

SEWAGE, WASTEWATER, AND SANITATION HEARING BOARD MEETING MINUTES

Members

Ronald J. Anderson, P.E., Chair
Matthew Buehler
Vonnie Fundin
Nick Vestbie, P.E.
Matt Smith – Alternate
Ray Pezonella, P.E - Alternate

Wednesday, October 10, 2018

6:00 p.m.

**Washoe County Administration Complex, Building B
Health District South Conference Room
1001 East Ninth Street
Reno, NV**

1. *Roll Call and Determination of Quorum

Chair Anderson called the meeting to order at 6:01 p.m.
The following members and staff were present:

Members present: Ronald J. Anderson, P.E., Chair
Vonnie Fundin
Nick Vestbie, P.E.

Members absent: Matthew Buehler
Matt Smith - Alternate
Ray Pezonella, P.E - Alternate

Ms. Rogers verified a quorum was present.

2. *Pledge of Allegiance

Mr. Vestbie led the pledge of allegiance to the flag.

3. *Public Comment

As there was no one wishing to speak, Chair Anderson closed the public comment period.

4. Approval of Agenda

October 10, 2018

Mr. Fundin moved to accept the agenda for the October 10, 2018, Sewage, Wastewater and Sanitation Hearing Board meeting. Mr. Vestbie seconded the motion which was approved three in favor and none against.

5. Approval of Draft Minutes

May 7, 2018

Mr. Vestbie moved to accept the minutes of the May 7, 2018 Sewage, Wastewater, & Sanitation Board meeting as written. Mr. Fundin seconded the motion which was approved three in favor and none against.

- 6. Public Hearing to consider an appeal to the Health District's decision to not allow a reduced setback to a public utility easement, Section 040.095 of the Regulations of the Washoe County District Board of Health Governing Sewage, Wastewater, and Sanitation..**
Staff Representative: David Kelly

Jeff and Penelope Filce
330 Ember Drive
Sparks, NV 89436
Assessor's Parcel Number 089-523-08

Chair Anderson opened the Public Hearing.

Mr. Kelly summarized the staff report, informing that Washoe County Code requires the septic system to have a setback to any new buildings and that the property maintains room for a second area for a septic system that also meets setback requirements should the first fail. He informed that, upon inspection, a second area that would meet setbacks could not be found on the property.

Mr. Kelly informed they did find a location that would be slightly less than the ten foot required setback to the utility easement. The property is also within 200' of the sewer system, and by regulation, they would be required to hook into the sewer system rather than place a repair system on their property. However, because there are variances and other reasons why a property owner might not connect to sewer, EHS requires they maintain sufficient repair area until connection to sewer is completed.

Mr. Kelly stated that the property owner's appeal is regarding the decision of EHS to disallow a reduced setback to the utility easement per Code, but, due to the proximity of the property to sewer, the minimal reduction requested in the setback and the willingness of the appellant to record a mandatory connection to the sewer, EHS would support the appeal.

After the Board's discussion, Mr. Vestbie opined that the Board should support the appeal.

Mr. Vestbie moved to support the appeal to the Health District's decision to not allow a reduced setback to a public utility easement, Section 040.095 of the Regulations of the Washoe County District Board of Health Governing Sewage, Wastewater, and Sanitation, based on the agreement to connect to the sewer if the septic system fails. Mr. Fundin seconded the motion which was approved three in favor and none against.

Chair Anderson closed the Public Hearing.

- 7. Public Hearing to consider an appeal of the Health District's interpretation of Sections 040.005-040.030 regarding minimum acreage required per septic system and related Section 120.075 regarding second dwellings of the Regulations of the Washoe County District Board of Health Governing Sewage, Wastewater, and Sanitation**
Staff Representative: David Kelly

Linda and Allen Eisele
15540 Cherrywood Drive
Reno, Nevada 89511
Assessor's Parcel Number 045-583-01
Mountain Meadows Subdivision 1
Lot 40 Block 1

Chair Anderson opened the Public Hearing.

