5-610-240 et seq. of the Department's Sewage Handling and Disposal Regulations ("Regulations").

2. George Alcaraz ("Owner") is the owner of property located at 1500 Back Bay Landing Road, Virginia Beach, Virginia ("Property").

3. On February 22, 2008, Owner through an agent, Bob Willoughby, an Authorized Onsite Soil Evaluator, applied for a sewage disposal system construction permit to “replace” an existing sewage disposal system on the Property. On April 8, 2008, Owner, through his agent, applied for a second permit to “repair” the existing sewage disposal system on the Property.

4. Owner did not present evidence that the existing sewage disposal system on the Property was properly permitted at any time in the past by the Department.

5. Erik Severson, an independent soil scientist from Virginia Tech, testified that he visited the Property on May 23, 2008. His report from this visit to the Property indicated that the “features at the site do not meet the minimum requirements of the [Regulations] for conventional or any alternative sewage treatment systems due to the limited amount of space and very poorly drained soils.”

6. The evidence presented at the April 1, 2009 hearing indicated that seventy-five (75%) of the existing sewage disposal system drainfield is located on an adjoining property, which is not owned by the Owner.

7. The evidence further indicated that the existing sewage disposal system does not meet the Department’s current, required stand-off distance from drinking water.

8. The evidence further indicated that the existing sewage disposal system is at an insufficient soil depth required by the Department due to the seasonal water table on this Property.

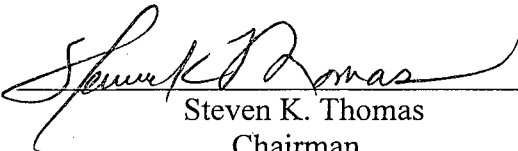
CONCLUSIONS OF LAW

9. The Department's Sewage Handling and Disposal Regulations at 12 VAC 5-610-240 et seq. govern the sewage disposal system permit application requirements and processes.

10. The Board finds that the Department acted within these regulations in denying the sewage disposal system construction permit application submitted on behalf of the Owner.

WHEREFORE, for the foregoing reasons, the Board hereby upholds the decision of the Department of Health to deny George Alcaraz's application for a sewage disposal system construction permit.

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: April 20, 2009

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