

BEFORE THE ENVIRONMENTAL APPEALS BOARD
STATE OF DELAWARE

APPEAL OF BERNARD STIFLER

OPINION AND ORDER

This matter came to a hearing before the Environmental Appeals Board on March 12, 1986 at 9:45 a.m. Present were Chairman Thomas J. Kealy, and Board Members Evelyn Greenwood, Clifton H. Hubbard, Jr., and Ray Woodward. The Board was represented by Deputy Attorney General Barbara MacDonald. The appellant, Bernard Stifler, 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 wastewater disposal system permit pursuant to the DNREC's "regulations governing the design, installation and operation of on-site wastewater treatment and disposal systems," §6.0000, adopted July 10, 1985. Mr. Stifler testified that he is a Maryland resident, that he purchased the lot in question in 1975 in a development known as Patterson Place. Presently, of the 33 lots in Patterson Place, 20 have trailer residences and septic tanks. Mr. Stifler further testified that he knew that the DNREC's regulations governing permits to install septic tanks had changed between the time he filed his application, and the time his neighbors in Patterson Place had obtained their permits. However, he stated

that in his opinion such a change was unfair, and that in Maryland, where he lives, the owners of property at the time when regulations change have their rights "grandfathered" in. Mr. Stifler introduced, as appellant's Exhibit 1, a plot of the Patterson Place development showing those lots which have septic tanks, and those which do not. Mr. Stifler presented no further evidence.

Mr. Lyle Jones, a soil scientist employed by DNREC, testified that on November 20, 1985, he conducted a site evaluation of Mr. Stifler's property. Mr. Jones conducted three borings on the lot. The borings revealed that in the rear of the lot, where Mr. Stifler proposes to place the septic system, is characterized by Fallsington soil with a seasonal highwater table at or near the soil surface. Mr. Jones testified that for this reason the rear of the lot was not suitable for installation of a septic tank. At the front of the lot, Mr. Jones testified that he found Kalmia soil, that this portion of the lot could possibly be made to take a septic system with an elevated sand mound, however, that the location does not meet the requirement that the system be located at least 100 feet from any extant wells, since there are wells within this distance on Mr. Stifler's neighbors' property.

Mr. Robert Zimmerman testified that he is an environmental engineer for DNREC and the supervisor of the on-site wastewater treatment permitting system. He testified that Mr. Stifler's application had been processed in accordance with the applicable regulations. He testified that DNREC's regulations have some "grandfathering" provisions for the owners of existing lots, in

that they allow the development of smaller lots, as opposed to the one-half acre current requirement, and reduce the required well separation distance (from 100 to 50 feet) if the wells meet certain construction requirements. However, Mr. Zimmerman testified that in his understanding the Stifler lot does not meet even the 50 foot well separation requirement. He testified that if Mr. Stifler's neighbors could be persuaded to relocate their wells and to construct them in the appropriate manner, Mr. Stifler could possibly obtain a permit under these "grandfather" provisions.

Mr. Zimmerman testified that the applicable regulations, which were adopted in January 1985 and took effect July 10, 1985, were the result of an extended effort by DNREC to improve its permitting system. In particular, Mr. Zimmerman testified that DNREC had held meetings with citizen advisory groups for three to four years prior to the adoption of the new regulations and had held several public hearings on the matter which were noticed in the newspapers of all three counties. Mr. Zimmerman testified that DNREC did not attempt to notify Delaware property owners who live out of state of these hearings in any manner other than publishing notices thereof in the newspapers of the counties where the property is located.

Findings of Fact

The Board finds that Mr. Stifler's property is currently unsuited for the installation of a septic system. The soil at the rear of the lot has a seasonal highwater table at or near the

soil surface. At the front of the lot, where the soil is potentially suited for septic system, it is not currently possible to meet even the 50 foot well separation requirement. Mr. Stifler introduced no evidence to dispute these facts.

Conclusion of Law

The finding that the Stifler property does not meet the applicable regulations governing septic tank installation mandates a conclusion that the Secretary was correct in denying Mr. Stifler's permit application. The testimony further shows that DNREC has made reasonable attempts to accommodate the special needs of existing small lot owners.

ORDER

The Board affirms the decision of the Secretary to deny Mr. Stifler's application for a permit to install an on-site wastewater disposal system.

SO ORDERED:



Thomas J. Kealy, Chairman

Evelyn Greenwood

Clifton A. Hubbard, Jr.

Ray Woodward

Richard C. Sames


Dated:

ORDER

The Board affirms the decision of the Secretary to deny Mr. Stifler's application for a permit to install an on-site wastewater disposal system.

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Ray K Woodward 4/30/8

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