Mr. Kelly informed the Health District's interpretation of regulations is being questioned in regards to the minimum acreage required for a septic system in relation to an addition of a second dwelling. He stated the property involved in this appeal is .92 acres, and that the regulations have been interpreted to require a minimum of one acre per septic system for current construction standards since 1991. He stated that; for a second dwelling to be added, a separate septic system would be required but would not be allowed if the property was less than two acres.

Mr. Kelly informed discussions with the property owners began in January 2018 and the regulations and the Health District's stance were outlined for the owner at that time. In August 2018, an application was received by the Health District for an accessory structure, and that the plan included bedrooms. Mr. Kelly informed that the Health District's practice is to involve Washoe County Planning Department to designate whether the proposed build is a structure or a dwelling for a uniform determination of the project. In this instance, Planning determined the structure as proposed would be a dwelling and could be allowed under the condition the bedrooms be removed and the property owner file a deed restriction that the structure would not be used as living quarters.

Mr. Kelly stated that option was not the desire of the property owner, and the contractor on the project, Mr. Perkins, disagreed with the Health District's interpretation of the regulations.

Mr. Kelly highlighted the section of the regulations that outlines parcel size requirements, and informed the Health District's interpretation of these regulations is that they pertain to the creation of parcels; this is supported by later regulations that require parcel sizes to be increasingly larger. He stated the application of the regulations by EHS in practice is that, a parcel created in the time of the earlier regulation would allow for a dwelling to be built on it; however, all current construction requires a minimum of one acre.

Mr. Kelly informed that this practice aligns with other building codes in that existing construction prior to regulation change would be 'grandfathered' in, but all new construction would be required to meet current construction practices.

Mr. Kelly stated that EHS has offered the appellant the variance process to address this issue, and, depending on the Board's decision, may return to apply for a variance. He stated that the current request before the Board is a review of the Health District's interpretation of the regulations and their application. The appellant's stance is that, because the parcel was created in 1973, they shouldn't be required to adhere to the newer requirement of one acre per septic system.

Mr. Vestbie inquired what staff's recommendation is. Mr. Kelly stated that, based on EHS practices dating from 1991 and that of current construction being required to meet current construction standards; staff recommends denial of this appeal.

Chair Anderson stated the most important point is that there is a path forward for the owners to request a variance; an option for fair hearing of their request for possible approval.

Mr. Carl Perkins informed his company is Grizzly Construction and introduced himself as a General Contractor. He stated he is representing the Eisele family.

Mr. Perkins informed that regulation 120.075 refers back to a table and regulation stating that if your lot was created during a certain time frame, that one should apply that time frame and whether or not the property is on municipal water or well to calculate the acreage per dwelling. He informed that, based on the regulations and his interpretation, the determining factor is not when construction will begin, but when the lot was created.

Mr. Perkins informed he had provided evidence that the lot was created in 1973, and using the prescribed calculation with the property as being connected to municipal water, the

requirement is one third acre per dwelling. Mr. Perkins stated the lot is .93 acres so would accommodate two dwellings at the required one third acre each.

Mr. Vestbie inquired if Mr. Perkins had written the draft for this appeal; Mr. Perkins confirmed that he had. After review of regulations, Mr. Vestbie opined that the property in question meets the requirements for one third acre per dwelling and so would accommodate two dwellings. Mr. Perkins agreed.

Mr. Vestbie stated his decision was based on there being no date parameters referenced for lot creation in regulation 120.075, but if there had, it could be reason to deny the appeal.

Chair Anderson inquired if this is the current regulation. Mr. Vestbie said it was.

Chair Anderson stated that Mr. Vestbie's is one interpretation. He stated that had not been the interpretation previously. Mr. Vestbie stated it is not an interpretation but a fact, written in the regulations.

Chair Anderson stated this issue has come before the Board and the Planning Department before and that the interpretation of one acre per septic has been used by the County for a number of years. Mr. Kelly agreed that a one acre minimum was applied in all instances he has seen. Mr. Kelly stated that the Dwellings section of the regulations was being considered as the appellant's argument which refers back to the section covering Parcels. Chair Anderson requested Mr. Kelly expand on that concept.

