

THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

David and Diana Howe)	
Complainants)	
)	
)	
v.)	Docket No. 003-00
)	
)	
George Hast and Sherryland Park, Inc.)	
Respondent)	

Hearing held on June 19, 2000 at Concord, New Hampshire.

ORDER ON MOTION TO DISMISS

The Board of Manufactured Housing (“the Board”) makes the following findings of fact and conclusions of law and issues the following Order in the above-referenced matter.

PARTIES

1. Sherryland Park MHB (“Sherryland Park” or “the park”) is a manufactured housing community located in Tilton, NH. Sherryland Park, Inc. is the owner and operator of Sherryland Park, and George Hast is owner and sole shareholder of Sherryland Park, Inc. For purposes of clarity, the park and its current management shall be referred to in unitary fashion as “Respondent.”
2. David and Diane Howe were and are at all times relevant to this matter, lawful residents of the park.

ORDER

1. This matter comes before the Board on Respondent’s Motion To Dismiss for lack of subject matter jurisdiction.

2. Complainants' fundamental complaint is that their septic field, which is located in the back corner of their lot, appears to be leaking or otherwise overflowing, leading to a potentially unhealthful condition.
3. Complainants attribute this leak to a cracked intake pipe, which Complainant, David Howe, observed being replaced in the ground beneath Complainants' driveway in the wake of certain construction work conducted by the park.
4. Respondent has moved to dismiss Complainants' action before the Board on the grounds that the complaint does not involve any interpretation of, or alleged violation of, rules under RSA 205-A:2, nor any other matter within the limited jurisdiction of the Board. *See* RSA 205-A:27, I.
5. The Board finds, as a matter of law, that Respondent's Motion to Dismiss is appropriate in that Complainants' issues with park management do not concern matters within the limited jurisdiction of the Board.
6. Rather, Complainant raises a health and safety issue. Such issues are properly presented to the superior court by petition under an expedited process pursuant to RSA 205-A:15 through 20.¹

¹ The Board makes no finding of fact regarding the validity of Complainants' contention regarding the performance or condition of its septic field. However, the Board notes that Respondent vigorously disputes that there is any problem with Complainants' septic field, or that the supposed problem is attributable, as Complainants suggest, to a cracked pipe located at a considerable distance from the field. Given this factual dispute, it may be in the interest of all parties to obtain an inspection of the Complainants' septic field by a town health official before proceeding with further litigation in this matter.

WHEREFORE, the Board grants Respondent's motion to dismiss Complainants' action without prejudice to Complainants' rights or capacity to bring an action in the superior court pursuant to RSA 205-A:15.

A decision of the Board may be appealed, by either party, by first applying for a rehearing with the Board within twenty (20) business days of the clerk's date below, not the date this decision is received, in accordance with Man 201.27 Decisions and Rehearings. The Board shall grant a rehearing when: (1) there is new evidence not available at the time of the hearing; (2) the Board's decision was unreasonable or unlawful.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

By: _____
Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

Stephen J. Baker
Richard R. Greenwood
Rep. Robert J. Letourneau
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to David & Diana Howe, 32 Sherryland Park, Tilton, NH 03276, George Hast, Sherryland Park, Inc., School St., Tilton, NH 03276 and Joseph Dubiansky, Esq., 8 Raymond Rd., Deerfield, NH 03037

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing

BOARD MEMBERS CONCURRENCE

Docket 003-00 David & Diana Howe v. George Hast (Sherryland Park)

STEPHEN J. BAKER

RICHARD R. GREENWOOD

HON. ROBERT J. LETOURNEAU

KENNETH R. NIELSEN, ESQ.

JIMMIE D. PURSELLEY

FLORENCE E. QUAST

OrdDavid & Diana Howe.doc