

VIRGINIA:

BEFORE THE STATE HEALTH DEPARTMENT SEWAGE
HANDING AND DISPOSAL APPEAL REVIEW BOARD

In Re: Shirley B. Braswell

FINAL ORDER

Ms. Braswell appeals the Health Commissioner's denial of a variance for an onsite sewage disposal system on her property at TM 31-1-025 in Isle of Wight County.

This 0.43 acre lot contains an abandoned house that formerly was served by a privy. The detailed history of Ms. Braswell's application for a permit is set out in the Department's proposed findings of fact. In short, after the denial of a permit, Ms. Braswell sought a variance from § 3.3.C.2 of the *Sewage Handling and Disposal Regulations*, which prohibits installation of a drainfield in a drainage way that is subject to intermittent flooding.

In evaluating a variance, the *Regulations* require consideration of three factors: the effect on a variance upon the operation of the sewage disposal facility, the cost and other economic considerations, and the effect of the variance upon the public health. *Regulations* § 2.7.C.2.

A. The Effect on Operation of the System

Based upon her personal observations of the property during rainstorm event, Ms. Braswell claims that the proposed drainfield area is not in a drainage

way. To the contrary, the Department's expert, Carl Peacock, a Research Associate with Virginia Tech with over twenty-one years' of experience in soil science, testified that, based both upon the topographical map of the site and the soil characteristics, the proposed location is in a drainage way subject to intermittent flooding. Mr. Peacock calculates the watershed of the drainage way to be four to five acres.

As Mr. Peacock testified, the drainage way carries water from both surface and subsurface runoff. Unless this water can be diverted, a drainfield in this location will be subject to intermittent flooding that will contribute to malfunctioning; during wet periods the drainfield will not properly treat the sewage effluent.

B. Cost and other Economic Considerations.

Ms. Braswell paid \$5,300 for the lot, intending to improve the structure and use it for her personal residence. Unfortunately, she did not first investigate the suitability of the lot for an onsite sewage disposal system. She now has purchased another residence, and she seeks the variance so she will be able to sell the present lot, which she calculates may be worth as much as \$8,000.

At the worst, the denial of this variance will reduce substantially the value of Ms. Braswell's investment. The worst case does not appear to be inevitable, however. The soils data and typography indicate that the area south and west of the area presently proposed may be suitable. The Board has requested that the Department assist Ms. Braswell in investigating the suitability of that site. More-

over, the Board has no information on the availability or suitability of the adjacent property.

C. Effect on the Public Health

As Mr. Peacock testified, the proposed system probably will fail, in the sense that it will not provide adequate treatment of sewage effluent. The contaminated effluent will flow downhill with the groundwater and, ultimately, enter Champton Swamp, which is a tributary to the Pagan River (which contains shellfish waters). The Board has no information about existing wells that would be threatened by this contaminated effluent.

The Department's exhibit 16 discusses the health threats posed by human contact with insufficiently treated sewage, whether by way of ground or surface water. Although the probability of exposure to effluent from the system Ms. Braswell proposes is slight, the effect of any such exposure could well be catastrophic.

Conclusion

In performing the balancing required by § 2.7.B of the *Regulations*, it is not clear what hardship the Regulations impose upon Ms. Braswell. Her only reasonable expectation when she bought the lot was that the dwelling would be served by a privy. Thus, although Ms. Braswell may suffer a financial loss in connection with the property, the Board is unable to find any hardship imposed upon her by § 3.3 of the *Regulations*, from which she seeks a variance.

In contrast, the benefits to the public of enforcement of the *Regulations* are quite clear. There is no reasonable prospect of obtaining aerobic treatment of sewage effluent by a flooded drainfield. Accordingly, the Board finds that the hardship imposed by the Regulation does not outweigh the benefits to be received by the public.

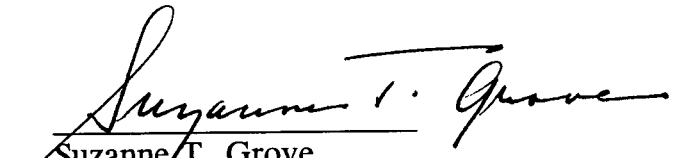
Finally, the Board concludes that installing a system that probably conveys partially treated sewage to ground and surface waters poses an unreasonable health risk. As the Board stated in *In re Hudgins*:

The nineteenth century sanitary revolution was probably the most significant step ever taken by an organized society to enhance health. The sanitary disposal of excreta and the provision of pure piped water removed deadly dangers to health of weanling and older children and others in every age who previously died in huge numbers from all forms of gastrointestinal infections.

In Ms. Brasfield's appeal, as in the *Hudgins* case, the Board cannot grant the appeal "without embracing a return to the eighteenth century." Accordingly, the Health Commissioner's denial of this variance is sustained.

Ms. Braswell may initiate a judicial appeal of this decision by filing a notice of appeal with the Board's Secretary, Ms. Constance Talbert, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219 within 33 days of the date of mailing of this order to her. 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.


Suzanne T. Grove
Vice Chairman

Dated: November 30, 1994

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