Mr. Kelly stated that the 040 sections referenced are the historical processes that has changed over time, informing there had once been no required lot size, then a minimum lot size was required with size dependent on whether the parcel was on community or well water. He informed that the distinction of water source was then removed. Now, he informed that the minimum per dwelling is one acre, but if parceling a large plot of land such as in Palomino Valley, the lot size is five acres. He stated that there has been a historical progression of how parcel sizes are applied in the Health District's approval of parcel maps. Why the Dwelling section was not changed, he was not clear, but that the interpretation has always been current construction must meet current code, and the current code is a minimum of an acre per septic system.

Mr. Vestbie stated that in his opinion, the interpretation should be changed; that because a misinterpretation has occurred in the past is no reason to continue with the interpretation.

Chair Anderson stated the current regulations were considered in previous instances of the one acre minimum being applied. Mr. Vestbie stated the regulations under consideration are current.

Mr. Perkins inquired if the Board had any questions for him and thanked them for their time.

Chair Anderson stated the regulations have become more strict over time and the interpretation is one acre per septic system. He inquired if Mr. Vestbie opined there to be a flaw in the regulations; that it's possible the regulations need to be changed to be consistent.

Mr. Vestbie stated it is not a flaw, it is the regulation.

Ms. Admirand stated she had reviewed some related history and the reason some of those provisions still exist in the regulations are to provide for non-conformance issues; these allow for conditions to be grandfathered in that were lawful at the time but would not meet current standards. She stated that is part of the reason the provisions still exist within the regulations.

Ms. Admirand stated she wanted to bring another provision to the Board's attention regarding interpretation of the regulations that state, if there are more than one interpretation and it is the Board's decision to determine if there is, the stricter interpretation prevails. She then read the provision verbatim. Chair Anderson inquired if that provision was to be applied across the board, Ms. Admirand confirmed it was.

Mr. Vestbie stated that would mean that they cannot disagree with current interpretation. Ms. Admirand stated that would be the Board's decision.

Mr. Vestbie inquired why the Board was hearing this appeal if they could not decide the outcome.

Chair Anderson agreed he had a good point, but the process is that if you cannot meet the current regulations as interpreted, you can request a variance, provide information and present your case. He stated he sympathized with the appellant and that the Board was there to help them, but that it appeared that staff had done a good job. He stated the variance process is available to them.

Mr. Perkins agreed and stated if the appeal isn't approved, they would go forward with the variance process. He inquired, if current standards are being followed and code states that an acre minimum lot size is required for lots created from 1992 – 2001, why would a parcel created in 1973 be interpreted as being within the scope of that regulation and not the one he cited in his appeal?

Mr. Vestbie moved to approve the variance to allow another house be built on the 0.929 acre parcel.

Ms. Admirand requested the motion to be changed to approve the appeal versus the variance for the record.

Mr. Vestbie moved to approve the appeal to allow another house to be built on the 0.929 acre parcel. Mr. Fundin seconded the motion, which was passed two in favor and one against.

Chair Anderson closed the Public Hearing.

8. Discussion topic for possible direction to staff regarding use of sand as a substitute for soil in Onsite Sewage Disposal Systems (OSDS).

Staff Representative: Dave Kelly

Mr. Kelly stated that current septic regulations require a vertical separation from groundwater. Situations with high ground water can make it difficult to achieve setback margins. He informed that sand filters could be installed and the vertical setback would be reduced to two feet.

He informed there are times when the ground water is higher it has been practice to require an engineered soil to be put in place designed, certified and tested to meet the capabilities of native soils to treat sewage.

Mr. Kelly informed engineers have occasionally suggested using more sand in the filter to satisfy the requirement, but this has not been allowed to date. He stated EHS is seeking feedback from the Board on the questions within the staff report to determine if the Board feels sand could be a suitable alternative to soil.

Chair Anderson covered variables, and inquired if perhaps regulations needed to be modified to better allow for application.

Mr. Kelly stated that he would like to the Board to consider the questions to determine if the use of sand as a substitute for soil is a viable option, ie: can sand be compacted, tested, designed and certified to meet the needs of sewage treatment. He stated the goal is to have consistent standards set for application.

