

THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE

In The Matter Of:)
)
THE DENIAL OF A PERMIT FOR) Introduction, Findings of Fact,
A SEPTIC TANK SEWAGE DISPOSAL) The Law, Decision and Order
SYSTEM TO CARROLL GARVENOR)

INTRODUCTION

1. A hearing was held on Thursday, August 23, 1979 at 10:00 a.m. in the Supreme Court conference room, Supreme Court Building, Dover, Delaware to consider an appeal filed by Carroll Garvenor appealing a denial of a permit for a septic tank sewage disposal system by the Water Resources Section of the Department of Natural Resources and Environmental Control.

2. Conducting the hearing were Thomas J. Kealy, Chairman of the Environmental Appeals Board and Wheeler K. Neff, Deputy Attorney General. Members of the Environmental Appeals Board also at the hearing were Mr. Joseph Melson, Mr. Ray Woodward and Mr. Clifton H. Hubbard, Jr.

3. Appearing on behalf of the Department of Natural Resources and Environmental Control were June D. MacArtor, Deputy Attorney General and Mr. Robert J. Touhey.

4. Appearing on behalf of the appellant were Carroll Garvenor, and Steve Calloway, Esquire.

FINDINGS OF FACT

All exhibits introduced into the record are incorporated herein.

1. Testimony in the record by Mr. Robert Touhey in conjunction with the May 11, 1979 percolation test and soil analysis by Richard P. Bennett, District Conservationist, (State's hearing exhibit #1) revealed that the lot on which a septic tank sewage disposal system is proposed and the surrounding lots are poorly drained and have seasonal high water tables, local ponding and potential high frost action. Soil percolation tests were conducted on May 10, 1979 with a hole bored to the depth of the sixty (60) inches. After five minutes water rose twelve (12) inches in the hole, after ten minutes twenty-four (24) inches and after fifteen minutes, water was thirty-two (32) inches from the surface and still rising. Mr. Bennett concluded in his report that the site was unsuitable for the operation of a septic tank disposal system. In similar fashion, a test conducted on May 30, 1979 by Richard L. Hall, Soil Scientist, revealed that in one of the test holes bored to a depth of sixty-two (62) inches, water rose to a level thirty-nine (39) inches below ground surface in thirty-five minutes. Mr. Hall concluded that given the soil characteristics noted in the investigation he would classify the soils in two of the three holes as poorly drained

2. William McDaniel, Environmental Protection Officer, for the Department of Natural Resources and Environmental Control testified that in the course of his duties, he has observed standing water on the property near where the proposed septic sewage disposal system is to be located. Mr. McDaniel testified that standing water was often to the depth of several inches and remained for periods of a week or more.

3. Testimony in the record by Donald Melson, as well as a memorandum dated June 12, 1979 by Mr. Melson indicated that attempts at performing percolation tests at the proposed location in March of 1979 were unsuccessful after an hour or more of testing, since water kept rising in the percolation hole.

THE LAW

Under the provisions of 7 Del. C. §6008(a) any person whose interest is substantially effected by any action of the Secretary may appeal to the Envirnomental Appeals Board within twenty (20) days after the Secretary has announced the decision. Appeals of a decision of a Secretary shall be conducted in accordance with 29 Del. C. §6006 and the regulations promulgated pursuant to §6010. Department Regulation #2, §0514 dealing with drainage at septic tank disposal sites provides that a septic tank disposal system shall not be located in an area where surface or subsurface (ground) water will accumulate or in area subject to surface flooding or where ground water may interfere with satisfactory percolation of sewage. Section 0806 dealing with the water table at septic tank disposal sites provides that septic tank tile disposal systems shall not be installed in areas where the maximum elevation of ground water table is less than four (4) feet below the ground surface except where it can be shown to the satisfaction of the Commission due to the special nature of the area involved or particular manner of construction a system will not cause or contribute to a state of pollution. Finally, §1003 dealing with the acceptable percolation rate for septic tank systems provides that the slowest

acceptable percolation rate will be forty (40) minutes for every inch. The fastest percolation rate will be two (2) minutes per inch. Pursuant to §6008, the Board may affirm, modify or reverse the decision of the Secretary or his delegate.

DECISION AND ORDER

It is this ~~21st~~ day of August, 1979 the decision of the Environmental Appeals Board that the decision of the Secretary by and through Robert J. Touhey, Manager of the Water Resources Section is hereby affirmed. Testimony in the record together with the exhibits incorporated herein clearly establish that drainage at the proposed septic tank sewage disposal system location is inadequate. Testimony in the record revealed that the area in question has numerous instances of surface water accumulation and remains for extended periods of time during the course of the year. In addition, testimony in the record indicated that the ground water table was less than four (4) feet below the ground surface and there were no special characteristics of the soil or aspects of construction to prevent an increase in the state of pollution if a septic system were installed at the site. Finally, evidence in the record indicates that several attempts at percolation tests were unsuccessful due to rising water in the percolation hole which is further evidence of an impermissibly high water table and inadequate drainage.

The Board takes note that substantial re-ditching of the area is proposed and that upon such re-ditching of the area appellant is given leave to apply for a new septic tank sewage

disposal system permit which shall be entertained and reviewed by the Secretary on its merits.

In addition, it is hereby ordered by the Board that the Department of Natural Resources and Environmental Control undertake bacteria tests in areas where surface water has accumulated for an extended period of time over existing septic tank sewage disposal systems to determine the existence and extent of any pollution caused thereby.

Thomas J. Kealy
Chairman

Ray K. Woodward

Earl B. Tull

Cliff H. Hubbard 9/10/79

Carolyn H. Greenwood

Wheeler K. Neff
Wheeler K. Neff
Deputy Attorney General

DATED: 8/31/79

