

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

BRIAN and TRACI SANDBERG)
)
 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 October 14, 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 indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to Brian and Traci Sandberg (the “Sandbergs”). The Sandbergs appeared at the October 14, 2009 hearing without counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. The Sandbergs are and were at all times pertinent to this matter the owners of 7215 Jay Ray Way, Nokesville, Virginia located in Fauquier County (the “Property”).

3. On July 3, 2002, an official from the Fauquier County Health Department ("FCHD") awarded a construction permit for the Property based upon the soil work and system designed by a private Authorized Onsite Soil Evaluator (AOSE) and Professional Engineer (PE).

4. FCHD approved the construction permit without any site visit to the Property. On August 19, 2004, FCHD issued a notice of violation to the Sandbergs. On September 21, 2006, Jim Sawyer, a soil scientist for the Fauquier County, determined that the soils initially approved by FCHD were unacceptable for a drainfield.

5. The testimony of the Sandbergs' witnesses indicated that the original construction permit issued by FCHD should never have been issued.

5. The evidence further indicated that the sewage system failed within three (3) years of its permit.

6. The Sandbergs repaired the sewage system at a cost of \$24,533.67.

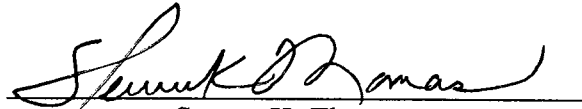
CONCLUSIONS OF LAW

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 there was evidence of negligence on the part of the Department in permitting the Sandberg's sewage system without a proper inspection, the Board grants the Sandbergs' request for indemnification and orders payment to Brian and Traci Sandberg in the amount of \$24,533.67.

WHEREFORE, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner to deny any indemnification award to Brian and Traci Sandberg and grants the Sandbergs' request for indemnification.

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: November 18, 2009

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