Gunnison County Environmental Health Board
Agenda: June 18, 2020

1:15 p.m. Call to order; determine quorum
Approval of Minutes
Unscheduled citizens

1:25 p.m. R&D Development, LLC, Public Hearing, request to install a second OWTS on a single parcel at 337 Buckley Drive, Lot 1 Riverland Industrial Park "Supplemental Property". OWTS-19-00287

1:55 p.m. Work Session – discussion of potential revision

Adjourn

LINK TO THE ZOOM MEETING CAN BE FOUND AT:
https://www.gunnisoncounty.org/144/Community-and-Economic-Development
On Line Meetings tab

ADA ACCOMMODATIONS: Anyone needing special accommodations as determined by the *American Disabilities Act* may contact the Community Development Department prior to the day of the hearing.

DRAFT

GUNNISON COUNTY ENVIRONMENTAL HEALTH BOARD
JUNE 18, 2020

The June 18, 2020 Gunnison County Environmental Health Board meeting was conducted by Zoom virtual online meeting, Gunnison, CO 81230.

Present Were:
Lucinda Lull, Chairperson
Bill Barvitski, EH Board Member
Eddy Balch, EH Member
Shea Earley, EH Board Member
Lynn Cudlip, EH Board Member, Alternate
Corey Bryndal, EH Board Member, Alternate (arrived later in the meeting)
Crystal Lambert, Building and EH Official
Charlie Dominguez, Building and EH Inspector
Rebecca Ricord, Administrative Assistant

Absent were: Board member Ashley Bembenek

Alternate members seated for the day: Board member Lynn Cudlip and Corey Bryndal

Other attendees as listed in text.

Lambert stated that at the last meeting the Board approved to change of a quorum to three and Gunnison County Attorney, David Baumgarten, backed up that it is state statute.

Lambert went over the Gunnison County Environmental Health Zoom meeting protocol. Members introduced themselves and their roles. Barvitiski reported that he will be recusing himself as a representative during the public hearing.

Call to order: A quorum was determined by Lull at 1:24 pm. The meeting was properly noticed and verified by Lambert.

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Approval of Minutes:
Moved by; Barvitski, **seconded by** Balch to approve the February 27, 2020 meeting minutes as amended. The motion passed unanimously with Board members Lull, Barvitski, Earley, Balch and Cudlip voting yes.

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Unscheduled citizens: None present.

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R&D Development, LLC, OWTS-19-00287: The Gunnison County Environmental Health Board conducted a Public Hearing. Request to install a second OWTS on a single parcel at 337 Buckley Drive, Lot 1 Riverland Industrial Park "Supplemental Property"

Barvitski recused himself to represent applicant in public hearing.

Chairperson Lull confirmed a quorum and opened the public hearing.

Alternate Board members Cudlip and Early were seated.

Environmental Health Official Crystal Lambert confirmed adequate public notice. The notice was published in the Crested Butte News and Gunnison Country Times, and the applicant submitted the certified mailing receipts,

photo and affidavit of posting on the parcel. It was posted at the new posting location on the Gunnison County Community Development website.

Engineer Bill Barvitski representing applicant R & Development, LLC, was present by Zoom. Robert Dixon, applicant, was present by Zoom. Shannon Rennick representing the R & Development project, was present by Zoom.

Dixon presented the proposed plans. In 2002 the Supplemental property was platted and a condominium declaration recorded. In Section 37 there is a reserved right to enlarge in the "Supplemental Property". In the HOA documents there is a prohibition on use of the existing OWTS, unless approved by the existing HOA Board. Right to assign the building rights on the supplemental property.

In 2018 he became involved when they went under contract to purchase the supplemental property from Chris and Shannon Rennick. At the time he had hoped to build a five-unit building. They heard concerns from the HOA members and they were unable to get their consent on their plan at the time. At that point they abandoned the effort. In 2020 the effort has been renewed as a cooperative with Dixon and the Rennicks partnering in hopes of building a reduced sized project. They sought and received HOA approval for the plan. They got an inspection of the existing OWTS and it was deemed to be in good working order. Their project has been reduced in size, a three unit building. They hired Barvitiski to do and engineering analysis and have sought a variance with the County to have a second OWTS to support the new building.

