

Gunnison County Environmental Health Board Minutes

April 28, 2022

The April 28, 2022 Gunnison County Environmental Health Board meeting was conducted in the BOCC meeting room, located at 200 E. Virginia, Gunnison, Co. 81230 and by ZOOM virtual online meeting.

Board Members Present:

Shea Earley, EH Board Member
 Lucinda Lull, EH Board Member
 Bill Barvitski, EH Board Member
 Lynn Cudlip, EH Board Member

Staff Present:

Crystal Lambert, Building and EH Official
 Rachel Sabbato, Community Development
 Shannon Frias, Community Development
 Charlie Dominquez, Community Development
 Rebecca Ricord, Community Development

Other attendees as listed in text.

Call to order: S. Earley called the meeting to order at 2:20 pm. A quorum was determined by S. Earley at 2:25 pm

Approval of Agenda:

Approval of Minutes: Moved by Cudlip seconded by Lull to approve the April 14, 2022 meeting minutes as amended. The motion passed unanimously.

Unscheduled citizens: None present or on ZOOM

With a quorum present Vice Chairperson S. Earley opened the public hearing at 2:30 pm

Coleman (OWTS-22-00004) The Environmental Health Board conducted a public hearing to review the variance request to the Gunnison County On-site Waste Water Treatment System (OWTS) regulations for a second OWTS on a parcel at 4995 County Road 76.

The members introduced themselves.

Voting Members: S. Early was seated as vice-chair. Lull and Cudlip.

Barvitski recused himself from the Environmental Health Board to represent the applicant in the public hearing at 2:31 PM

Environmental Health Official Crystal Lambert confirmed adequate public notice. The notices were published in the CB News and the Gunnison Country Times. All property owners within 500 feet of the parcel boundaries were notified by certified mail of the public hearing. The agenda 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.

Application Presentation: Sara Coleman Craig stated she is hoping to build a secondary residence on the Coleman Trust. A creek divides the property necessitating the need for a second septic field on the property. Barvitski added that the creek divides the property in half which you can see on the site plan. She is wanting to develop on the county road side of the creek. The opposite side is where the existing residence and well is located. There is already a legal well drilled on the county road side. We need the variance for the second OWTS design system.

Staff Comments:

Lambert stated that staff reviewed application and did a site visit. This was a second site visit by staff. A decade ago Lambert met with Coleman at the site and reviewed the same scenario. At that time, Coleman had not begun working with a design professional. It was a concept at that point. Lambert gave Coleman ideas of what she should be focused on. The second site visit was after reviewing the application and the report from Trout Creek. The design specifies the design of a second OWTS. That system is in compliance with all of the minimum requirements of Gunnison County's OWTS regulations, with one exception. It is a second septic system on a single undivided parcel. No building permit has been submitted at this time. Staff did notice that this parcel is within a zone A floodplain. This will require a hydrologic study to determine the base flood elevation so a flood elevation certificate can be prepared. This is required before any permit can be issued. The design professional only wants to bring the second system in front of the board today, not the floodplain elements. Staff's site inspection report on April 19th confirmed that Quartz Creek runs across this parcel on the northwestern side and the parcel is bordered by County Road 76 on the southeastern side with an irrigation ditch that branches near and along the County Road. The parcel is relatively flat <5% slope. The owner wishes to build a dwelling on the southeastern portion and there is an existing dwelling on the other side of Quartz Creek in the northwestern region of the parcel. It is not feasible to run a sewer line across Quartz Creek so that both dwellings could be served by one system. The proposed plan appears to meet all of the minimum setback requirements to waterbodies, wetlands, and wells and the minimum technical requirements of the OWTS Regulations.

Lambert shared the plan as submitted by the design professional. Lambert stated that the applicant initially stated that the ditch was full irrigation. Staff determined that it appeared to be an intermittent ditch. The applicant proposed that the ditch could be piped or lined across the property which would make the setback requirements much less. All setbacks can be made with the proposed design. If a second residence is going to be built on this property, it makes sense for a second septic you are going to do a second residence you would need to do a second septic due to Quartz Creek running through. Lambert shared the prohibitions on the granting or variance requests.

