

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

DANIEL B. TRACY,)
)
 Appellant,)
)
 v.)
)
 VIRGINIA DEPARTMENT OF HEALTH,)
)
 Appellee.)

IN THE APPEAL OF THE DECISION BY THE VIRGINIA DEPARTMENT OF HEALTH RE: AN APPLICATION FOR A CERTIFICATION LETTER for property owned by Daniel B. Tracy at 2019 Mountain Road, GPIN 7201-36-9080, Prince William County, Virginia.

ORDER

Based upon the entirety of the record of this matter, including documents, imagery presentation, other evidence, oral testimony, argument and authorities offered by the parties pursuant to the April 4, 2007 hearing before the Sewage Handling and Disposal Appeal Review Board (the “Board”) herein, the Board finds the following:

BACKGROUND

1. This case is an appeal of the denial by the Virginia Department of Health (the “Department”) of a request by Daniel B. Tracy (“Mr. Tracy”) or the (“Appellant”) that the Department issue Certification Letter pursuant to *Virginia Code § 32.1-164(H)*.

2. Mr. Tracy is the owner of record of an approximately five (5) acre property located in Prince William County at 2019 Mountain Road, GPIN 7201-36-9080, Haymarket, Virginia 20169.

3. On, June 12, 2006, Mr. Tracy made application #175-06-0423 to the Prince William County Health District (“Health District”) in cooperation with the Virginia Department of Health for a (Sewage Disposal and Water Supply Permit) Certification Letter.

4. The Prince William County Health District in cooperation with the Virginia Department of Health denied the request for the (Sewage Disposal and Water Supply Permit) Certification Letter on July 5, 2006.

5. On or about November 8, 2006, Mr. Tracy appealed, through Barry R. Hadley, AOSE of Greenway Engineering, the decision of the Prince William County Health District to the Virginia Sewage Handling and Disposal Appeal Review Board.

APPLICABLE LAWS AND REGULATIONS

1. *Virginia Code § 32.1-12* authorizes the Virginia Board of Health to adopt and enforce regulations protecting the public health and welfare.

2. *Virginia Code § 32.1-16* establishes the Virginia Department of Health (the “Department”) and the authority of the State Health Commissioner to carry out the management and supervisory responsibilities of the Department in accordance with the policies, rules and regulations of the Board of Health.

3. *Virginia Code § 32.1-164* authorizes the Board of Health to have supervision and control over the safe and sanitary collection, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems as they affect the public health and welfare and promulgate regulations governing same.

4. Pursuant to *Virginia Code §§ 32.1-12 and 32.1-164*, the Board of Health lawfully promulgated *12 VAC 5-610-20 et seq.* (the “Sewage Handling and Disposal Regulations” or “Regulations”) regulating the permitting, installation, and operation of onsite sewage disposal systems.

5. Pursuant to *Virginia Code §§ 32.1-65*, no county, city, town or employee thereof may issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner of Health (the “Commissioner”) or his agent. The Commissioner or his agent may authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said permit has been approved by the Sewage Handling and Disposal Appeal Review Board.

6. Regarding matters within the Board of Health’s jurisdiction, *Virginia Code § 32.1-20* vests the Commissioner with all the authority of the board when it is not in session, subject to such rules and regulations as may be prescribed by the board.

7. Pursuant to *Virginia Code § 32.1-166.6*, the Sewage Handling and Disposal Appeal Review Board hears all administrative appeals of denials of onsite sewage disposal system permits, which decision shall be the final administrative decision. Proceedings of the Review Board and appeals of its decisions shall be governed by the

provisions of *Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2*. In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop recommendations for alternative solutions to the conditions resulting in denial of the permit.

FINDINGS OF FACT

1. Daniel B. Tracy is the owner of record of an approximately five (5) acre property located in Prince William County at 2019 Mountain Road, GPIN 7201-36-9080, Haymarket, Virginia 20169

2. On, June 12, 2006, Mr. Tracy made application #175-06-0423 to the Prince William County Health District in cooperation with the Virginia Department of Health for a (Sewage Disposal and Water Supply Permit) Certification Letter.

