

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

STEPHEN and JACQUELYN ERB,)
)
 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 19, 2012 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 Stephen and Jacquelyn Erb. Mr. and Mrs. Erb appeared at the September 19, 2012 hearing without counsel, and the Department was present without counsel. Both parties presented testimony, documentary evidence and argument.
2. Mr. and Mrs. Erb are the current owners of 38791 Dutchman's Knoll Drive, Lovettsville, Virginia 20180, located in Loudoun County, Virginia (the “Property”).

3. The house on the Property was built in 2006, and the Loudoun County Health Department ("LCHD") issued an operation permit for the sewage system at the house in 2006.

4. Almost immediately after moving into the house in 2007, Mr. and Mrs. Erb discovered that their sewage system failed to operate properly.

5. In 2012, LCHD determined that there was a negative fall line in the sewage system that prohibited proper flow and distribution of the sewage drain from the house on the Property.

6. Mr. and Mrs. Erb requested indemnification from the Department's indemnification fund on February 16, 2012.

7. The evidence demonstrated that the sewage system on the Property failed within three (3) years of its construction.

8. The evidence further demonstrated that the LCHD should not have issued the original 2006 operator permit on the sewage system with a negative fall line and that the sewage system had been failing from the time Mr. and Mrs. Erb inhabited the property.

9. The evidence also indicated that Mr. and Mrs. Erb failed to file a request for indemnification within a year of the date of the sewage system's failure.

CONCLUSIONS OF LAW

10. 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.

11. Because Mr. and Mrs. Erb failed to file a request for indemnification from the Department within one year of the sewage system's failure, the Board denies Mr. and Mrs. Erb's request for indemnification.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision of the State Health Commissioner to *deny* any indemnification award to Stephen and Jacquelyn Erb.

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.


Chairman

Dated: October 10, 2012