Section 3.M.2.: Prohibitions on the granting of variance requests
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Prohibitions on the granting of variance requests:	Staff comments:
No variance shall be issued where the property can accommodate a conforming OWTS. Section 3.M.2.a.	The owner wishes to construct a dwelling and OWTS on the opposite side of Quartz Creek from the existing dwelling and OWTS. Staff discussed this plan with the current owner about 10 years ago and she has been considering any alternatives and preparing the design phase ever since.
No variance shall be issued to mitigate an error in construction involving any element of property improvements. Section 3.M.2.b.	N/A
No variance shall be allowed on the grounds of cost of compliance. Section 3.M.2.c.	N/A
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.	The required separation to ground water will be met with the proposed raised bed sand filter system.
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.	N/A
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.	N/A

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

The proposed plan appears to meet all of the minimum setback requirements to waterbodies, wetlands, and wells and provides the required minimum separation to groundwater with an elevated sand bed design. Additionally, the technical requirements of the OWTS Regulations are met with the proposed design. Quartz Creek runs across this parcel on the northwest side and the property owner wishes to construct the proposed dwelling on the opposite side of the creek (closer to County Road 76) from the existing dwelling. Staff recommends approval of the Coleman application for a variance to the Gunnison County OWTS Regulations, Section 3.A.10., to allow for a second system on the parcel. Staff will continue to work with the applicant once the base flood elevation is

determined to ensure that compliance with FEMA regulations and the floodplain design requirements of the OWTS Regulations are met with the final design.

Planning office will review any application and any items as needed under the Gunnison County Land Use Resolution before any OWTS permit will be issued. Cudlip stated that she is concerns with health and safety issues that may come with placing a new septic system on this parcel. Even with all of the setbacks being met.

Review Body Comments to staff comments and report:

Cudlip asked the applicant if there is any intent to subdivide the parcel. The applicant respond no.

Cudlip stated that she has concerns with health and safety issues that may come with placing a new septic system on this parcel. Even with all of the setbacks being met.

Early asked is a pressurized service back to the existing OWTS considered? Barvitski stated that they did not consider it due to the elevation drainage and crossing of the creek.

Cudlip asked about the landscape and irrigation. Cudlip would like more information on that. Cudlip also wants to make sure it goes through the LUC permit process. Lambert stated she spoke with Rachel Sabbato before the meeting regarding the second residence. Sabbato stated that an administrative review would be required for any second residence per the Land Use Resolution. Lambert commented that this variance request is not for approving a second residence, it is for a second OWTS system.

Lambert asked Sabbato to If they were to move forward to build they would have to go through an admin review. Sabbato listed what standards the second residence would have to go through:

Shea asked if the ditch is determined is not to be intermittent ditch could the setbacks still be met. Bill stated that the original design was done with the ditch being it being a ditch. After the site visit the design was changed for the it being an intermittent ditch. Bill stated that the setbacks would still be made even if it isn't an intermittent ditch.

Public Comments:

Public comment by email from residents Jeffrey Ryan and Cynthia Cechini-Ryan was read by Vice Chair, S. Earley. The residents expressed their concern with the board approving the variance. It was stated that that the original development agreed upon acres per structure. Not in support of changing that agreement.

Public comment by email from resident Deb Hefftner was read by Vice Chair, Early. She expressed her concern with the board approving the variance. She is not in favor of a variance or subdivision.

Taylor Hefftner, representing the Nienhueser family, specifically Seth Nienhueser, gave public comment in person. It was stated that Mr. Nienhueser has concerns with the board approving the

variance. It was stated that the variance would have a large encompassing effect on all surrounding properties. Over development would be a problem.

Public comment was given in person by resident William Earley. William Earley expressed concern with the board approving the variance.

William Earley also stated that he was concerned that the ditch is being considered an intermittent ditch and the well being legal.

Cudlip asked if William Earley has looked at the design for the OWTS that is being presented. William Earley commented that he has not had time to go over the design yet.

Public comment was given in person by resident Justin McLain. Mr. McLain expressed concern regarding who would be responsible for maintaining the ditch if it is piped or lined. Barvitski stated it would be for the attorney's office and reminded the room that this hearing is for a variance for a septic system design. The permit would still need to go through the Land Use Change permitting process with the county.

Applicants response to Public Comments:

Barvitski wanted to comment a reminder that this is just the approval of a septic system design. Everything will have to be reviewed through Gunnison County LUR compliance.

Aaron Huckstep was in person, representing the applicant. The concerns that the board is hearing relate to density issues. Which is not the variance request. Huckstep recently obtained a title commitment for the property and there is not a covenant with respect to subdivision of this property. In respect to the well, Huckstep has a letter dated February 25, 2019 that states both wells on the property are legal and can each be used for a single-family residence. In respect to the ditch, the pictures that Lambert showed do not indicate that the ditch goes very far beyond the property. Huckstep stated that there are no health or safety issues.

Review Body Response to Public Comment:

Cudlip asked who maintains the ditch now and does it go off property? It does go off property. The pictures show that the irrigation ditch leaves the property and appears to peter out to a very shallow depression.

Cudlip asked when the pictures were taken. Lambert stated they were taken the week before the hearing.

