

**VIRGINIA:**

**SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

JASON AND KRISTA EHLERT,                    )  
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  )  
v.    )  
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VIRGINIA DEPARTMENT OF HEALTH,        )  
  )  
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  )

**ORDER**

This matter comes before the Sewage Handling and Disposal Appeal Review Board (the "Board") pursuant to Virginia Code § 32.1-164.1:01 and § 2.2-4000 et seq. 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 2, 2008 hearing, the Board finds as follows:

**FINDINGS OF FACT**

1. Pursuant to Virginia Code § 32.1-164.1:01 (the "Fund"), this case is an administrative appeal of the decision by the State Health Commissioner to pay Jason and Krista Ehlert one-half of the cost of the sewage disposal system that was installed on their property and subsequently failed.
2. Jason and Krista Ehlert are the owners ("Owners") of Lot 1, Paynes Farm Subdivision, Tax Map # 22-(5)-1, located in Orange County, Virginia ("Property").

3. On January 7, 2003, Battlefield Homes Inc. submitted an application to construct an onsite sewage disposal system ("System") on the Property. The Orange County Health Department (OCHD) issued a construction permit on January 13, 2003 for the System. The Construction permit specified 7 trenches, 100-feet long, 2-feet wide and 36-inches deep. Jennings Construction installed the System and installed a substituted system in accordance with the Virginia Department of Health's ("Department") policy, Guidance Memorandum and Policy # 116. The OCHD inspected the System which consisted of 3 trenches that were 94 feet long and located in a lowest portion of the area designated for the drainfield, and issued an operation permit. An inspector from the OCHD testified that her inspection report noted that the System consisted of three sewage lines and that the lowest of the three lines ran into "marginal soil". The OCHD inspected the System after construction and issued an operation permit for the system even though it was known at the time of installation to be in "marginal soil".

4. The System failed within three years of its construction. The Owners worked with the builder, Battlefield Homes, Inc., and the original contractor, Jennings Construction, to replace the failed System with one like the design originally specified by the OCHD in the area originally identified in the January 2003 construction permit.

5. Mr. Ehlert testified that that replacement cost of the failed System totaled \$12,400.00. Mr. Ehlert further testified that he has paid \$4,200.00 towards the replacement cost and that the remaining \$8,200.00 is due and owed to Michael Tierney, owner of Battlefield Homes, Inc.

6. The testimony and evidence presented to the Board did not indicate that the System failed due to private party error. The System failed as a direct result of the marginal soil in the area in which the drainfield was installed. The area in which the drainfield was installed was within the area permitted by the OCHD, and the System was designed to drain into the permitted drainfield.

### CONCLUSIONS OF LAW

7. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse payment a property owner, in whole or in part, from the Fund complies with the requirements of Va. Code § 32.1-164.1:01.

8. The Board also regulates the use and disbursement of monies in the Fund pursuant to Va. Code § 32.1-164.1:01.

9. Va. Code § 32.1-164.1:01(E) provides, "The total amount an owner may receive in payment from the fund shall not exceed \$30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the fund."

10. Finding that the System failed due to the negligence of the Department, the Board awards the Owners the amount of \$12,400, which is the cost of replacing the System. The Board further orders that \$4,200.00 should be paid to the Owners immediately and that the remaining balance of \$8,200.00 shall only be paid to the Owners upon their proof of payment of the same sum to Battlefield Homes, Inc.

**WHEREFORE**, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner and awards the cost of installing the replacement system, upon showing proof of payment, to Jason and Krista Ehlert.

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 15, 2008