It is a three unit building and they are hoping to have a second OWTS. Their plan meets are the setback requirements. Water will be provided by the Riverland central water system. Their aim is to combine into the Buckley Drive HOA, which the current HOA has approved. The existing OWTS that services the current building is approximately 165 feet from the new structure they hope to build with a lot traffic in the parking lot. This would be an owner-occupied building, home to Dixon's Precise Painting and Rennick Wood Floors.

Dixon went over the need for a separate septic. The standard is that only one OWTS is allowed per undivided parcel. The technical challenge is that denial of variance will require abandonment of the existing system and installation of a larger, more complicated system and would still result in two OWTS systems on the lot with the abandoned one in place. The practical challenge is the coordination for development has proved challenging due to the number of involved parties. Coordinating abandonment and construction of a new, larger system is expected to have those same challenges. Showed excerpt that Barvitski has written stating that "The alternative is to abandon the existing system on the parcel that serves the existing shops and residence and construct a larger system to accommodate the existing development and proposed future development. This approach could be problematic due to the distance between the two buildings and the parking area that separates them." Also showed excerpt from the County staff stating that "The existing system that serves the existing development on the parcel has recently been inspected ad shown to be in working order. Requiring a new system that serves both the existing development and the proposed future development would require a complicated design plan that may be susceptible to failures. It would also require abandoning a working system that is not related to the proposed development."

They believe that their plan proposes no greater risks than limiting the entire parcel to one single OWTS.

Lambert briefly explained the requirements. When looking at a variance request staff needs to comment on the analysis of the request and requirements in the septic regulations for approval of variance requests. Variance request submittals shall include the following items: A site-specific request identifying the specific criteria from which a variance is being requested. Per Section 3.A.10 of the Gunnison County OWTS Regulations, no more than one OWTS shall be permitted for an undivided parcel.

The next requirement is a technical justification by a professional engineer or professional geologist, which indicates the specific conditions which exist and/or the measures which will be taken that support a finding that

the variance shall result in no greater risk than that associated with compliance with the requirement of the OWTS regulations. When looking at this, they look at the purpose of the septic regulations and the protection of water quality, public health, safety and welfare. The proposed system meets all of the required horizontal setback distances to water bodies and pertinent physical features.

Additionally, a discussion of alternatives consider in lieu of the requested variance. It's true that an alternative could have one system on the parcel and is possible but it is technically infeasible, When she went out to the site and looked at the existing and proposed OWT systems it was clear that abandoning the working system that was recently inspected and showed to be in working order it would be a long run of waste water traveling across the parcel. It is a parking lot and Lambert is worried about freezing and failures and what could go wrong. A lot could go wrong with creating one system to support both the existing and proposed development. It doesn't seem like a reasonable alternative and doesn't believe that is the intent of the OWTS Regulations.

The next requirement is technical documentation for selected alternative, which may include a testing program, which confirms that the variance does not increase the risk to public health and to the environment. That isn't applicable in this case. It would only be applicable if the applicant was proposing an alternative system design or new technology from waste water treatment. They are proposing a system straight out of the OWTS Regulations that meets all the required setbacks and will meet all of the technical standards, so she skipped that requirement.

Finally, a statement of the hardship that created the necessity for the variance. The applicant has spoken to that. The existing system has been in place, working and serving the existing development.

Then they look at the prohibitions of the granting of variance requests that the Board has to consider whenever a variance is requested.