Additional Staff Comments:

Lambert asked Sabbato to explain what the process would be for the LUR review. Sabbato stated that if Coleman wanted to move forward, they would have to submit a LUC permit and go through an Administrative Review process to address a secondary structure. Sabbato explained the standards that need to be met for a secondary structure. This includes that the secondary structure be smaller than the primary residence, the location has to be within close proximity to the primary, designation of building envelope, adequate parking, shared water supply, shared

OWTS and the need to review if there are any deed restrictions or protective covenants. Sabato stated that a document on suggested covenants has not been found.

Review Body Comments:

S. Earley asked if the ditch is determined to not be an intermittent ditch could the setbacks still be met. Barvitski stated that the original design was done with the ditch being considered an irrigation ditch. After the site visit the design was changed for the it being an intermittent ditch. Barvitski stated that the setbacks would still be made even if it isn't an intermittent ditch.

S. Earley has reservations in closing the meeting due to the status of the ditch. Cudlip stated that she would have significant conditions if they want to approve.

S. Earley stated that he needs to know about the ditch. The plans need to show. Conditions need to be made with the ditch holders.

Determination Discussion

Lambert reminded the board that if there it is apparent that a decision can be made, either approve, deny, or approve with conditions, then they hearing can be closed.

S. Earley stated he is having pause to closing the hearing without knowing the status of the ditch.

Cudlip asked if they should continue the meeting or approve with conditions. Cudlip stated that she has several conditions before approval.

S. Earley again stated the they need to determine what engineering needs to be done on the ditch and if it is an intermittent ditch. S. Earley also stated that a condition should be an agreement between the ditch owners of the maintenance.

Cudlip stated to the board that the 2 conditions she would ask for on approval are: 1.) We must know what kind of ditch it is and if it is an actual ditch that it must be lined or piped. 2.) There must be a maintenance plan between owners for the ditch.

Lambert stated that there are definitions for ditches and she has spoke to representatives at the state level and the OWTS coordinator and she feels that we can apply those definitions definitively.

Huckstep thinks the applicant can take the classification of the ditch off the table for the board. She will take responsibility of the ditch being lined or piped.

Huckstep also suggested that If there is a condition of approval that there is an agreement for the maintenance of the ditch, that it should be provided at the time of a LUR application. Because if there is no secondary residence and LUR application then an agreement is meaningless.

S. Earley asked if they can put a condition on the LUC application. Lambert stated that the staff does a thorough job and they shouldn't put a condition on the application.

Lull stated that she is having a hard time with this not knowing what other conditions may come up. You think you have them all covered and things still come up. Lull stated she wanted to

continue the hearing until all information is gathered. Lambert asked if the concern was on what conditions may come up for the OWTS or the Land Use and building code regulations? Lull answered that the concern is with the OWTS conditions that may come up and effect the variance if it is approved.

Huckstep stated he isn't sure what new information would come up. Barvitski agreed.

Moved by : Early, **seconded by** Cudlip to close the public hearing at 3:43 PM.

Barvitski went on record at 3:44 pm that he will leave the room for the EH Board determination

The EH board wants to add the following conditions. 1.) Staff review and verify the status of the ditch in closest to the proposed OWTS and determine whether it is a intermittent irrigation lateral or an irrigation ditch as defined by the Gunnison County OWTS Regulations and that the ditch be piped and or lined and be maintained as required. 2.) The first one is to get the definitions of the ditch and have the staff review the state definitions. And to ask the applicant to pipe the ditch. The second condition is to accept the document from Mr. Huckstep regarding the wells from the state engineer's office.

EH Determination of Application: Moved by Cudlip. Seconded by Lull to approve, with conditions, the application for Coleman, OWTS-22-00004 before the Gunnison County Environmental Health Board. The motion passed unanimously.

Barvitski joined the EH meeting at 3:49.

Draft-ENVIRONMENTAL HEALTH BOARD VARIANCE REQUEST ACTION

APPLICANT: Coleman Trust-Sarah Coleman Craig

DATE: April 28, 2022

SITE LOCATION: 4995 County Road 76; 5.54 Acres in Section 4 49N3E

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

PREPARED BY: Crystal Lambert, Building and Environmental Health Official

PROPOSED PROJECT:

The applicant is requesting a variance to the Gunnison County OWTS Regulations for a second on-site wastewater treatment system (OWTS) on a single undivided parcel.

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. 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. Additional floodplain requirements will be demonstrated and verified by Department staff prior to permit approval and issuance.

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.

PUBLIC HEARING:

On April 28, 2022, 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 and existing 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.
6. The applicant has demonstrated that no substantial injury will result from the granting of the requested variance.
7. This review and decision incorporate, 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 the Coleman Trust and Sarah Coleman Craig at her parcel, 4995 County Road 76, 5.54 Acres in Section 4 49N3E, under OWTS application 22-00004, 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, floodplain requirements, 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.

Adjourn: S. Earley adjourned the meeting at 3:58 pm

/S/ Shannon Frias
Administrative Assistant III
Gunnison County Community and Economic Development