



# Environmental Appeal Board

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## APPEAL NO. 94/35 HEALTH

In the matter of an appeal under s.5 of the *Health Act*, R.S.B.C. 1979, c. 161

**BETWEEN:** Reginald Clowes **APPELLANT**

**AND:** Environmental Health Officer **RESPONDENT**

**BEFORE:** Mr. J. Basran, Chair

**DATE OF HEARING:** May 25, 1995

**PLACE OF HEARING:** Cranbrook, BC

**APPEARING:** **For Appellant**  
Spokesperson: Reginald Clowes

**For Respondent**  
Spokesperson: Kirt Sellars  
Witness: Don Corrigan

This is an appeal of a decision of the Environmental Health Officer to refuse to issue the Appellant a sewage disposal repair permit for Lot 6, Plan 4007, District Lot 4347, Kootenay District.

## BACKGROUND

This subdivision survey was completed in May 1958. Lot 6, District Lot 5347, Plan 4996, Kootenay District, on Lake Windermere in the Province of British Columbia. The land in question has a single dwelling with two bedrooms and one bathroom. The sewer system was installed in 1960.

In 1990, an application was submitted to the Regional District of East Kootenay for a building permit, but East Kootenay Building Regulations require a Sewage Disposal Permit in their possession from East Kootenay Health Unit first.

In July 1990, the Appellant made application for a building replacement, with no change in the number of rooms from the original dwelling, but with an increase in square footage. The sewage flow would remain the same. The sewage permit is required by the Building Inspector.

The old dwelling consists of a split level home, constructed in two parts, of approximately 850 ft<sup>2</sup> with no foundation, only cement pads and 4 by 4 timbers under it. The kitchen floor has over a 1-inch slope in 10 feet. The upper half of the split level has a partial dirt room under it, with a 3 by 10 cinder block wall set on

dirt foundation, holding the dirt from caving away, under the east wall of the dwelling. The proposed new building is to be approximately 200 ft<sup>2</sup> larger.

On September 7, 1993, the Appellant received a letter from the East Kootenay Health Unit stating that there is no objection to the proposed new dwelling. It was noted that the existing on-site sewage system was not malfunctioning, and that the estimated daily sewage flow will not change. The installation of a new conventional system would not meet the current regulations (see Exhibit #1).

On September 27, 1993, the Appellant received a second letter from the East Kootenay Health Unit clarifying the position of the Health Unit. This letter stated that the sewage flows will have to stay the same when the dwelling is constructed and that the existing system may be required to be upgraded to reduce any potential environmental hazard. (see Exhibit #1)

In September 1994, Mr. Clowes and his wife met with Chief Environmental Health Officer Don Corrigan, and the Invermere Health Officer, Kirt Sellars, on site to discuss obtaining their approval of a sewage permit, that is required by the Building Inspector. In their discussion, the Health Officers referred to the sewer system as being "grandfathered" prior to the September 30, 1986 *Health Act*. The Health Officers indicated they would not take the septic system away from the Appellant if it failed, but would review the existing system, and, if required, recommend upgrading the system to lessen any potential hazard. This still would not comply with the *Health Act*.

Mr. Clowes and his wife conducted Dye Tests, using capsules provided by the Health Officers, to determine any sewage leakage. Records were logged during the periods of high effluent discharge. No evidence of effluent drainage was detected in the lake, beach or dirt bank. They also conducted permeability tests of the site to determine the ground conditions, in accordance with Public Health Percolation Test Procedure. (see Exhibit #1)

On October 17, 1994, an application for repair of a sewage disposal system was made. This was rejected by the Invermere Health Officer because the setback requirements from lake cannot be met on this property. (see Exhibit #5)

As a result, the permit application was rejected. This rejection is being appealed.

The property in question has an existing recreational cottage serviced by a non-permitted sewage disposal system. The satisfactory operation presently in place is partially due to the seasonal use of the property dictated by the construction standard of the present dwelling.

## **ISSUES**

There is an existing septic tank and effluent disposal system on the site that is not overtly malfunctioning. This system was constructed prior to December 20, 1985, and cannot be repaired or altered to current regulations.

The proposed new dwelling will have the same number of plumbing fixtures as the old dwelling (1 toilet, 1 shower, and 2 sinks) and the same number of bedrooms (2). However, the total square footage will be increased by approximately 200 ft<sup>2</sup>.