1. No variance shall be issued where the property can accommodate a conforming OWTS. While it is true that the property could accommodate one system the OWTS will conform to the OWTS will conform to the technical and design requirements. The variance request is for a second OWTS on a parcel. If the variance request is approved, a proposed design will only be accepted for an OWTS permit if it meets the design requirements of the OWTS Regulations. It's going to meet the technical requirement sof the septic regulations. The State Regulations say nothing about how many systems can be a parcel. That is a local regulation.
2. No variance shall be issued to mitigate an error in construction involving any element of property improvements. There is no known error of construction.
3. No variance shall be allowed on the grounds of cost of compliance. A claim of cost burden has not been made.
4. No variance shall be issued if it will result in a setback reduction to an offsite physical feature that does not conform to the minimum setbacks defined in Table 7-1 of this regulation. The minimum setbacks to off-site physical features appear to be met with the proposed development plan, off-site and on-site.
5. No variance shall be issued if it reduces the separation to ground water or bedrock based on the level of treatment. A limiting layer has not been encountered and is not anticipated in the area. Working on this area with other projects Lambert has never encountered high ground water or any sort of limiting layer.
6. No variance from the horizontal setback from a well shall be issued unless it also meets the variance requirements of the Board of Examiners of Water Well Construction and Pump Installation Contractors. The parcel and surrounding parcels are served by a central water supply.
7. No variance shall be issued for the installation of a higher level treatment system based on sizing or separation reductions. A higher level treatment system is not proposed.

Staff Recommendations: It appears that the proposed OWTS design meets the design criteria and setback distance requirements of the Gunnison County OWTS Regulations. Designing one system to serve the existing and proposed buildings on the parcel is not technically feasible and the system could be susceptible to failures.

The existing system on the parcel is serving an existing shop building with a residence above and has recently been inspected and shown to be in working order. Therefore, staff recommends approval of R&D Development, LLC's application for a variance to the Gunnison County OWTS Regulations, Section 3.A.10, for a second OWTS on a parcel.

Bryndal asked whether there is any future residential or commercial units added to the property. Rennick stated that there will not be any future expansions. Bryndal asked whether they had good data on the existing system and if they believe it to be in good working condition. Lambert referred him to the NAWT inspection report included in the packet, the septic tank, pump station and the field were all inspected and appear to be in working order. Lambert reported that staff knows about problem systems especially in the industrial park areas. She has never had any complaints or repair permits for this property.

Cudlip asked about what the second page of the application states under Description of Proposed Development, the commercial section is checked but then she can't read what it says next to it. Lambert stated that it is says "3 units light commercial shops". Cudlip also wanted to know if R& D Development, LLC and RWF Properties, LLC are the same entities. Dixon reported that RWF Properties is the Rennicks' company and R & D Development will be the one they start together.

Earley wanted to know if the OWTS regulations have a minimum setback between the OWTS and adjacent properties. Lambert reported that there is a 20 foot minimum.

Barvitski reported that he will be leaving the room before discussion on the decision starts.

Lambert reported that staff has not received any public comments in reference to the variance request.

Moved by; Balch, seconded by Cudlip to close the public hearing. The motion passed unanimously, with the Board Members Lull, Bryndal, Earley, Balch, Bryndal and Cudlip voting yes.

Barvitski turned off his video and left the room.

Balch asked whether Lambert recommended that they need an O&M Agreement. Lambert stated that she recommended that they be required to install a system that is in accordance with the Gunnison County OWTS Regulations and did not recommend that no matter the system that they would be required to have an O&M Agreement. Bryndal asked whether there is any potential for the current commercial units to be changed to residential units in the future and if they were would that sizing effect the system. Lambert stated that the review through Community Development for a Change of Use and would require a Land Use Change, a building permit and evaluation of the system for design load would be required and the HOA would have to approve it.

EH Determination of Application: Moved by Earley, seconded by Balch to approve the application for R & D Development, LLC (OWTS-19-00287) before the Gunnison County Environmental Health Board. The motion passed unanimously, with Board members Lull, Earley, Balch, Bryndal and Cudlip voting yes.

The Board members agreed they supported the staff requirements as stated.

The Board members reviewed the draft decision of approval.

Lambert read the proposal and the findings into the record.