Mr. Vestbie opined regulations will have to be changed to provide for the use of sand in applications apart from those already detailed.

After discussion, Mr. Kelly stated the takeaway he had from the Board is that they would consider the use of additional sand in lieu of engineered soils in certain situations. The sand

would need to be the same sand type as required for sand filter systems and the percolation rate of the soil interface needed to be taken into account. Chair Anderson stated he agreed with Mr. Kelly's understanding of their discussion.

Mr. Kelly informed the reason these types of issues are brought before the Board is to provide consistency and build procedures in a way works for industry and the public.

Chair Anderson stated it is important to have a uniform policy being applied. Mr. Kelly informed that he will take information back to the team to discuss how it will be applied in the field. He opined that the better way to address these issues is through regulation but that this direction gives them a way forward until those can be amended.

Mr. English inquired if the Board would agree that the information paraphrased by Mr. Kelly regarding the subject of sand usage could be taken from the minutes of this meeting as future direction for staff. Chair Anderson stated the minutes would be reviewed at the next meeting and would be discussed as necessary to possibly agree on a policy statement. Mr. English suggested staff create a policy statement that could be brought back to the Board if they wanted to review and approve it, but requested the ability to utilize the staff policy until a formal motion would be made by the Board. Chair Anderson requested the item to be brought back to the Board at a future meeting.

Ms. Admirand inquired of Chair Anderson, in order for the record to be clear, that the Board is not taking any action or making any direction to staff to implement any of the measures, but are requesting that more information be provided and be presented at the next SWS Hearing Board Meeting. Chair Anderson agreed her statement to be correct and that this discussion will be continued at a future meeting as an agenda item.

9. Discussion topic for possible direction to staff regarding standard variance package for the installation of domestic drinking water wells where the lots are too small to meet current setbacks.

Staff Representative: James English

Mr. English informed there are parcels that don't meet any of the required setbacks for placement of a well as determined by regulation, and that many of these issues come to light in an emergency situation when the existing well has failed.

Mr. English stated staff are proposing a standard variance package to include provisions staff could apply in situations similar to circumstances previously approved in individual variance hearings without having to go through the individual variance hearing process. He informed that, if the Board would consider a standard variance package, staff is requesting Board's direction regarding the types of provisions the package variance would entail.

Mr. English stated EHS doesn't monitor residential groundwater quality, but does insure the well is properly drilled to be the most protective of groundwater.

Chair Anderson stated there is always an option to retrofit a septic system with a denitrifying unit and a disinfection unit to prevent E.coli and nitrate contamination.

Mr. Fundin stated regulations require a well to be set back one hundred feet from a pond, stream or septic system, and opined it didn't make a difference if the setback was vertical or horizontal if the sanitation seal is installed properly.

Mr. Kelly informed EHS is beginning to see well failures in Verdi and Wadsworth and some of the properties would not meet setback regulations. He stated he appreciated the Board's comments, but directed them to the intent of this item which is not to address regulations at this meeting, but to ascertain if they feel a variance package to be an appropriate process. If so, staff would design a draft based on conditions previously allowed in individual variance hearings to be brought back to the Board as if it were a variance for their direction and possible approval. If it were approved, such a variance package would

allow staff to apply the variance package as appropriate without having property owners apply for individual variance from the regulations. In the situations where required setbacks cannot be met, this package would alleviate the excessive costs to the property owners of these very small lots.

Mr. English informed the intent is to bring the draft of the variance package before the Board at the next SWS Hearing Board Meeting for review and possible approval. He informed it is often an emergency situation where the existing well has failed or the water supply is a questionable source, and stated staff are looking to develop a framework that would be most protective of the environment, ground water and the property owner.

Mr. English opined that staff could develop a variance package that would be acceptable to the Board, which, when approved, would allow these situations to be resolved without the six to eight weeks the variance process takes.

The Board recommended a chart to represent situations that could be approved by staff should the conditions fall within the allowed parameters.

