

SEP 03 2013

Ravalli County Commissioners

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August 26, 2013

Dear Director Guthrie, Ravalli County Attorney Fulbright, Director Stone-Manning, Ravalli County Board of Health:

We have just received the attached Memorandum from Director Guthrie dated August 22 and would like to address some of the issues cited.

It is true, as stated, that Director Guthrie has had numerous conversations with us regarding our complaint of an illegally installed septic system by Mr. Harry Newlon on property which we own and which he leases. For over two years we have been asking for action to be taken on this illegal activity.

Director Guthrie states in paragraph 2 of the memorandum "For one, it is my opinion that the owner of the tract of land (even if another party is involved and also charged with a violation) may be responsible for any violations that occur on that land."

We do not understand how her opinion conforms to Section 6.1 of Ravalli County Wastewater Treatment and Disposal Regulations:

SECTION 6.1 Department Investigation

Prior to commencing any judicial enforcement, alleged violations of these regulations shall be investigated by the Department. The Department shall provide written notice to the individual(s) involved in the alleged violations by letter, and include within that letter a description of the alleged violation. The landowner(s) must also be notified, if different from the individuals involved. If the Department determines that a violation occurred, the Department will provide written notice to the violator setting forth a time within which the violator may cure the violation by complying with these regulations, if possible. If the violation is not cured via this administrative procedure or is incapable of being cured, the Department will notify the Ravalli County Attorney's Office, which may commence judicial enforcement action.

And Section 6.3

SECTION 6.3 Penalties

Any violation of these regulations or order of the Ravalli County Board of Health is subject to criminal prosecution in accordance with Sections 50-2-123 and 50-2-124, MCA.

In addition, a violation of these regulations shall subject the violator to any other action or penalty under the law.

Director Guthrie also states in paragraph 2 that Mr. and Mrs. Newlon "have been working with us to remedy the violation including removal of the portapotty and ceasing use of the grey water system."

As of August 1, 2013, when we were last in Montana, the port-a-potty remains on the leased land. It was merely moved, at the order of the U. S. Forest Service in 2012, from Forest Service land to our land, which Mr. Newlon leases. If your department is in doubt

of this fact, please inspect the land. The grey water drain also still remains.

However, our main concern as we have frequently stated is contamination of our well by an illegally installed septic system 60 feet or less from our well.

Please note, that we, the landowners, have been working for two years with Director Guthrie to see that County and State laws have been followed. Mr. and Mrs. Newlon have continued to add to their illegal system by adding an additional sewage pipe in May 2013, which we reported to Director Guthrie, and since she informed us that she chose not to take action, we reported to the Ravalli County Sheriff's office. Only after two years of our requests for action have the Newlon's acted, by filing an application to install a system which has already illegally been installed.

Director Guthrie also states in paragraph 2 that we "implied they were happy to have me issue them the information letter." which stated that Mr. Newlon could install a holding tank to satisfy the Departments requirements. In fact, in early June, 2013, after Deputy Sheriff Clint Eckhart had investigated and spoken to Director Guthrie about the addition of an illegal sewage pipe (which he observed and took pictures of) we asked for Director Guthrie to issue a letter of violation. That seemed to us to be the only way that action would be taken. Director Guthrie told us that she was not ready to issue a letter of violation and told us that instead she would issue an information letter. We definitely did not ask for her information letter and we definitely did ask for a violation letter.

It is true, as Director Guthrie says in paragraph 4 that we called her "repeatedly to check on the progress of the complaint." Two years is a long time to wait for action.

Director Guthrie states on page 3, paragraph 1, again that Mr. Newlon "approached our office wanting to remedy the situation" and that "He removed the port-a-potty." This is not true. We can supply witness statements from neighbors that as late as August 1, 2013, when we were last in Montana, that the port-a-potty was still there and that the sewer pipe from his cabin had been added to the system in May 2013. Adding new elements to an illegal system does not seem to fit with remedying the situation.

Director Guthrie states in her Memorandum that we have cited irrelevant Montana State rules .and she refers to the correct citation for a holding tank in her paragraph 5, page, 3. She states, "If permitted, the permit will spell out that all the requirements of this rule be met." However, she does not supply the requirements for a holding tank. We have attempted to ascertain just what rules do apply in our case.

