

**Gunnison County Environmental Health Board  
Agenda: August 12, 2021**

- 1:15 p.m.** Call to order; determine quorum  
Approval of Minutes from 3-11-2021 meeting  
Organizational business-election of officers, meeting times  
Unscheduled citizens
- 1:30 p.m.** Chandra and Jeremiah Proffitt, Public Hearing, for a second OWTS on a single undivided parcel at 14752 Highway 50. OWTS-21-00133

**Adjourn**

Join Zoom Meeting

<https://us06web.zoom.us/j/89509458216?pwd=aUFqUEIzWXphbWRHaWNBUETzajVuQT09>

Meeting ID: 895 0945 8216

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**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.

**GUNNISON COUNTY ENVIRONMENTAL HEALTH BOARD  
August 12, 2021**

The August 12, 2021 Gunnison County Environmental Health Board meeting was conducted in the Gunnison County Blackstock Government Center, 2<sup>nd</sup> floor meeting room, located at 221 N. Wisconsin #D, Gunnison, CO, 81230 and by Zoom virtual online meeting, Gunnison, CO, 81230

**Present Were:**

Lucinda Lull, EH Board Member  
Ashley Bembenek, EH Board Member  
Eddy Balch, EH Board Member  
Bill Barvitski, EH Board Member

**Staff Present:**

Crystal Lambert, Building and EH Official  
Rachel Sabbato, Senior Planner  
Rebecca Ricord, Administrative Assistant III

Other attendees as listed in text.

**Call to order:** A quorum was determined by Lull at 1:20 pm.

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**Approval of Agenda:** Agenda amended.

**Approval of Minutes:** **Moved by:** Balch, **seconded by** Bembenek to approve the March 11, 2021 meeting minutes as amended. The motion passed unanimously with Board members Bembenek, Barvitski, Balch and Lull voting yes.

**Moved by:** Barvitski to keep officers the same, **seconded by** Balch to keep chair and vice-chair until the end of the year. The motion passed unanimously with Board members Bembenek, Barvitski, Balch and Lull voting yes.

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**Unscheduled citizens:** None

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Lambert went over the Gunnison County Environmental Health Zoom meeting protocol, more specifically about when to close a public hearing.

Lambert stated that the Board of County Commissioners passed the revisions to the OWTS Regulations in June. A quorum for the EH Board is three members. The Board is also the going to be reviewing any licensed installer violations.

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**Chandra and Jeremiah Proffitt, OWTS-21-00133:** The Gunnison County Environmental Health Board conducted a Public Hearing. Request to install a second OWTS on a parcel at 4752 Highway 50.

The members introduced themselves.

**Voting members:** Board members Lull was seated as the chair. Balch, Barvitski and Bembenek.

Lull confirmed a quorum and opened the public hearing.

Environmental Health Official Crystal Lambert confirmed adequate public notice. The notice was published in the Gunnison Country Times. It was posted at the new posting location on the Gunnison County Community Development website. The applicant submitted the certified mailing receipts, photo and affidavit of posting on the parcel.

Engineer Sarah Bergstrom, representing applicant, was present in person. Chandra and Jeremiah Proffitt, applicants, were present.

Audience members presented in text.

**Application Presentation:**

J. Proffitt stated that in the future they will be letting the neighbors know what is going on ahead of time. Their home is remotely located on 180 acres+ with a private driveway. They have a large, unheated barn storage on the parcel. They are trying to build a 52X60 foot garage that will be heated. They will have a lean to, 12X20 for storage. It is 500 feet from the current OWTS. They want to have a wash basin, half bath, in the structure. There will not be anything commercial. They are under contract with NRCS to develop their land for agricultural and wildlife habitat.

