

September 2024

Q: When a someone is researching the development of a lot the first step is digging a “perc hole” which is use to by a septic designer to evaluate the ability of the land to drain the septic discharge (to evaluate its percolation capacity). We require a deposit from the owner which is refunded once the perc hole is covered back up lest it be a trip hazard. On occasion an owner will not bother to fill the hole and leave their deposit with us. In the future they will be notified that should the perc hold not be filled we will keep the deposit to cover our costs of filling the hole.

Two questions:

1. If fully disclosed, is there any problem with us keeping the deposit?
2. Do we or our agents have the legal right to enter their property to fill the hole without specific permission?

A: With the perc hole being on the owner’s property, it is not clear to me why the Association would be concerned about a trip hazard on the property. Any action or injury which occurs on the owner’s property would be the responsibility of the owner, not the responsibility of the Association. If they choose to have an unfilled hole on their property, that is their choice and their liability. It seems to me that by requiring a deposit the Association is inserting itself into the process and possible exposing itself to unnecessary liability, particularly if you are going on the property to fill the hole.