



COMMONWEALTH of VIRGINIA

*Sewage Handling and Disposal Appeals Review Board
Richmond, Virginia 23219*

May 9, 2011

Mr. Bevin Alexander, Jr.
Attorney at Law
Freeman, Dunn, Alexander, Tiller & Gay
1045 Cottontown Road
Lynchburg, Virginia 24503

Certified Receipt #7009 2250 0004 2904 5764

Dear Mr. Alexander:

RE: Appeal, John and Evelyn Winnard, Bland County.

Enclosed is a copy of the Final Order regarding your appeal heard on April 6, 2011, before the Sewage Handling and Disposal Appeals Review Board.

If I can be of further assistance, you may contact me at (804) 864-7470.

Sincerely,

A handwritten signature in cursive script that reads "Donna Tiller".

Donna Tiller
Secretary to the Board

Enclosure:

c: Appeal Board Members
Robert W. Hicks, OEHS Director
Allen Knapp, Division Director
Dwayne Roadcap, Program Manager
Mr. & Mrs. Winnard, Owner

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

JOHN F. and EVELYN V. WINNARD,)
))
Appellants,)
))
v.)
))
VIRGINIA DEPARTMENT OF HEALTH,)
))
Appellee.)

ORDER

This matter comes before the Sewage Handling and Disposal Appeal Review Board (“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 presented at the April 6, 2011 hearing, the Board finds as follows:

FINDINGS OF FACT

1. This case is an administrative appeal of the decision of the State Health Commissioner for the Virginia Department of Health (“Department”) to deny an indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to John and Evelyn Winnard. Mr. Winnard appeared at the April 6, 2011 hearing with counsel, Bevin R. Alexander, Jr., and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.
2. Mr. and Mrs. Winnard (“Owners”) are and were at all times pertinent to this matter the owners of 547 Big Bend Drive, Tax Map #90-B-1-27, located in Bland County, Virginia (the “Property”).

3. On August 23, 2000, a private soils consultant, Stephen Dalton, conducted a site and soil evaluation of the Property. Mr. Dalton recommended that the Bland County Health Department (“BCHD”) approve the Property for a conventional onsite sewage system.

4. Based upon the soil evaluation of the Property conducted by Mr. Dalton on August 23, 2000, on October 18, 2001, BCHD approved an onsite sewage disposal system for the Property for the future use of a three-bedroom house.

5. In 2008, the Owners purchased the Property, and on July 30, 2008, the Owners submitted a correctly completed application¹ seeking a permit to construct a sewage system to serve a three-bedroom house on the Property.

6. On August 21, 2008, an employee from BCHD, Cecil Sink, visited the Property. At the Owners’ request, Mr. Sink performed a soil evaluation for a reserve area to serve a four-bedroom house on the Property.

7. Mr. Sink did not perform a second soil evaluation of the original three-bedroom onsite sewage disposal system footprint on the Property, but the evidence demonstrated that he was not legally required to perform a second evaluation. Mr. Sink properly relied on Mr. Dalton’s August 23, 2000 evaluation regarding the proper footprint for the sewage disposal system on the Property. This footprint did not change with the Owners’ request for a four-

¹ The Owners filed an initial application for an onsite sewage disposal system for the property on June 16, 2008. However, BCHD instructed the Owners that this application was incomplete due to the overgrowth of underbrush on the proposed drainfield. The Owners complied with BCHD’s recommendations and filed a subsequent application on July 30, 2008.

bedroom house. Instead, the evidence demonstrated that the existing footprint was simply enlarged to accommodate the Owners' request for a four-bedroom house.

8. The Owners did not present evidence indicating that BCHD should have performed a subsequent evaluation of the existing three-bedroom house sewage disposal system footprint.

9. On August 26, 2008, BCHD issued a permit to construct an onsite sewage disposal system to serve a four-bedroom house on the Property using Mr. Dalton's August 23, 2000 soil evaluation and Mr. Sink's evaluation for a reserve area.

10. On April 17, 2009, BCHD inspected and approved the substituted system.

11. On or about July 22, 2009, the Owners reported to the BCHD that they observed a wet spot near the lower edge of the substituted system.

12. On September 10, 2009, BCHD observed effluent discharging onto the ground surface over parts of the sewage system.

13. On December 16, 2009, the Owners requested an application to repair the sewage system.

14. On May 11, 2010, the Owners filed an application for indemnification with the BCHD.

15. The evidence indicated that the sewage system failed within three (3) years of its construction permit.

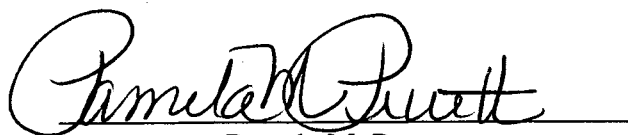
CONCLUSIONS OF LAW

16. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse payment from the indemnification fund complies with the requirements contained in Va. Code § 32.1-164.1:01.

17. Because there was no evidence of negligence on the part of the Department in permitting Mr. and Mrs. Winnard's sewage system and because the sewage disposal permit was granted pursuant to the pertinent regulations, the Board denies Mr. and Mrs. Winnard's request for indemnification.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision of the State Health Commissioner to *deny* any indemnification award to John and Evelyn Winnard.

If the Appellants wish to appeal this ORDER, they 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.



Pamela M. Pruett
Vice Chairman

Dated: May 2, 2011