

BEFORE THE ENVIRONMENTAL APPEALS BOARD

STATE OF DELAWARE

APPEAL OF EDWARD O. SAULSBURY

OPINION AND ORDER

This matter came to a hearing on January 14, 1986 at 2:30 p.m. Present were Chairman Thomas J. Kealey and members Clifton H. Hubbard, Jr., Ray Woodward, and Evelyn Greenwood. Deputy Attorney General Daniel E. Fleming represented the Board. Mr. Saulsbury was self-represented. Deputy Attorney General Peter Hess represented the Department of Natural Resources and Environmental Control ("DNREC"). Mr. Saulsbury appealed DNREC's denial of his application for a permit to install an on-site wastewater disposal system on certain property in the Pine Grove Development which is south of Millville. DNREC's denial was based on its finding that the property did not meet the standards set forth in §6.000 of the DNREC's Regulations Governing the Design, Installation and Operation of On-sight Wastewater Treatment and Disposal Systems," effective July 10, 1985.

SUMMARY OF THE EVIDENCE

Mr. Saulsbury testified in his own behalf that other property owners in the Pine Grove Development had in the past been granted septic system permits and had such systems installed. He further testified that two lot owners had received permits for such systems subsequent to the adoption of the new regulations on July 10, 1985. However, Mr. Saulsbury was unable to state the result of the on site evaluations were with respect to those particular properties, or when the owners of those properties originally submitted their applications.

Mr. Saulsbury alleged that DNREC has applied stricter standards under the new regulations and is denying applications which would have been approved under the old regulations. Mr. Saulsbury testified that he owns lot 24 of the Pine Grove Development. A home has been constructed on lot 25 and a

home is under construction on lot 20. Lot 20 is lower than Mr. Saulsbury's lot and it has been approved for an on-site wastewater disposal system. Although Mr. Saulsbury did not know when that lot was approved. Mr. Saulsbury's son received septic approval on lot 18 on May 21, 1985. Mr. Saulsbury maintained that rainfall prior to evaluation adversely affected the results of Mr. Saulsbury's lot. Mr. Saulsbury introduced diagrams of the Pine Grove Development and Country Village.

Mr. Joseph Wayash testified on behalf of DNREC that he is a soil scientist employed by DNREC and that he conducted a soil evaluation of the Saulsbury property. He testified that he made seven borings on the lot. He identified three soils on this lot, namely Fallsington and Rutledge soils, with a small amount of Woodstown. These soils are unsuitable for an on-lot wastewater disposal system due to their poor drainage properties. The seasonal high water table (limiting zone) ranges from the soil surface to 15 inches below the soil surface.

Mr. Robert Zimmerman testified for the DNREC that he is the head of the Water Resources Section. He testified that lot 20 had been approved in December of 1984. He further testified that 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.

Mr. Zimmerman testified that the new regulations went into effect on July 10, 1985 after public hearings which were held in June of 1985. Mr. Zimmerman felt that Mr. Saulsbury had adequate time to apply for an on-site wastewater disposal system and have the old regulations applied to his application. The DNREC adopted a policy that any application received by them would be processed pursuant to the regulations in effect at the time of the submission of the application. In addition, Mr. Zimmerman testified that Mr. Saulsbury had several alternatives to an on-site wastewater disposal system. Mr. Saulsbury could install a permanent holding tank or make some provision for some central sewer service. This would be done by petitioning the County for central sewer service.

Mr. Jerry Esposito testified for the DNREC that he is the Director of the Division of Water Resources. He further testified that the contamination of ground water in

Sussex County is a growing problem and that on-site wastewater disposal systems are a substantial cause.

FINDINGS OF FACT

The Board finds:

1. That the soils located on the Saulsbury property are poor drainage soils and are unsuitable for an on-site wastewater disposal system.

2. The seasonal high water table (limiting zone) ranges from the soil surface to 15 inches below the soil surface.

3. That there is no evidence which disputes the findings of the investigation.

4. That there is no evidence that the DNREC has granted septic system permit applications subsequent to the adoption of the new regulations which did not comply with those regulations.

5. That all applications for on-site wastewater disposal systems were reviewed under the criteria of the regulations in effect at the time of their submission.

CONCLUSION OF LAW

The finding that the soils located on the Saulsbury property were poorly drained Fallsington, Rutledge, and Woodstown and that the seasonal high water table ranges from the soil to 15 inches below the surface mandates a conclusion that the Secretary was correct in denying Mr. Saulsbury'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.

Mr. Saulsbury's allegations of inconsistency are not persuasive. He was unable to show that the regulations had been unevenly applied since their adoption. The regulations, with respect to this application, were applied in a fair and impartial manner. Further, Mr. Saulsbury chose not to attend the public hearings which were held prior to

the adoption of the new regulations. He had adequate legal notice of the adoption of the regulations and ample opportunity to have some input in the drafting of the regulations.

ORDER

The Board affirms the decision of the Secretary to denying Mr. Saulsbury's application for a permit to install an on-site wastewater disposal system. SO ORDERED:

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