

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

BRUCE CLAIBORNE,)
)
 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 Bruce Claiborne’s request for a sewage disposal construction permit pursuant to 12 VAC 5-610-240 et seq. of the Department’s Sewage Handling and Disposal Regulations (“Regulations”).

2. Bruce and Jackie Claiborne (“Owners”) are the owners of property located on Palace Green Road, Tax Map #81-A-26A, in Caroline County, Virginia (“Property”).

3. On November 6, 1996, the Caroline County Health Department (“CCHD”) issued a Certification Letter for a three-bedroom conventional onsite wastewater system for the Property.

4. The Certification Letter was drafted by Shirlea Pemberton, who was at that time an employee of the Department.

5. On February 29, 2008, Owners submitted an application to convert the Certification Letter to a permit to construct a conventional onsite wastewater system.

6. CCHD conducted a site visit of the Property in April 2008 and found evidence of “redox” at a depth restricted by the Regulations, and CCHD put the application for the permit on hold until further testing of the soil could be done.

7. Thereafter, the Owners hired Ms. Pemberton, at that time and currently a private Authorized Onsite Soil Evaluator (AOSE).

8. On July 16, 2008, Ms. Pemberton submitted an application for a conventional sewage disposal system on the Property on behalf of the Owners.

9. On July 30, 2008, CCHD submitted a letter to the Owners. The letter denied the July 16, 2008 application and stated, “Further soil investigation must be performed by health department.”

10. The July 30, 2008 CCHD denial letter was submitted to Owners’ address of record with CCHD.

11. Ms. Pemberton testified at the April 1, 2009 hearing that she did not find “redox” at the level the CCHD official did. She found “redox” at a 40 inch depth and

testified that her proposed conventional wastewater system complied with the Regulations.

12. On August 4, 2008, Erik Severson, an independent soil scientist from Virginia Tech hired by CCHD, testified that he tested the soil and found “redox” at 25 inches depth, making the soil restrictive for a conventional sewage disposal system pursuant to the Regulations. Mr. Severson’s report stated as follows: “Restrictive horizons and seasonal water tables were found as shallow as 29 inches and subsequently do not meet criteria for a conventional onsite wastewater system.”

13. On September 16, 2008, CCHD issued a denial letter denying Owners’ application based on “soil horizon(s) for the 18 inches immediately below the installation depth [showing] the presence of any limiting factor.”

14. Owners timely filed an appeal of this denial letter.

CONCLUSIONS OF LAW

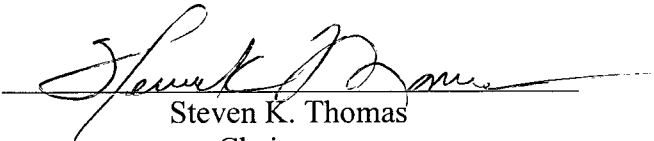
15. The Department’s Sewage Handling and Disposal Regulations at 12 VAC 5-610-240 et seq. govern the application permits for sewage disposal systems.

16. The Board finds the Health Department acted within the Sewage Handling and Disposal Regulations in denying the Owners’ permit.

17. The Board finds the Health Department acted within the Sewage Handling and Disposal Regulations in submitting its findings in writing to Owners in a timely fashion.

WHEREFORE, for the foregoing reasons, the Board hereby upholds the decision of the Department of Health to deny the sewage disposal permit application of Bruce Claiborne.

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

H:\hess\igm\VDH\Claiborne Order.doc