

MAY 22 1986

BEFORE THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE

Environmental Appeals Board

APPEAL OF:
WILLIAM BAUSMAN, JR.

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OPINION AND ORDER

This matter came to a hearing before the Environmental Appeals Board on May 7, 1986. Present for the Board were Thomas A. Kealy, Chairman, and members Evelyn Greenwood, Clifford Hubbard and Ray Woodward. Peter Hess, Deputy Attorney General, appeared on behalf of the Secretary. The appellant was represented by Ernest A. Sciascia, Esquire. Barbara MacDonald, Deputy Attorney General, advised the Board.

SUMMARY OF EVIDENCE

Mr. Bausman appealed the denial of his application for a septic permit on his lot in Plantation Park, a mobile home development near Bethany Beach. A chronology and copies of the documents in the DNREC's file relating to Mr. Bausman's application was marked "Board Exhibit 1". Mr. Bausman testified that he purchased two lots in the Plantation Park development in 1970. He applied for a permit in October 1985 and was denied in November 1985. He testified that lots immediately contiguous to his have been granted permits, that there is no public sewage system planned for the development, and that his only alternative, a holding tank, is cost prohibitive. He testified that he paid \$1,800 per lot, and that he had had a number of

difficulties with the location of the lots and a subsequently discovered cloud on title which led him to postpone developing the property and hence applying for a septic system permit. He also testified that the lots had been reassessed to \$3,500 each. He testified that he had received notice from Sussex County of a proposed rezoning of the property, however he never received any notice that the DNREC was planning to revise the regulations pertaining to septic system installation. Mr. Carl Jeffers, a neighbor of Mr. Bausman's, testified that he lives in the lot adjacent to Mr. Bausman's and that he has had a mobile home on the lot since October 1972. He has an inground sewage system and has had "no problems." Mr. Jeffers testified that the lots are currently sold at a value of \$15,000 each. Mr. Jeffers testified on cross-examination that he put 12 to 15 truckloads of fill on the lot after the system was installed. He testified that he had not noticed any difference in the vegetation growing over the drain field as compared to the rest of the lot. He testified that he had had no problems with his well.

Mr. Bausman introduced the following exhibits:

Exhibit 1, a plot plan of Plantation Park.

Exhibit 2, copies of letters relating to Mr. Bausman's exchange of his original two lots for two lots in another section of the development.

Exhibit 3, the deeds to Mr. Bausman's lots.

Exhibit 4, correspondence relating to a cloud on the title of Mr. Bausman's lots.

Exhibit 5, correspondence relating to a drainage ditch on Mr. Bausman's lots.

Exhibit 6, a Sussex County tax statement showing the assessment of Mr. Bausman's lots.

Exhibit 7, correspondence and receipts demonstrating expenses Mr. Bausman has entailed by making improvements on his lots.

Exhibit 8, correspondence relating to Mr. Bausman's application for a septic system.

Exhibit 9, the copy of the rezoning notice Mr. Bausman received from Sussex County.

Exhibit 10, a photograph of Mr. Bausman's lot.

Exhibit 11, a photograph of another lot in the neighborhood showing standing water.

Exhibit 12, a maintenance assessment for Mr. Bausman's lots.

Exhibit 13, documents relating to the approval of the permit application of Mr. Bausman's neighbor, Mr. Jeffers.

Exhibit 14, listings for lots and mobile homes in Plantation Park showing the asking price.

The DNREC presented no evidence.

FINDINGS OF FACT

The facts testified to by Mr. Bausman and Mr. Jeffers were undisputed by the Department. The Board finds them to be as represented by Mr. Bausman.

CONCLUSIONS OF LAW

At the close of Mr. Bausman's case the DNREC moved for summary judgment. The Board granted the motion. Mr. Bausman raised no arguments which challenged the validity or correctness of the Secretary's decision under the applicable regulations or Delaware law. Consequently, the Secretary's decision is affirmed.

SO ORDERED.



Thomas J. Kealy, Chairman

Evelyn Greenwood

Clifford Hubbard

Ray Woodward

Richard C. Sames

Dated:

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At the close of Mr. Bausman's case the DNREC moved for summary judgment. The Board granted the motion. Mr. Bausman raised no arguments which challenged the validity or correctness of the Secretary's decision under the applicable regulations or Delaware law. Consequently, the Secretary's decision is affirmed.

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Thomas J. Kealy, Chairman



Evelyn Greenwood

Clifford Hubbard

Ray Woodward

Richard C. Sames

Dated: 5/24/86

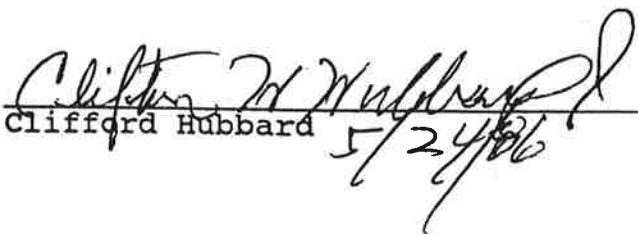
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