

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

JACQUELINE and JOSEPH SHIPP,)
)
 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 7, 2010, hearing, the Board finds as follows:

FINDINGS OF FACT

1. This case is an administrative appeal of the decision of the Commissioner for the Virginia Department of Health to deny an indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to the Appellants. Appellants Joseph and Jacqueline Shipp (the “Shipps”) appeared at the April 7, 2010 hearing without counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. The Shipps were at all times pertinent to this matter the owners of 2048 Carpenters Mill Road, Barboursville, Virginia in Orange County (“the Property”).

3. In 2004, the Shippis planned to build an addition onto their existing home on the Property. In June 2004, during the construction of the addition, the existing sewage disposal system was damaged.

4. On June 18, 2004, a construction permit was issued to the Shippis for the installation of a new sewage disposal system ("System"). The new System failed on May 3, 2006, and the Orange County Health Department ("OCHD") determined that new System should not have been permitted because the land on the Property would not "perk". Therefore, another system would have to be installed.

5. On April 20, 2007, due to the failure of the System, the Shippis filed a request for indemnification. This request for indemnification was filed prior to the amendments to Virginia Code § 32.1-164.1:01, which took effect on July 1, 2007.

6. The Shippis replaced the failed System at cost exceeding \$22,724.21. However, the Board determined that some of these costs were inapplicable to the System replacement.

CONCLUSIONS OF LAW


7. The Board is authorized to determine whether a decision of the Commissioner for the Virginia Department of Health to refuse payment from the indemnification fund complies with the requirements contained in Va. Code § 32.1-164.1:01, and in this case whether the decision of the Commissioner comported with the law as it existed prior to the July 1, 2007 amendments.

8. Because there was evidence of negligence on the part of the Department in permitting the Shippis' sewage disposal system, the Board grants the Shippis' request for

indemnification and orders payment to Jacqueline and Joseph Shipp in the amount of \$22,724.21.

WHEREFORE, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner to deny any indemnification award to Jacqueline and Joseph Shipp and grants the Shipp's request for indemnification.

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.


Steven K. Thomas
Chairman

Dated: April 21, 2010

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