



BOARD OF HEALTH

Cox Appeal Minutes

February 5, 2007

ATTENDANCE:

Board: Chairman Oberquell, Commissioners Macleod and Wolfe, Deputy Prosecuting Attorney Elizabeth Petrich, Clerk of the Board Lydia Hodgkinson

Thurston County: Steve Petersen, Environmental Health Program Manager
Rick Peters, Deputy Prosecuting Attorney
John Ward
Jim Goode

Appellant: G. Saxon Rodgers, Attorney
Walt Cox
Michael T. Vinatieri
William G. Dennis
Steve Chamberlain

Chairman Oberquell opened the Board of Health appeal and stated the Board is present to hear the appeal by Walt Cox of the Hearing Officers Decision dated September 14, 2006. The Hearing Officers' decision affirmed an administrative decision by John Ward dated June 5, 2006, which denied departmental approval of the area which is proposed to accommodate 5 on-site sewage disposal systems and reserve area for Mr. Cox's large lot subdivision which determined that the soils for his proposed septic system do not meet the code requirements in section 21.2.7 of Article IV and that the soils proposed for the on-site systems have been disturbed within the meaning of Article IV.

Chairman Oberquell explained the process for the hearing and swore in all individuals present intending to testify.

Rick Peters, representing the Environmental Health Division of the Thurston County Public Health and Social Services Department (Department), presented the Department's case. Mr. Peters provided an opening statement summarizing the Hearing Officers' decision to uphold the denial of the preliminary plat application as the site does not meet the minimum requirements outline in Section 21 of Article IV of the Thurston County's Sanitary Code. County will be presenting evidence that during its initial inspection and subsequent inspection of the site a layer of woody vegetative material is present underneath the soil, there is no natural way for this to have occurred and based upon that finding it is believed that the soil is disturbed and the site cannot allow for a preliminary plat approval of this current proposal. That does not mean a subsequent proposal may not meet the criteria, but the proposal as submitted can not be approved by the Department. The county must up hold the Hearings Officer's decision. Issues: a) appellant does not believe the soils condition as the County believes it to

be is present b) the appellant believes that even if it is present the system as it is designed is capable of handling this and therefore this should be a non-issue. It is a difference of opinion.

Mr. Peters moved to ask the Board to incorporate into its evidence the Findings of the Hearing's officer from the September 7, 2006 Hearing and also the County's report including Exhibits A-I submitted in support of the County's position regarding this appeal. Mr. Saxon Rodgers noted Department Exhibit A is the incorrect site plan for this project. Mr. Peters and Mr. Petersen acknowledged this to be true and acknowledged the correct plan submitted by the appellant.

G. Saxon Rodgers, representing Walt Cox the appellant, moved to submit the Applicant's Hearing Memorandum and Exhibits 1-21 provided previously to be made part of the record as exhibits in this case. Commissioner Oberquell seconded the motion.

Mr. Rodgers provided a brief chronology of events to show the creditability of the staff's position on this particular issue. He stated the ultimate issue is whether or not the soil is disturbed and whether or not it is suitable for the septic system as proposed for which they will provide overwhelming evidence that this site is absolutely suitable for the proposed system.

Mr. Peters noted for the record that he and Elizabeth Petrich work in the same office, but stated without reservation he has never had a discussion with Ms. Petrich about this matter either on or off the record and has no idea of her mind or her opinions on this matter.

Rick Peters called John Ward to testify. Mr. Ward, an Environmental Health Specialist II with the Environmental Health Division stated his background and credentials pertinent to review of land development applications. Mr. Ward then provided an overview of the process followed when reviewing the original preliminary plat application proposal including a description of the site and soil conditions the department determined not to meet the minimum requirements of Article IV.

Mr. Rodgers questioned Mr. Ward providing information and clarification of several appellant exhibits. Mr. Peters re-questioned Mr. Ward.

Rick Peters called Steve Petersen to testify. Mr. Petersen, Program Manager for Environmental Health Division, stated his background and credentials pertinent to review of land development applications and provided an overview of all Department exhibits.

Mr. Peters submitted Department Exhibit D-1, a copy of a Power Point presentation containing pictures taken January 26, 2007 of the site conditions and soils. Mr. Petersen presented and described the content of the pictures pointing out the layer of woody vegetative material in question, explaining there is no natural way for this to have occurred and based upon that finding it is believed that the soil is disturbed and the site cannot allow for a preliminary plat approval of this current proposal. Mr. Petersen stated he and Jim Goode, Supervisor of the Environmental Health Division Land-use and Drinking Water Program, collected soil samples from the site. Mr. Petersen provided a description and clarification of the soil samples taken. Mr. Rodgers questioned Mr. Petersen regarding the soils. Mr. Peters continued questioning Mr. Petersen.

