

BEFORE THE ENVIRONMENTAL APPEALS BOARD

STATE OF DELAWARE

APPEAL OF FRANK COLLINS

OPINION AND ORDER

This matter came to a hearing before the Environmental Appeals Board on January 8, 1986 at 10:30 a.m. Present were the Chairman Thomas J. Kealey, and Board Members Holger H. Harvey, Clifton H. Hubbard, Jr., and Ray Woodward. The Board was represented by Deputy Attorney General Barbara MacDonald. The Appellant, Frank Collins, represented himself. The Department of Natural Resources and Environmental Control ("DNREC") was represented by Deputy Attorney General Peter Hess.

Summary of the Evidence

This is an appeal of DNREC's denial of an on-site waste water disposal system permit pursuant to the DNREC "Regulations Governing the Design, Installation and Operation of On-Site Waste water Treatment and Disposal System" §6.0000, adopted July 10, 1985.

Frank Collins, Sr., the appellant's father, testified that he had been the owner of the land in which the appellant seeks to locate the system, and had farmed the land for at least the last fifteen years. He testified that he had never had any problem with drainage on the property, and that although the County Map (Chronology, 14) shows no drainage ditches by the property there are in fact ditches on either side.

George Collins, Sr., the brother of the appellant testified that he had also tilled the land in question for several years, that he had plowed to sixteen inches without ever seeing water and that there are ditches on either side of the property.

Bruce Collins, the brother of the appellant testified that he is a licensed plumber and contractor and that he has installed septic systems on similar property and has not ever had any problem with the sort of soil of which the property consists. He testified that he believed a septic system would work on the property, but that he does not believe the property meets the requirements of the new regulations.

James Larrimore testified that he lives in a trailer nearby the property, that he has a septic system and has never had any problems with it.

Sam Powell testified that he is a licensed plumber and contractor, that he installed Mr. Larrimore's system and that he believes the same system could work on the Collins' property. Mr. Powell also testified that, based on his past experience and observations, he believes the water table on the Collins property to be at least thirty-eight to forty inches below the surface, but that he had not conducted any tests to verify this.

The appellant's wife, Mrs. Collins, testified that she has never seen high water on the land and that subsequent to Hurricane Gloria, standing water had drained from the land within one hour. The appellant introduced photographs into evidence to substantiate this point.

William Ratledge testified that he is a soil scientist and that he was hired by Mr. Collins to do a site evaluation of the property, and that the results of that evaluation show that the seasonal high water for the Collins property is approximately fourteen inches from the surface.

Mr. Ratledge also testified that drainage ditches if placed within 300 feet of the proposed site could drop the seasonal high water table by as much as a foot, but that he saw no drainage ditches deep enough to accomplish such a drop near the proposed site of the septic system.

Dr. Jack Carey testified that he is a soil scientist with DNREC and that he agrees with the results of the Ratledge evaluation. Dr. Carey further testified that the drainages ditches adjoining the Collins property are not deep enough or close enough to the proposed septic system site to materially affect the level of the seasonal high water table.

Mr. Robert Zimmerman testified that he is the supervisor of the Water Pollution Branch of DNREC and that under the applicable regulations, the seasonal high water table must be at least twenty inches from the surface in order for any on-site wastewater treatment system to be permitted.

Findings of Fact


The Board finds that the seasonal high water table on the Collins property at the site of the proposed septic system is higher than twenty inches below the surface.

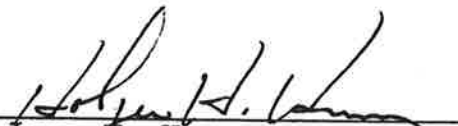
Conclusions of Law

The finding that the seasonal high water table is higher than required by the applicable regulations mandates a conclusion that the Secretary was correct in denying Mr. Collins's permit application. The new regulations were adopted in order to make more accurate DNREC's method of testing the suitability of sites for septic systems. Therefore, the evidence that nearby property owners have obtained septic systems prior to the adoption of the new regulations is not persuasive to show that the DNREC erred in its application of the current regulations. Further, the evidence and opinion testimony that these prior systems "work" did not address the question of whether these systems were discharging pollutants into the environment, nor were the witnesses qualified to testify on this point. Similarly, the testimony that surface water drains quickly from the property is not persuasive to show that a septic system, if installed on the proposed site would not discharge such pollutants.


ORDER

The Board affirms the decision of the Secretary to deny Mr. Collins's application for a permit to install an onsite waste water disposal system. SO ORDERED:


Thomas J. Kealey, Chairman
10 Feb 86


Holger H. Harvey


Clifton A. Hubbard, Jr. 1/23/86


Ray Woodward 2/3/86


Evelyn Greenwood

2/12/86
Date