Bergstrom with SCJ Alliance, fka Williams Engineering, stated that they worked with the applicant to do what they wanted. Gave a synopsis of what they do. The current system is at least 500 feet from where they want the garage and it would need a pump. It would be more environmentally disruptive to tie into the current system and she recommended that they apply for the variance of the second system. Barvitski asked how many people will be using it. Bergstrom stated that the design was designed based off the bathroom, 33.2 gallons per day. Barvitski stated the system is supposed to be designed per person in the regulations per table 6.2. Bergstrom will make the note for the revisions for the OWTS permit.

**Staff Comments:**

Lambert stated that the variance request submittal has been received and all of the required items for a variance request submittal have been verified. Lambert went through the Variance Request Submittal Analysis:

**Variance Request Submittal Analysis**

Variance request submittals shall include the following items:	Applicant Submittal Summary	Staff Comments
Site-specific request identifying the specific criteria from which a variance is being requested. Section 3.M.1.b(1)	The variance is being requested for a second OWTS to be installed on the referenced parcel.	Per <i>Section 3.A.10</i> of the <i>Gunnison County OWTS Regulations</i> , no more than one OWTS shall be permitted for an undivided parcel. This is a local County requirement. The State of Colorado OWTS Regulations do not contain a requirement regarding number of systems per parcel.
Technical justification by a professional engineer or professional geologist, which indicates the specific conditions which exist	All the required setback distances between system components and	All required horizontal setback distances to water bodies and pertinent physical features will

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 requirements of the OWTS Regulations. Section 3.M.1.b(2)	waterbodies, wells, and pertinent physical features can be met. The existing septic system that serves the dwelling is over 500 feet away from the proposed workshop building. Connection to the existing system would require pumping and significant disturbance.	be met. The existing system was installed in 1996 and serves the four-bedroom dwelling. The existing system is over 500 feet away from the proposed location.
A discussion of alternatives considered in lieu of the requested variance. Section 3.M.1.b.(3)	Connection to the existing system is not desirable and would require pumping and trenching over 500 feet.	
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. Section 3.M.1.b.(4)		N/A-the applicant is not proposing an alternative system design. The proposed system meets the technical requirements of the OWTS Regulations.
A statement of the hardship that created the necessity for the variance. Section 3.M.1.b.(5)		Previous development on the parcel did not anticipate facilitating a sewer connection.

<b>Section 3.M.2.: Prohibitions on the granting of variance requests</b>	
<b>Prohibitions on the granting of variance requests:</b>	<b>Staff comments:</b>
No variance shall be issued where the property can accommodate a conforming OWTS. Section 3.M.2.a.	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.
No variance shall be issued to mitigate an error in construction involving any element of property improvements. Section 3.M.2.b.	There is no known error of construction involving any element of the property improvements.
No variance shall be allowed on the grounds of cost of compliance. Section 3.M.2.c.	A claim of cost burden is not being made.
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 without proof of compliance of Section 3.M.5. Section 3.M.2.d.	The minimum setbacks to off-site physical features appear to be met with the proposed development plan.
No variance shall be issued if it reduces the separation to ground water or bedrock based on the level of treatment in Table 7-2. Section 3.M.2.e.	Required separations to groundwater and bedrock will be made.

<p>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. Section 3.M.2.f.</p>	<p>The minimum required setback distances to wells will be met. The proposed system is approximately 200 feet away from the spring cistern.</p>
<p>No variance shall be issued for the installation of a higher level treatment system based on sizing or separation reductions without the Department having a maintenance and oversight program. Section 3.M.2.g.</p>	<p>A higher level treatment system is not proposed.</p>

**Staff Recommendation on the application for a variance to the *Gunnison County OWTS Regulations*:**

It appears that the proposed OWTS design meets the design criteria and setback distance requirements of the Gunnison County OWTS Regulations. Connecting to the existing system, which serves the existing dwelling, would require pumping and 500 feet of trenching. Staff recommends approval of the applicant’s proposal which requires a variance to the Gunnison County OWTS Regulations, Section 3.A.10, for a second OWTS on a parcel to serve a future residence.

