

BEFORE THE ENVIRONMENTAL APPEALS BOARD STATE OF DELAWARE

APPEAL OF WILLIAM GREER

)

)

)

NO. 88-1

)

MAY 2, 1988

)

FINAL ORDER

This matter came before the Environmental Appeals Board on March 30, 1988. The following Board members were present: Thomas J. Kealy, Chairman, Evelyn H. Greenwood, Richard C. Sames, Mary J. Sheldrake, and Harry E. Derrickson. Also present was the Appellant, William A. Greer and Mrs. Greer. Jeanne Langdon, Deputy Attorney General, represented the Department of Natural Resources and Environmental Control ("DNREC"). The Board was advised by Deputy Attorney General, Ann Marie Johnson. For the reasons stated below, the Board AFFIRMS the denial of the permit.

SUMMARY OF THE EVIDENCE

This is an appeal of DNREC's denial of an application for an on-site sewage disposal system pursuant to the DNREC Regulations Governing the Design, Installation and Operation of On-Site Waste Water Treatment and Disposal Systems," adopted July 10, 1985, section 6.06038.

Mr. Greer testified that he felt that the soils evaluation did not accurately determine the appropriateness of the soil on

his property. He stated that he had had a lot across the street from the proposed site approved under the old septic regulations and had fairly recently done a perk test on the site. This property has a working sewage disposal system. He also mentioned that at the end of Dutch Neck Road there were two developments with the same soil as his, which had septic systems.

Doyle Brown, Soil Scientist from DNREC, testified on behalf of the department. He stated that he had conducted the soil survey on Mr. Greer's property. His tests of the soil in the area designated for a septic system in Mr. Greer's application was high in clay content, that it drained slowly, and that he detected "mottles", i.e. the presence of water at or near the surface. This was attributable either to a seasonal high water table or the low permeability of the soil.

Mr. Brown admitted on cross-examination that there might be more suitable soils on other parts of the property, and that the soil maps of the area confirmed this, but that he could only test the site designated by the applicant. There was no system that would work on this one acre that he tested. Mr. Greer did have other options. One would be to install pisometers, which are small monitoring wells, to determine where the water table is on the property. The pisometers could be installed in the winter of 1988 through the spring of 1989. If the water table was found to be twenty inches below the surface, Mr. Greer could install a Sand Mound system. He estimated that the cost of the pisometer would be approximately \$150.00 for the three wells.

Another option would be to hire an independent soil scientist who could find a more appropriate spot for a septic system on the property. Finally a third option was to apply for a ten acre variance for a septic system. Mr. Greer stated that the pisometer option had not been adequately explained to him by the Department prior to the denial of his septic application.

FINDINGS OF FACT

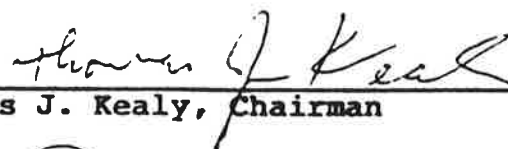
The Board finds that Mr. Greer did not contest the findings of the soil evaluation. Moreover, the Board finds that the area tested showed soil high in clay content, with water near the surface, indicating that the water table was not 20 inches below the surface. Therefore the Board finds that the soil tested by soil expert at DNREC did not have sufficient permeability to be adequate for his septic system.

CONCLUSIONS OF LAW

Section 6.06038 of the regulations states that the depth to limiting zone must be 20 inches or greater from the original grade. As the applicant's property did not meet this condition, the Secretary properly denied his application for a septic system.

ORDER

The Board affirms the decision of the Secretary to deny Mr. Greer's application.



Thomas J. Kealy, Chairman

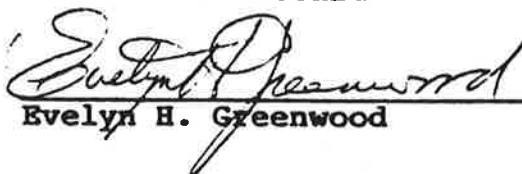


Mary J. Sheldrake



Harry E. Derrickson

Clifton H. Hubbard



Evelyn H. Greenwood

Ray K. Woodward



Richard C. Sames

DATE: May 12, 1988