ENVIRONMENTAL HEALTH BOARD VARIANCE REQUEST ACTION

APPLICANT: R&D Development, LLC

DATE: June 18, 2020

SITE LOCATION: 337 Buckley Drive, "Supplemental Property" of the Buckley Drive Condominiums, on Lot 1 Riverland Industrial Park

ACTION: Request for a variance to the Gunnison County OWTS Regulations for a second OWTS on a parcel

PREPARED BY: Crystal Lambert, Building and Environmental Health Official

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PROPOSED PROJECT:

The applicant is proposing a 3-unit "light commercial" shop building to operate on its own, standalone OWTS. There is an existing OWTS on the parcel, permitted in 1997, which receives wastewater from the existing 4 shops and a 2-bedrooms residence.

GUNNISON COUNTY ENVIRONMENTAL HEALTH OFFICE ACTION:

A site inspection was performed by staff at the parcel on June 10, 2020. The proposed septic design meets the design criteria of the Gunnison County OWTS Regulations and the minimum horizontal distance requirements from water features, pertinent physical features and property lines are met.

The OWTS application was denied by the Environmental Health Office on May 22, 2020. *Section 3.A.10.* of the *Gunnison County OWTS Regulations* states that no more than one OWTS shall be permitted for an undivided parcel.

APPLICANT'S REQUEST FOR A VARIANCE:

A request for a Public Hearing with the Environmental Health Board for the consideration of a variance to *Section 3.A.10* of the *Gunnison County OWTS Regulations* has been received and was prepared by Bill Barvitski, PE of Trout Creek Engineering, LLC.

PUBLIC HEARING:

On June 18, 2020, the Gunnison County Environmental Health Board conducted a Public Hearing on this request for a variance.

FINDINGS:

Based on a review of all the information included with the OWTS application, the request for a variance, and staff reports for this project and consideration of any and all testimony and public input received relative to this application, the Gunnison County Environmental Health Board finds that:

1. Action on this request for a variance from the *Gunnison County OWTS Regulations* is property-specific and limited to the circumstances unique to this application.

2. The applicant has demonstrated that the requested variance from the *Gunnison County OWTS Regulations* is warranted by unique site-specific configuration and site size that make compliance with the Regulations technically infeasible.

3. The applicant has provided justification through specific conditions that exist which support a finding that approval of the requested variance will result in no greater risk than that associated with compliance with the requirements of the *Gunnison County OWTS Regulations*.

4. The applicant has demonstrated that approval of the requested variance will not be in violation of any minimum standards established in any other applicable federal or state rule or regulation.

5. The applicant has demonstrated that the proposed OWTS will not be a nuisance or injurious to public health, safety or welfare. The proposed development meets minimum horizontal distance requirements from water features, pertinent physical features and property lines.

6. The applicant has demonstrated that no substantial injury will result from the granting of the requested variance.

7. This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Department file relative to this application; including all exhibits, references and documents.

DECISION:

The Gunnison County Environmental Health Board, having reviewed the proposed application and supporting documentation, site observations and public testimony does approve the requested variance to Section 3.A.10 of the *Gunnison County OWTS Regulations* for R&D Development, LLC at their parcel, 337 Buckley Drive, "Supplemental Property" of the Buckley Drive Condominiums, on Lot 1 Riverland Industrial Park, under OWTS application 19-00287, with the following conditions:

1. The OWTS shall be designed and installed in accordance with the *Gunnison County OWTS Regulations* and the *Gunnison County Land Use Resolution,* including but not limited to setback requirements, design standards, requirements for system components and general technical standards.

2. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.

3. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.

4. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

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<u>Work Session – discussion of potential revision</u>

Discussion followed on whether it would be reasonable if someone was in a certain distance to a dump station that it would be adequate for sanitary facilities for Long-term Camping Permit applications.

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Lull closed the meeting of the Environmental Health Board at 2:35 P.M. Moved by Cudlip, seconded by Earley to adjourn meeting. The motion passed unanimously, with Board members Lull, Bryndal, Earley, Balch, and Cudlip voting yes.

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/S/ Rebecca Ricord
Administrative Assistant
Gunnison County Community Development Department

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