

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

DIETRICH A. STEPHAN,)
ELIZABETH A. STEPHAN,)
)
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 19, 2014 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 Dietrich and Elizabeth Stephan (“the Stephans”). Mr. Stephan appeared at the April 9, 2014 hearing without counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. The Stephans were at all times pertinent to this matter the owners of 708 Clear Spring Road, Great Falls, Virginia, 22066, located in the County of Fairfax, Virginia (the "Property").

3. The sewage disposal system on the Property was installed and completed in accordance with the construction permit on May 4, 2011.

4. The Fairfax County Health Department ("FCHD") issued an operational permit on the sewage disposal system at the Property on May 27, 2011.

5. The evidence indicated that the sewage system began to fail almost immediately after construction.

6. The evidence further indicated that the failure of the sewage system occurred due to negligence attributable to the FCHD. An operational permit should not have been issued for the system as installed.

7. The evidence indicated that the sewage system failed within three (3) years of its operation permit, and the Stephans applied for indemnification within one (1) year of the system's failure.

CONCLUSIONS OF LAW

8. 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.

9. Because there was 1) evidence that the Stephans requested indemnification within one (1) year of the sewage system's failure; and 2) evidence of negligence on the part of the Department in permitting Mr. and Mrs. Stephan's sewage system, the Board overturns the

Commissioner's decision to deny indemnification to Mr. and Mrs. Stephan and remands this matter to the Commissioner to reimburse the Stephans the reasonable cost of repairs to or replacement of the sewage system.

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.


Chairman

Dated: April 22, 2014