

VIRGINIA:

**BEFORE THE STATE HEALTH DEPARTMENT
SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD**

In Re: Sandra & Jesse Corker

FINAL ORDER

Mr. & Mrs. Corker appealed the denial of an application for a permit¹ for the repair of an onsite sewage disposal system to serve a Bed & Breakfast and related facilities at the former Apple Grove Elementary School property in Louisa County. The Department denied the application on January 20, 1999, following an informal conference.

As set forth in a letter of April 14, 1999 from Mr. Knapp of the Department to Mr. & Mrs. Corker, the parties settled the substantive dispute, and the Department authorized the County to issue a building permit for the proposed use. By letter of April 19, 1999 the Corkers thanked Mr. Knapp for his efforts, but

¹ Code § 32.1-164.B.1 authorizes the Board of Health to adopt regulations to include "[a] requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system . . ." Section 2.12 of the Board's *Sewage Handling and Disposal Regulations* (the *Regulations* now are codified at 12 VAC 5-610-10 *et seq.*; § 2.12 is codified at 12 VAC 5-610-240) imposes that requirement. Section 1.4 of the *Regulations*, 12 VAC 5-610-40, authorizes the Commissioner to delegate his authority under the *Regulations* (except for variances and orders) to the Department and appoints the Department as the primary agent of the Commissioner for the purpose of administering the regulations. Pursuant to that authority, the Commissioner has delegated the authority to issue and deny permits; he has not delegated the authority to issue variances. Denials of permits and variances may be appealed to this Board for the final administrative decision pursuant to Code §§ 32.1-164.1 and 32.1-166.6.

asserted that the hearing scheduled before this Board must continue because the Department had not approved a temporary occupancy permit. The letter concluded:

We are only sorry we were unable to come to complete resolution on this issue. When (sic) in fact, we were only one already documented (in your exhibits) statement away from enabling us too (sic) completely resolve this issue.

By letter of April 20, 1999 the Department notified the County that it had no objection to the temporary occupancy permit. This provided the "one . . . statement" and consummated the settlement. Based upon the completed agreement, the Board's Vice Chairman continued the hearing that had been scheduled for April 21, 1999.

The Corkers nonetheless continued to demand a hearing, apparently as an outgrowth of their litigation with VDOT about the condemnation of part of the property. In a telephone conversation with Mr. Hagy of the Department, Mrs. Corker said that she wanted a statement from the Department that the initial denial was based upon soils information from VDOT. In a letter dated May 26, 1999, the Corker's attorney confirmed that the remaining dispute was with VDOT, not the Department:

[VDOT] further contended that if the Corkers entered into any agreement with the Health Department that [VDOT] was not bound by that and the Corkers could not claim any damages against [VDOT] because of the agreement the Corkers had made with the Virginia Department of Health.

In a letter of June 14, 1999 the Board's Vice Chairman advised the Corkers that the relief they seek is outside the Board's jurisdiction, which runs to denials of permits. CODE § 32.1-166.6. The Vice Chairman further told the Corkers that the Board intended to dismiss the appeal at its next regular meeting unless the Corkers brought forward additional information on the subject.

At the Board's meeting on July 14, 1999, the Department moved for dismissal of the Corker appeal. The Corkers were not present. The Board voted to continue the matter until its meeting on August 18, 1999.

By letter of July 27 the Department notified the Corkers that the pending motion would be heard on August 18, 1999. At the meeting on August 18 the Department renewed its motion and the Corkers again failed to appear. The Board voted unanimously to dismiss the Corker appeal as settled.

Accordingly the Corker appeal is DISMISSED, SETTLED.

If the Corkers wish to appeal this decision they may initiate an appeal by filing a notice of appeal with the Board's Secretary, Ms. Susan Sherertz, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219 within thirty-three days of the date of mailing of this order to them. 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.


Charles Hagedorn
Vice Chairman

Dated: August 20, 1999

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