Mr. Kelly stated that if the Board agrees this to be an appropriate mechanism and if it is approved by legal counsel, he would work to develop the variance package. Chair Anderson agreed that they would review the proposal at the next SWS Hearing Board Meeting, with the intent that regulations would be updated to align with the package in the future.

Ms. Admirand confirmed the Board was taking no action on this item and the understanding is that staff will bring back the draft variance package to be reviewed at the next SWS Hearing Board Meeting.

Mr. English stated that he would work to set a meeting in November, possibly on the 20th, for review of this information and to address another appeal that has been filed.

10. *Public Comment

As there was no one wishing to speak, Chair Anderson closed the public comment period.

11. Adjournment

At 7:13 p.m., Chair Anderson adjourned the meeting.

Possible Changes to Agenda Order and Timing: Items on the agenda may be taken out of order, combined with other items, withdrawn from the agenda, moved to the agenda of another later meeting, moved to or from the Consent section, or they may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Items listed in the Consent section of the agenda are voted on as a block and will not be read or considered separately unless withdrawn from the Consent agenda.

Special Accommodations: The Sewage, Wastewater and Sanitation Board Meetings are accessible to the disabled. Disabled members of the public who require special accommodations or assistance at the meeting are requested to notify Administrative Health Services in writing at the Washoe County Health District, 1001 E Ninth Street, Building B, Reno, NV 89512, or by calling 775.328.2415, 24 hours prior to the meeting.

Public Comment: During the "Public Comment" items, anyone may speak pertaining to any matter either on or off the agenda, to include items to be heard on consent. For the remainder of the agenda, public comment will only be heard during items that are not marked with an asterisk (*). Any public comment for hearing items will be heard before action is taken on the item and must be about the specific item being considered by the Board. In order to speak during any public comment, each speaker must fill out a "Request to Speak" form and/or submit comments for the record to the Recording Secretary. Public comment and presentations for individual agenda items are limited as follows: fifteen minutes each for staff and appellant presentations, five minutes for a speaker representing a group, and three minutes for individual speakers unless extended by questions from the Board or by action of the Chair.

Response to Public Comment: The Sewage, Wastewater and Sanitation Board can deliberate or take action only if a matter has been listed on an agenda properly posted prior to the meeting. During the public comment period, speakers may address matters listed or not listed on the published agenda. The *Open Meeting Law* does not expressly prohibit responses to public comments by the Sewage, Wastewater and Sanitation Board. However, responses from the Board members to unlisted public comment topics could become deliberation on a matter without notice to the public. On the advice of legal

counsel and to ensure the public has notice of all matters the Sewage, Wastewater and Sanitation Board will consider, Board members may choose not to respond to public comments, except to correct factual inaccuracies, ask for Health District Staff action or to ask that a matter be listed on a future agenda. The Sewage, Wastewater and Sanitation Board may do this either during the public comment item or during the following item: "Board Comments – Limited to Announcement or Issues for future Agendas."

Posting of Agenda; Location of Website:

Pursuant to NRS 241.020, Notice of this meeting was posted at the following locations:

Washoe County Health District, 1001 E. 9th St., Reno, NV
Downtown Reno Library, 301 S. Center St., Reno, NV
Reno City Hall, 1 E. 1st St., Reno, NV
Sparks City Hall, 431 Prater Way, Sparks, NV
Washoe County Administration Building, 1001 E. 9th St, Reno, NV
Washoe County Health District Website www.washoecounty.us/health
State of Nevada Website: <https://notice.nv.gov>

How to Get Copies of Agenda and Support Materials: Supporting materials are available to the public at the Washoe County Health District located at 1001 E. Ninth Street, in Reno, Nevada. Ms. Laura Rogers, Administrative Secretary to the District Board of Health is the person designated by the Washoe County District Board of Health to respond to requests for supporting materials. Ms. Rogers is located at the Washoe County Health District and may be reached by telephone at (775) 328-2415 or by email at lrogers@washoecounty.us. Supporting materials are also available at the Washoe County Health District Website www.washoecounty.us/health pursuant to the requirements of NRS 241.020.