Lambert went over the definition of a utility building within the International Residential Code. She did not get the impression that they are building the structure for commercial use. Sabato stated that they have received multiple letters from neighbors with concerns on commercial use. Sabato went over the commercial uses that require a Land Use Application and Special Event Permits. Commercial use is not permitted without a commercial land use application, minor impact application.

J. Proffitt stated that they are not doing anything commercial, neither do they plan to. They obtained a special event permit last year when they had the Halloween party. They may have gone a little overboard with decorations and activities. There was no money exchanged during the party. They have had a friend’s wedding out there. They had a party in 2019 with a band and 20 people who camped out there. That was the only night they have ever had anyone camp out there otherwise. It was a one-time thing. Wanted to know if they would need a permit if they wanted to in the future. Sabato stated that they would need a special event permit. Sabato asked about how their access has changed. J. Proffitt stated they use to have to access it through the campground north of their property. They decided to buy about 16 acres adjacent to them and built their own private access, driveway, off Cove Road. They have kept the access road off the easement for emergency services or when necessary. The new driveway was completed prior to the Halloween Party. They haven’t used the access easement since October 28, 2020. On the adjacent property they are building a house, they will use the easement to get the dump truck to the property if needed. Carla Alley, with the Lake Fork Cove Alliance, reported the roads do not start until after the cattle guard that is after the Proffitt access so they wouldn’t need an access permit. J. Proffitt stated that they are in the process of improving Cove Road, where potholes have developed due to winter use. Sabato stated the applicant is aware of what a Special Event permit is and the applicant stated that there are no plans for commercial uses. The applicant agreed and will contact the County for any permits required.

Lambert stated that Table 6.2 is per person and the design will need to be adjusted. Bergstrom will resubmit the design to the County. Bembenek pulled up Section 3D and there is a second table of where the applicant used a different table and asked that if Barvitski is correct then there will need to be some clarification for applicants in the future. Lambert stated that the correct table for an auxiliary building is 6.2 and they will need to design it per person.

**Review Body Comments:**

Barvitski asked if the system will be connected to the existing water source. Yes they will use what is existing. Barvitski asked about electricity and Proffitt stated they will tie into what is existing. Barvitski stated that ultimately it is up to the board to decide whether a secondary system can be allowed, without using the land use requirements as part of the decision process. Sabato stated that the land use component has no bearing on the decision as a board.

**Public Comments and Responses:**

Alley stated that the Lake Fork Cove Alliance Board met and believes that it would be ok to have a second OWTS.

**Moved by:** Barvitski, **seconded by** Balch to close the public hearing. The motion passed unanimously, with Board members Lull, Barvitski, Balch and Bembenek voting yes.

**EH Determination of Application:**

**Moved by:** Barvitski, **seconded by** Balch to approve the application with the conditions that have been listed in the draft decision from staff, for Chandra and Jeremiah Proffitt (OWTS-21-00133) before the Gunnison County Environmental Health Board. The motion passed unanimously, with Board members Lull, Barvitski, Balch and Bembenek voting yes.

**ENVIRONMENTAL HEALTH BOARD VARIANCE REQUEST ACTION**

**APPLICANT:** Chandra and Jeremiah Proffitt

**DATE:** August 12, 2021

**SITE LOCATION:** 14752 Highway 50

**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 applicants are requesting a second septic system on their parcel to serve a future workshop building. There is an existing system on the parcel that serves the existing dwelling.

**GUNNISON COUNTY ENVIRONMENTAL HEALTH OFFICE ACTION:**

The application and proposed design plans have been reviewed by the Environmental Health Office for compliance with the OWTS Regulations and the land use requirements of the County. 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 because *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 SCJ Alliance Consulting Services.

**PUBLIC HEARING:**

On August 12, 2021, 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 Chandra and Jeremiah Proffitt at their parcel, 14752 Highway 50, under OWTS application 21-00133, 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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**Adjourn:** Lull closed the meeting of the Environmental Health Board at 2:20 P.M.

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