



a "de facto" subdivision which began to be developed in 1966. He said no plot or subdivision plan had been filed.

Mr. Twilley became involved with the property as an owner in 1980. He testified that each of the other parcels had a house or mobile home on it. Mr. Twilley said that the only use for the property was residential. He claimed that septic system permits must have been issued for the other properties since people were living there. He described four parcels which had been conveyed between 1982-1985.

Mr. Twilley testified that he had observed the parcels on the morning of the hearing and that there was some ponding on the property. He said there had been two days of heavy rain within the preceding three weeks. He said that it was "visually false" that the parcels were poorly drained as the Soil Survey for Kent County described Falsington soils.

DNREC soil scientist Lyle Jones testified for the Secretary. Mr. Jones testified that he performed approximately 700 soil surveys in 1986. He performed the soil surveys on the Twilley parcels which were the bases for the denial of his permit applications. He said that he conducted the tests according to accepted techniques at the locations indicated by the owner or his agent by stakes. The borings disclosed that both parcels had Falsington soils which are poorly drained. Visual inspection of the boring holes showed the seasonal high water table was at or near the surface for both. Under DNREC regulations, property with a seasonal high water table within 20 inches of the soil

surface were not deemed capable of supporting any septic system. Only a holding tank would be feasible. Holding tanks are permitted only on property for which plot plans were recorded before April 8, 1984.

Mr. Jones testified that the water table height is significant to the use of a septic system. A septic tank will absorb water from the ground. Then the homeowner likely would find his toilet would not flush. There also is a potential for ground water contamination. If the effluent stands on the surface rather than being treated in the septic system, then health hazards can result.

Mr. Jones testified that there are no septic systems within 100 feet of the Twilley parcels which are the subject of these appeals. One hundred feet is the generally accepted area needed for a well.

A. J. Farling of DNREC show two slides taken on January 14, 1987 of the properties. Both parcels had ponding. He testified that the properties were muddy. There had been one inch of rain on January 1 and 1 3/4 inches on December 24.

Mr. Twilley conceded that the standing water which he observed on the day of the hearing was at the same location shown on DNREC's slides. However, he said that the property was much deeper and there was no water farther back.

FINDINGS OF FACT


Mr. Twilley did not dispute the results of DNREC's site evaluation or that the soils were classified as Falsington and were poorly drained in the Soil Survey.

There was standing water on that part of each parcel staked for DNREC to evaluate. DNREC can only conduct its borings where indicated on the plot drawing in the Site Evaluation Application.

CONCLUSION OF LAW

Regulation 6.06038 requires a minimum depth of 20 inches for the seasonal high water mark for a elevated sand mound system. Mr. Twilley did not challenge the method or results of the DNREC site evaluation. Accordingly, the Secretary's decision is affirmed.

SO ORDERED.

  
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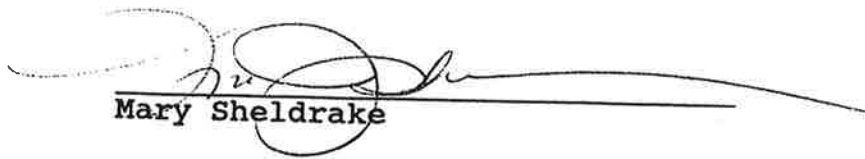
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Ray Woodward

**Dated:** March 4, 1987

