

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

JOSEPH and BEVERLY O'NEAL,)
)
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 September 15, 2010 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 Joseph and Beverly O’Neal (the “O’Neals”). The O’Neals appeared at the September 15, 2010 hearing without counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. The O'Neals are and were at all times pertinent to this matter the owners of 11541 Danforth Road, Chesterfield, Virginia (the "Property"). The property is located in Chesterfield County, Virginia.

3. On March 24, 2003, the Chesterfield County Health Department ("CCHD") inspected, approved and permitted the sewage disposal system on the Property.

4. On May 14, 2009, the O'Neals filed a repair permit application due to their sewage disposal system's apparent failure.

5. On August 10, 2009, the O'Neals applied for indemnification.

6. The evidence did not indicate that the sewage system failed within three (3) years of its permit.

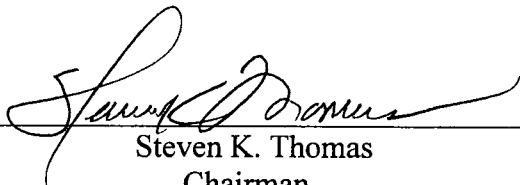
CONCLUSIONS OF LAW

7. 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.

8. Because the O'Neals failed to provide sufficient evidence that the Property's onsite sewage disposal system failed within three (3) years of its 2003 permit, the Board denies the O'Neals request for indemnification.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision of the State Health Commissioner to *deny* an indemnification award to Joseph and Beverly O'Neal.

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: October 8, 2010

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