3. The Prince William County Health District in cooperation with the Virginia Department of Health denied the request for the (Sewage Disposal and Water Supply Permit) Certification Letter on July 5, 2006.

4. The Prince William County Health District, in 1990, evaluated an Application for a Sewage Disposal System Construction Permit, #175-90-0030; they examined three different sites on Mr. Tracy's five-acre parcel and determined that sites #1 and #3 were not suitable and site #2 would require review.

5. In 1990, the Health District rejected the sites because of insufficient depth of suitable soil over hard rock, insufficient depth of suitable soil to seasonal water table and insufficient area of acceptable soil for required drain field, and/or Reserve Area.

6. On July 5, 2006, the Health District informed Mr. Tracy that his application was denied because the proposed drainfield area, which is situated in a broad, almost flat, drainage way, was not suitable and did not comply with the requirements of the Regulations.

7. Barry R. Hadley, AOSE, of Greenway Engineering on August 11, 2006, requested a review, on Mr. Tracy's behalf, of the denial of the Certification Letter.

8. A review of the findings was conducted by the Health District. An additional site visit and an informal hearing were conducted and Mr. Tracy was informed by Alison Ansher, District Health Director in a letter dated November 6, 2006 that the denial was upheld.

9. Mr. Tracy, through Barry R. Hadley, AOSE, of Greenway Engineering, requested an appeal hearing before the Sewage Handling and Disposal Appeal Review Board by letter dated November 8, 2006.

CONCLUSIONS OF LAW

1. *Virginia Code § 32.1-12* authorizes the Virginia Board of Health to adopt and enforce regulations protecting the public health and welfare. *Virginia Code § 32.1-16* establishes the Virginia Department of Health (the "Department") and the authority of the State Health Commissioner to carry out the management and supervisory responsibilities of the Department in accordance with the policies, rules and regulations of the Board of Health.

2. *Virginia Code § 32.1-164* authorizes the Board of Health to supervise and have supervision and control over the safe and sanitary collection, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems as they affect the public health and welfare and promulgate regulations governing same. Pursuant to *Virginia Code §§ 32.1-12 and 32.1-164*, the Board of Health lawfully promulgated *12 VAC 5-610-20 et seq.* (the “Sewage Handling and Disposal Regulations” or “Regulations”) regulating the permitting, installation, and operation of onsite sewage disposal systems.

3. Pursuant to *Virginia Code §§ 32.1-65*, no county, city, town or employee thereof may issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner of Health (the “Commissioner”) or his agent. The Commissioner or his agent may authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said permit has been approved by the Sewage Handling and Disposal Appeal Review Board.

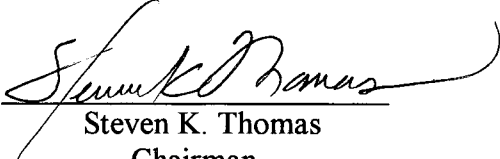
4. Pursuant to *Virginia Code § 32.1-166.6*, the Sewage Handling and Disposal Appeal Review Board hears all administrative appeals of denials of onsite sewage disposal system permits, which decision shall be the final administrative decision. Proceedings of the Review Board and appeals of its decisions shall be governed by the provisions of *Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2*. In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop

recommendations for alternative solutions to the conditions resulting in denial of the permit.

5. The Board finds that issuance of the requested permit would not permit the safe, adequate and proper sewage treatment at the said location and would be in violation of the Board of Health Regulations *12 VAC 5-610-20 et seq.*

THEREFORE, for the foregoing reasons, the Board hereby upholds the *denial* by the Virginia Department of Health of the request by Daniel B. Tracy that the Department issue a (Sewage Disposal and Water Supply Permit) Certification Letter for property owned by Mr. Tracy at 2019 Mountain Road, Prince William County, Virginia.

If the Appellant wishes to appeal this ORDER, they may do so pursuant to Virginia 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 receipt 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: September 4, 2007