Mr. Peters called Jim Goode to testify. Mr. Goode stated his background and credentials pertinent to review of land development applications. Mr. Goode then provided his opinion and description of the site and soil conditions the department has determined not to meet the minimum requirements of Article IV. Mr. Rodgers questioned Mr. Goode on his opinions and descriptions.

Mr. Peters submitted Department Exhibits D-2 and D-3, soil samples from the site. Mr. Rodgers questioned Mr. Petersen further on the soils. Mr. Peters re-questioned Mr. Petersen regarding soil samples.

The hearing was recessed until a date to be determined which would be mutually agreed upon by all parties. Lydia Hodgkinson, Clerk of the Board of Health, will work with all parties to determine a date.

Continuation of the Appeal:

The Appeal was reconvened on March 21, 2007 at 1:05 P.M.

Chairman Oberquell swore in Steve Chamberlain.

Mr. Rodgers called Walt Cox the project Developer to testify. Mr. Rodgers questioned Mr. Cox describing the chronology of the project as per the Appellant's Exhibit "Applicant's Hearing Memorandum". Mr. Peters objected to Mr. Cox's references to the length of time the project review has taken stating it is not relevant. Mr. Rodgers stated the importance of the chronology is that it explains the differences of opinions throughout the project review. Commissioner Oberquell allowed Mr. Rodgers and Mr. Cox to continue with the chronology. Mr. Peters questioned Mr. Cox referencing several appellant exhibits. Mr. Rodgers re-questioned Mr. Cox addressing questioned exhibits.

Mr. Rodgers called Michael Vinatieri to testify. Mr. Vinatieri stated his background and credentials pertinent to review of land development applications. Mr. Vinatieri stated he had reviewed the project application, reviewed all of the reports and visited the site. He described the soils as he saw them and gave his opinion of suitability confirming the appellant's opinion that the soil is adequate for the proposed system. In addition, Mr. Vinatieri stated he does not believe the woody vegetative material in question is an issue and there is not a specific definition of "disturbed" soil. Mr. Rodgers requested Mr. Vinatieri provide a brief description of the proposed Glendon Biofilter System. Mr. Peters noted the department does not dispute the quality of a Glendon Biofilter system, stating the issue is if the soil is disturbed. Commissioner Oberquell allowed the explanation. Commissioner Oberquell questioned and Mr. Vinatieri explained the requirements of a homeowner to maintain a Glendon System which would include obtaining a County Operation & Maintenance permit and a system check by a professional once a year. Mr. Rodgers continued questioning Mr. Vinatieri. Mr. Peters questioned Mr. Vinatieri requesting clarification of his qualifications and questions regarding several appellant exhibits. In addition Mr. Peters discussed with Mr. Vinatieri the definition of "disturbed" soil. Commissioner Oberquell requested clarification and Mr. Vinatieri explained the differences between soil structures. Mr. Peters re-questioned Mr. Vinatieri.

Mr. Rodgers called William G. Dennis to testify. Mr. Dennis stated his background, qualifications, work experience, and explained his involvement in this project. He explained his review of the project and reports and stated he believes the soil is native undisturbed soil and suitable for the proposed system. In addition, Mr. Dennis stated his opinion of the difference between native soil and fill. Mr. Rodgers continued questioning Mr. Dennis referencing several appellant exhibits. Mr. Peters questioned Mr. Dennis referencing discrepancies between soils reports in appellant exhibits. Mr. Dennis explained and addressed the questions. Mr. Dennis addressed Commissioner Oberquell's questions regarding the location of and the depth of test holes he inspected and he clarified soils descriptions.

Mr. Peters, for rebuttal, questioned Steve Petersen in regards to the department's offer to meet the appellant on site and if the appellant ever requested to meet. Mr. Petersen stated to his knowledge the appellant has not requested a meeting. In addition, for clarification Mr. Peters had Mr. Petersen describe the soils pictured in the PowerPoint presentation and explain the color differences in the soil layers. Mr. Petersen noted the soils have not been shown to be suitable by the appellant. Mr. Rodgers questioned Mr. Petersen regarding soils on the site.

Appellant and Department concluded questioning.

