

VIRGINIA:

BEFORE THE STATE HEALTH DEPARTMENT SEWAGE
HANDING AND DISPOSAL APPEAL REVIEW BOARD

In Re: Mildred A. Powers

ORDER

Mrs. Powers appeals the State Health Department's denial of an onsite sewage disposal permit for Lot 10, Lotus Garden Farms (Map Book 47, Page 19A), on Sandbridge Road in Virginia Beach.

Mrs. Powers has owned this 2.1 acre lot for over thirty-one years. On July 31, 1974, the Virginia Beach Health District denied Mrs. Powers' application for an onsite sewage disposal permit; the reason was "an indicated high seasonal water table."

On May 17, 1991, Mrs. Powers again applied for an onsite permit. Mrs. Powers states that she wishes to obtain the permit in connection with offering the lot for sale. The Department again evaluated the lot and again denied the application based on "[i]nsufficient depth of suitable soil to seasonal water table." Following an informal hearing, the Health Director upheld the denial. Mrs. Powers then appealed to this Board. The Board heard the appeal on April 21, 1993.

Mrs. Powers does not directly challenge the Department's finding of insufficient depth of soil to a seasonal water table. Instead, she notes that all the adjacent lots have been developed; she states that it is "hard to believe" that she has different soils from her neighbors.

Mr. Peacock, a V.P.I. soil scientist who serves as consultant to the Department, confirms the already unanimous conclusion of those who have examined the soils on this lot: The gray soil color indicates a seasonal water table *at the surface*. Sewage Handling and Disposal Regulations (State Board of Health, 1989) (the "Regulations"), § 3.5.A. Thus, there is an insufficient depth of suitable soil to accommodate the required eighteen inch trench depth, Regulations § 4.30.C.1 plus the required standoff from the trench bottom, *Id.*, § 4.30.A.3.

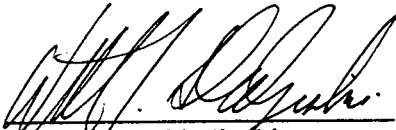
Section 1.7 of the Regulations, the Grandfather Clause, does not apply: The lot is not the subject of an earlier permit and there is no subdivision plat approval by the Department. If the lot were grandfathered, the permit application would be reviewed under the 1971 Regulations. As the Department decided in 1974, no permit could issue under the earlier regulation because of the high seasonal water table.

Mr. Peacock testified that the soil maps indicate short-distance variations in soils in the vicinity of the Powers lot that could account for a lot-to-lot difference in capability of the soils to support onsite disposal. In any event, whatever the condition of the neighboring soils, it is abundantly clear that *this* lot does not qualify under the Regulations. Accordingly, the appeal is DENIED.

Mrs. Powers may initiate a judicial appeal of this decision by filing a Notice of Appeal with the Board's Secretary, Ms. Constance Talbert, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia

23219 within 33 days of the date of mailing of this order to her. Other requirements for perfecting an appeal are set out in Part 2A of the Rules of the Supreme Court of Virginia and in the Administrative Process Act.

Mr. Peacock also testified that the highway ditch in front of the lot appears to artificially lower the water table in the front portion of the lot. Mr. Peacock estimates a 50:50 chance that a water table study would demonstrate that an area suitable for a drainfield exists there. See § 3.3.H of the Regulations. The Board is aware of the Department's policy of requiring that such studies continue for at least three years, to assure that the study includes a normally wet winter. In light of Mr. Peacock's information, the Board states its belief that a one-year study should be sufficient on this lot.


William F. Sledjeski
Chairman

Dated: May 4, 1993

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