### **THE LAW**

The regulation of sewage disposal in the circumstances leading to the appeal falls under the following *Health Act* regulations and policy:

#### Section 7(1)

Where a medical health officer or public health inspector is satisfied that it is impossible for a person to comply with

- (a) in the case of a conventional septic tank system, sections 1, 16 or 22 of Schedule 2

#### Schedule 2, section 18:

An absorption field shall be located not less than

- (a) 3 metres (10 feet) from a building;
- (b) 3 metres (10 feet) from a parcel boundary;
- (c) 3 metres (10 feet) from an interceptor drain;
- (d) 30.5 metres (100 feet) from a source of domestic water;
- (e) 30 metres (100 feet) from the high water mark; and
- (f) 3 metres (10 feet) from a domestic water pipeline.

All measurements shall be from the nearest trench wall.

#### Schedule 2, section 20:

##### *Ministry of Health Policy - On-Site Sewage Disposal*

#### Section 3.5 Changes in System

Section 5: The grant of a permit under section 3 or an authorization under section 4 does not operate as a relief on a person from the obligation to construct, install, alter, repair or use a sewage disposal system in accordance with the Act and the standards set out in this regulation.

Alterations: Changes in occupancy/use which increase sewage flows will require an evaluation of the sewage disposal system as to whether or not the system is sufficient in size for the proposed use.

An application to add or alter a building shall include evidence that the sewage disposal system shall accommodate the proposed changes. The owner must produce a record of final inspection of the original system or subsequent system(s). If this is not available, or appears to be inaccurate, the Environmental Health Officer may require the owner to expose the system or segments of it.

If the system cannot accommodate the proposed changes the owner shall apply for a sewage disposal system permit to upgrade or install an approved system.

House Alterations To assess flow rates and the impact the house construction may have on the successful operation of the sewage disposal system in addition to the number of bedrooms shown on the building plans, potential and/or future bedrooms may be considered, e.g., sewing room, library, television room, dens, etc. The area (square footage) of the house and the available area left for on-site sewage may also influence the decision whether or not to issue a permit.

Schedule II section 18(2), Schedule III, section 14(a). An absorption field shall be located not less than 3 metres (10 feet) from a building. The extension of the existing structure not encroach on the existing sewage disposal system.

#### Section 4.5 Building Replacement

Upon receipt of either an application from a homeowner or a referral from a building department, for the necessary approval of an existing sewage system as a requirement for obtaining a building permit, the Environmental Health Officer should consider sewage flow and house size. Where the sewage flow is not increased, nor the house area increased, approval should be given unless the sewage disposal system is creating a health hazard. If the system is creating a health hazard, compliance with section 7(2) must be met before approval to rebuild should be given. For situations where house sizes or sewage flows are increased, see procedure 3.5.

#### **THE PARTIES POSITIONS**

The Appellants feel they should have a sewage disposal permit that incorporates the existing septic system. They feel they should be allowed to build their new building.

The Respondents stated that the present septic system is not overtly malfunctioning. Therefore, there is no need to repair it. The Ministry policy regarding on-site sewage disposal, Chapter 4, subsection 4.5, does not apply in this case because the building is to be replaced by a larger one. Chapter 3, subsection 3.5 does not apply because the conditions contained therein have not been met.

The permit application is for a repair. However, the current septic system with its present use does not require repair. Schedule 2 of the *Health Act* Sewage Disposal

becomes a determining factor, in particular section 18 wherein it is stated that "an absorption field shall be located not less than

18 (b) 3 metres (10 feet) from a parcel boundary; and

18 (e) 0 metres (100 feet) from the high water mark".

Section 20 states that the line of a drainage pipe shall not be less than 2 metres (6 feet) apart.

In the preceding sections, the word "shall" is used as a command statement.

The Environmental Health Officers say there is no room for discretion in this section. Therefore, they have refused the issuance of a permit.

### **DISPOSITION**

Both parties agree that the septic system in its present use is not overtly malfunctioning. The Environmental Appeal Board has the power to confirm, vary or reverse a decision made under the *Health Act*.

Having considered all the information presented the Panel has come to the following decision.

### **DECISION**

The Panel has decided that the appeal should be dismissed and the refusal of the Health Officer to issue the repair permit to the Appellants be upheld.

Johnder Basran, Panel Chair  
Environmental Appeal Board

August 17, 1995