Mr. Rodgers presented a summary statement stating the entire process of obtaining final plat approval in this case has gone far beyond the boundaries of reasonableness. All consultants and experts, whose reports are included and referenced in the appellant's exhibits, recommend approval of the proposed septic system showing that County and State Code requirements have been met. Mr. Rodgers stated the department has produced no evidence that the subject soil is either "fill" or "disturbed" or in any other way unsuitable. The appellant requests that the Board of Health approve the proposed septic system for the subject large lot subdivision.

Mr. Peters presented a summary statement stating the department has evaluated the site, soils and proposal and have determined the site does not meet the minimum requirements outlined in Section 21 of the Thurston County Sanitary Code. Mr. Peters stated the appellant was not able to explain the layer of soil in question and did not prove the site and soil conditions meet the minimum code requirements of 24" of undisturbed soil. The department recommends the Board uphold the Administrative Hearing Officer's decision to deny the preliminary plan application.

The Appeal was recessed until the April 2, 2007 Board of Health Meeting at 1:30 P.M. at which time the Board will render their decision.

Continuation of the Appeal:

The Appeal was reconvened on April 2, 2007 at 1:35 P.M.

Commissioner Oberquell gave a brief overview of the appeal, stating the issue in this case is whether or not Mr. Cox's proposal satisfies the criteria in section 21.2.7 of Article IV for reducing the required minimum soil depth in the proposed drain field area from 24 inches to 12 inches. After reviewing the written and oral testimony in this case, including the uncontroverted testimony of Mr. Cox's different

consultants it is the Board's opinion that Mr. Cox's proposal does satisfy the criteria of section 21.2.7 based on the following findings and conclusions.

Commissioner Macleod stated as noted in Article IV of the Thurston Sanitary Code establishes minimum standards for on-site sewage systems. Section 21.2.7 requires that evidence of 24" of original, undisturbed and unsaturated soils exists above the maximum seasonal water table, a layer of creviced or porous bedrock, or any other restrictive layer. This section also provides that the minimum required soil depth of 24" may be reduced if sufficient technical justification is developed and submitted that will allow installation of a conforming onsite sewage system (OSS); assure preservation of reserve area for all proposed and existing OSS; assure proper treatment and dispose of the sewage; and assure preservation of sufficient areas with sufficient soil depths will exist in proposed drainfield and reserve area. The department initially thought the soils in the proposed drainfield area consisted of fill material and was not native soil; however, during the appeal the department did not establish the soils were fill material. Furthermore the applicant's consultants established through their evidence and testimony that the soils were not fill material, but instead were native and original soils. Both the department's and the applicant's consultants agreed the top 12" of soil in the proposed drainfield area were unsaturated and existed above the maximum seasonal water table and or any other restricted layer. The applicant's consultants conceded that the top 12" of the soil had been previously tilled. No testimony was provided as to when the actually tilling activity may have occurred. The applicant's consultants established the top 12" of soil, even though it had been previously tilled, was of sufficient structure and composition to provide suitable treatment for sewage effluent with the Glendon Biofilter system. The applicant's consultants also established that there was no plow pan, a restrictive layer that can develop with tilling activity. The applicant's consultants established that there is not anything in the soil composition that will prevent it from properly treating sewage effluent. This evidence was not challenged by the department. The department did challenge or allege that the applicant's proposal did not assure preservation of sufficient area for the reserve area for the proposed drainfield. The Board concludes the applicant has provided sufficient technical justification that will allow the installation of a conforming Glendon Biofilter system within 12" of native unsaturated soils, that these soils are suitable in structure and composition to treat sewage effluent. While suitable technical justification has been provided to allow approval of the proposed site, past tilling on site warrants assurances by the developer that the Glendon Biofilter will properly treat and dispose of sewage effluent after installation.

Commissioner Macleod moved that the decision by John Ward, Thurston County Environmental Health Division, dated June 5, 2006 and the hearing officer's decision dated September 16, 2006 be reversed and the proposal to accommodate 5 on-site sewage systems and reserve areas for this subdivision be approved on the following condition: Provide a financial surety with a term of twenty-four months for the performance of each of the five new septic systems for Large Lot Subdivision Project #2004-104925, Parcel #09360003000, to be effective from the date of occupancy. Commissioner Wolfe seconded the motion. The motion carried.

Commissioner Wolfe moved to sign the aforementioned Decision. Commissioner Macleod seconded the motion. The motion carried.

The appeal was adjourned

BOARD OF HEALTH
Thurston County, Washington

ATTEST:

DIANE OBERQUELL, Chairman

Lydia Hodgkinson, Clerk of the Board

ROBERT MACLEOD, Member

Date: _____

CATHY WOLFE, Member