

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

FRANK MOHORKO,)
)
 Appellant,)
)
 v.)
)
 VIRGINIA DEPARTMENT OF HEALTH,)
)
 Appellee.)

AMENDED ORDER

This matter comes before the Sewage Handling and Disposal Appeal Review Board (“Board”) pursuant to Virginia Code § 32.1-163.6 and § 2.2-4000 et seq. Based upon the entirety of the record of this matter presented at the October 20, 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 Appellant’s 2009 request for a permit to construct an engineer-designed sewage disposal system proposed by a professional engineer, Joel S. Pinnix. Mr. Mohorko did not appear at the October 20, 2010 hearing, but his attorney did. The Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. Mr. Mohorko is and was at all times pertinent to this matter the owner of property located in Moon, Virginia (the “Property”). The property is located in Mathews County, Virginia.

3. On November 24, 2009, Mr. Mohorko submitted an application for a sewage disposal system to be built on the Property. The application was submitted on behalf of Mr. Mohorko by Allen Farmer, owner of Farmer's Septic Service, Inc.

4. Mr. Farmer contracted with Mr. Pinnix to design a sewage disposal system to be built on the Property.

5. On November 12, 2009, Mr. Pinnix submitted to the local health department a soil evaluation report regarding the Property and a proposed design for the sewage disposal system to be constructed on the Property. These submissions were included with the November 24, 2009 permit application.

6. On December 15, 2009, the Three Rivers Health District denied the permit request.

7. Pursuant to Va. Code § 32.1-163.6, Mr. Mohorko filed an appeal of the Department's December 15, 2009 denial letter. Also pursuant to Va. Code § 32.1-163.6, Mr. Mohorko requested and received an informal fact finding conference before the Engineer Design Review Panel ("Panel").

8. On February 12, 2010, the Panel unanimously voted to approve Mr. Pinnix's design of the proposed sewage disposal system. The Panel has no authority to issue or deny sewage disposal system permits, only the Department has such authority.

9. On March 17, 2010, the Director of the Three Rivers Health District, Dr. Thomas Irungu denied Mr. Mohorko's permit, citing the design's failure to protect the groundwater.

10. The evidence indicated that the soil at the Property was and is saturated and that only 12 inches of sand stood between the effluent and sewage coming from the house and the ground water.

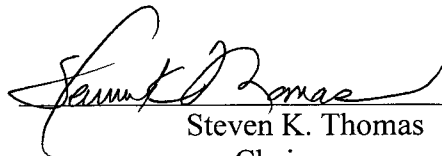
CONCLUSIONS OF LAW

11. The Board is authorized to review the Commissioner's decision to deny a sewage disposal permit.

12. Mr. Mohorko failed to provide sufficient evidence that Mr. Pinnix's proposed sewage disposal system design was appropriate for the particular soil characteristics of the site.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision of the State Health Commissioner to *deny* a sewage disposal system construction permit for the proposed design.

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 10, 2010

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