

STATE OF VERMONT
WATER RESOURCES BOARD

In re: Appeal of
Frank & Barbara Hamilton
Newport; Vermont

3, V.S.A. §2873(4)
§ 2-02(E) Environmental
Protection Rules

INTRODUCTION

On April 22, 1987, Frank and Barbara **Hamilton** filed an appeal with the Vermont Water Resources Board from the March 25, 1987 decision of the Department of Water Resources and Environmental Engineering denying-the **removal** of the waiver of development rights provided, **for in Deferral of** Permit D-7-0516 and D-7-0648 in order to allow for the construction of a dwelling with on-site sewage disposal facilities on a parcel of land located off Lake Road **in the** Town of Newport. The Board considered 'this **matter** at a public hearing held on July 2, 1987 at Berlin, Vermont and **August** 4, 1987 at Barton, Vermont.

Appearances at this hearing were entered by the following parties:

- (1) Frank and Barbara Hamilton represented by Robert **Chimileski**, Esquire.
- (2) Agency of Environmental Conservation represented by Anne **Whiteley**.

During the course of this proceeding the following documents were entered into the record:

- Exhibit #1 A letter addressed to Frank Hamilton dated March 25, 1987 from Donald Robisky on behalf of the Department of Water Resources and Environmental **Engineering**.
- Exhibit #2 A document entitled "Informal **Appeal** to Chief Engineering Services" dated March 25, 1987 signed on behalf, of the Department of Water Resources and Environmental Engineering by Donald Robisky.
- Exhibit #3 A letter addressed to Frank Hamilton dated June 19, 1987 from Gary Schultz on behalf of the Department of Water Resources and Environmental Engineering.

Exhibit #4 A drawing entitled "Site plan and disposal field details" dated July 24, 1987 prepared by the Blais Survey Company.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The appellants, Frank and Barbara Hamilton (**Hamiltons**), own a dwelling on 'a lot which pre-exists and is therefore exempt from the State Subdivision Statute and the Environmental Protection Rules adopted under its authority. The lot is located on the shore' of **Lake Memphremagog** in the Town of Newport;
2. On or about June **15**, 1978 a Deferral of Permit was issued for the subdivision of a 1.6 acre lot purchased by **the Hamiltons**. On June **28**, 1979 a Deferral of **Permit was** issued for the subdivision of a 2.5 acre lot purchased by the Hamiltons. Both of these lots (deferred lots) are contiguous to the pre-existing exempt lot.
3. Deferral of Permits D-7-0516 and D-7-0648 each **required as a** condition of approval that the following waiver of developmental rights be cited in any deed and be made **a term** of any contract of sale, or **lease of** these lots in the following form:

"Waiver of Developmental Rights":

"In order to comply **with State** of Vermont **Environmental** Protection Rules on the subdivision of lands and, disposal of waste including sewage, the grantee shall not construct or erect a structure or building on the parcel of the land conveyed herein, the useful occupancy of which will require the installation of plumbing and sewage treatment **facilities** or convey this land without first complying with said **State** regulations.' The **grantee by** acceptance of this deed acknowledges that this lot may not qualify **for** approval **for develop-**ment under **the appropriate** environmental protection or health regulations and that the State may deny an application to develop the lot."

4. Sanitary wastes from the existing dwelling on the exempt lot are currently treated in, a septic tank and leachfield which, at its closest point, is approximately 180 feet from the shoreline of Lake Memphremagog as shown on Exhibit #4.

5. The Hamiltons propose to build a new house served by a new septic **tank and** leachfield on one **of the** deferred lots to replace the **existing** dwelling on the exempt lot as shown on Exhibit 4.
6. The proposed leachfield at its closest point would **be at** least **300 feet** from the shoreline of Lake Memphremagog and would **be at** an elevation of approximately 10 feet higher than the existing leachfield. Additionally the new leachfield would have a surface area of approximately 1500 square feet, more than twice that of the existing leachfield.
7. The appellants have not conducted any formal soils elevation' at the proposed location of the new leachfield. Both parties agree **that soil** conditions at the site of the existing and proposed. leachfield are uniformly poor for purposes of on-site sewage disposal and do not comply with the technical requirements of the **Environmental Protection Rules**. One of the known limitations for on-site sewage disposal at both sites is the proximity of the seasonal high **groundwater table** to the ground surface and therefore to any leachfield.
8. The vertical distance between the leachfield and the groundwater table, which fluctuates seasonally, affects the degree of treatment **provided to** the effluent. Once the effluent reaches the groundwater little or no additional **treatment occurs**. For that reason the higher elevation, larger size and increased horizontal distance from Lake Memphremagog do not insure that **the proposed leachfield will** have a significantly different **impact** on the quality of adjacent ground or surface waters than that of the existing leachfield.
9. The Hamiltons have sought approval of their proposal under the provisions of **§2-02(N)** "Simplified Procedures for Minor **Projects**" and **§2-03** "Variances" of the Environmental Protection Rules.
10. Section 2-02(N) provides for an expedited approval in circumstances where an applicant's consultant submits a certification stating that the project complies in all respects with the Environmental Protection Rules or is a minor project having negligible potential for adverse environmental impact.
11. The Hamiltons concede that the **project in** question does not comply in all respects with the Environmental Protection Rules.

12. The Board concludes that the **Hamiltons** have failed to show that their project has a negligible **potential** for adverse environmental impact in that the proposed leachfield would be located on a site at which the soils are characterized as being poorly suited for on-site sewage disposal.

13. Section 2-03(B) provides for a variance from compliance with the Environmental Protection Rules under the following circumstances.

B. Grounds for Variances: Variances from the technical requirements of these rules may be granted upon finding that:

- 1) The proposed wastewater treatment disposal system is intended to **eliminate** an existing health hazard, public nuisance, or source of pollution from an existing structure;
- 2) Site conditions exist which render strict compliance impossible;
- 3) There are no other feasible means of legally treating and disposing of the sewage; and
- 4) A system can be constructed which **will** function in a satisfactory manner so as **not** to create a health hazard, public nuisance, or source of pollution.

14. Both parties agree and the Board so finds that the Hamiltons' **proposal** satisfies the requirements of **§2-03(B)** (2) and (3) of the Environmental Protection Rules.

15. The Hamiltons do not qualify for a variance under **§2-03(B) (1)**. The proposed system, although larger than the existing system; is located in equally poor soil conditions. There is no evidence that **the** proposed system will substantially improve the level of treatment currently provided by the existing system.

16. The **Hamiltons** do not qualify for a variance **under** **§2-03(B) (4)** in that they have failed to show that in light of poor soil conditions, the proposed sewage disposal system will function in a satisfactory manner so as not to create a health hazard, public nuisance, or source of pollution.

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ORDER

Based on the abovefindings of fact and conclusions of law the Water Resources Board hereby denies the appeal of Frank and Barbara **Hamilton** and affirms the decision of the Department of **Water Resources** and Environmental Engineering (new the Department of **Environmental** Conservation) denying the removal of the waiver of developmental rights provided for in **Deferral** Permit D-7-0516 and D-7-0648.

Dated at Waterbury, **Vermont** this 30th day of **September**, 1987.

Vermont Water Resources Board


Catharine B. Rachlin, Chairman

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