

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

ESTATE of LEN WESTON,)
)
 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 § 32.1-163 *et seq.* Based upon the entirety of the record of this matter presented at the September 9, 2009 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 application for a sewage disposal system certification letter pursuant to Virginia Code § 32.1-163.5 and 12 VAC 5-610-255. Each party was present with counsel, and each party presented testimony, documentary evidence and argument.

2. The Estate of Len Weston (“Estate”) is and was at all time pertinent to this matter the owner of Lot B5A, Occoquan River Hills, 6754 River Road, Prince William County (the “Property”).

3. On August 8, 2008, Michael Fredricks, executor for the Estate, filed an application for a sewage disposal system certification letter for the Property with the Prince William County Health Department (“PWCHD”).

4. PWCHD denied the permit, finding that the proposed sewage disposal site was positioned in a drainageway and subject to intermittent flooding. After an informal hearing held on November 20, 2008, the PWCHD Health Director, Dr. Alison Ansher, upheld PWCHD’s finding and its decision to deny the application for a sewage disposal system certification letter. The Estate appealed the PWCHD Health Director’s decision.

5. At the September 9, 2009 formal appeal, the Estate presented three highly-trained experts in the fields of engineering, soil science and topography, respectively, and each of these experts testified regarding the extensive testing and measurements he had conducted on the proposed sewage disposal site. The sum of the experts’ testimony and their supporting documentation, including soil analyses and surveys, indicated the following: the proposed sewage disposal site does not lie in a drainageway; the soils tested on the site are not prone to flooding; the proposed area has convexity (rather than concavity) in its topography; and the proposed area is not in fact subject to intermittent flooding.

6. The Department also produced the testimony of three highly-trained experts, each of whom is an employee of the Department, and each of whom testified that in his expert opinion this proposed sewage disposal site is in a drainageway and subject to intermittent flooding. However, none of the three Department employees tested the soils in the proposed area. Moreover, none of the three conducted his own survey of the

land, and in fact one of the employees testified that the land in the proposed area is indeed convex, rather than concave.


CONCLUSIONS OF LAW

7. The Board is authorized to determine whether a decision of the State Health Commissioner to deny a certification letter was accurately based in law and fact.

8. Because there was expert testimony and supporting documentation regarding the positive nature of the soils and topography of the proposed sewage disposal site and a lack of such evidence from the Department to rebut the Estate's evidence, the Board finds that the Estate provided substantial evidence that the proposed site does not sit in a drainageway and that it is not actually subject to intermittent flooding.

WHEREFORE, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner to deny the sewage disposal system certification letter to the Estate of Len Weston and grants the certification letter based on the existing application for a sewage disposal system in the existing proposed site.

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: September 25, 2009

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