The land which Mr. Newlon leases is just under 7,500 square feet.

In ARM 17.36.340 LOT SIZES: EXEMPTIONS it states that c) The reviewing authority may allow lot sizes smaller than one acre, but not less than 20,000 ft² if all of the conditions in any one of (1) (c) (i) or (ii) are met.

Again, Director Guthrie says this requirement does not apply to us and that in fact, there are no lot size requirements for our case. How can that be when 24.2.6 from Montana

Circular DEQ 4, chapter 24 states:

24.2.6 Holding tanks must meet the separation distances and other requirements in the subdivision and county minimum standard regulations, ARM 17.36.101 through 1107

We would very much appreciate Director Guthrie supplying to us the requirements (separation distances, setback distances, and lot size requirements for holding tanks) that she feels are relevant to us. We can find only the requirements from Montana law which we cited in our earlier letter.

In paragraphs 3 and 5 Director Guthrie dismisses our concerns about well contamination, however we again note the following which we referenced in our earlier letter:

Every regulation which we cite from ARM 17.36.101-1107, (the regulations cited in ARM 17.36.916 which Director Guthrie says is “the correct citation for a holding tank”) Director Guthrie then states is not relevant to us.(specifically Director Guthrie states that ARM’s 17.36.601, 17.36.916, 17.36.102, 1736.110, 17.36.913,17.36.321, 17.36.601,17.36.340, 17.36.108 do not apply to our case, mainly because she states that they refer to the Subdivision Act.) However 24.2.6 specifically states that holding tanks must meet the requirements in the subdivision and county minimum stands regulations. (Parenthetically, the land which Mr. Newlon leases is listed as a subdivision of our property by the Ravalli County Treasurer.)

We note that in ARM 17.36.918 holding tanks are listed under (1) sealed components and that their setback from multi-user wells is 100 feet. Since Mr. Newlon has no independent water source, therefore his only choice, if we were forced to supply him with water, would be the well which we use, making it, it seems, a multi-user well.

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS

(1) Minimum horizontal setback distances (in feet) are as follows:

	TABLE 1 SETBACK DISTANCES	
	Sealed components (1) and other components (2)	Absorption systems (3)
Public or multi-user wells/springs	100	100

Again, Mr. Newlon’s system is 60 feet or less from our well.

Director Guthrie states in her Summary on page 4 that “as long as they (the Newlons) are working with us and there is no public health threat, we will continue to work with them.” Since for over a year the Newlons did not work with her, according to Director Guthrie in paragraph 2 of page 2, “I hadn’t heard from Mr. Newlon’s attorney or the Newlons since they met with me in late July of 2012.” and that during that time the Newlon’s made additions to their illegal system, one could certainly say that it was we,

the landowners who, according to the same paragraph "called me repeatedly," who were attempting to work with her.

We are distressed to be told that the illegal system "is no immediate public health threat." One can only assume that to mean that our family's health is of no concern to the county and that the state rules and regulations designed to protect our water are irrelevant. Nor do we understand how "the remote location" of our land negates our need for protection of our well.

We are deeply disappointed to read in this reply to our two year attempt to see that County and State laws are enforced that we, by implication, are regarded as uncooperative, and that the violators who have failed to remedy the situation and only after two years have decided to act are in Director Guthrie's words "being cooperative and attempting to remedy the wastewater treatment situation."

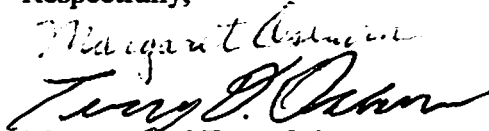
We are very disappointed in the Department's delay in acting on our complaint, by their dismissal of our concerns about the safety of an illegally installed system, the proximity of that illegally installed system to our well, and the danger to our water supply.

We respectfully request that you supply us with the **separation distances, setback distances, and lot size requirements for holding tanks that you determine are relevant to our case.**

Also of import, Director Guthrie attached to her Memorandum a copy of the Certificate of Survey showing property we own on Little East Fork Road. On the back of the large plot survey (CS 631065-CT) she has copied survey CS 5902-TR. This is not Mr. Newlon's leased land, nor is it in anyway related to his leased land.

We own three pieces of property on Little East Fork Road. The survey you copied has nothing to do with this case. If you are attempting to locate Mr. Newlon's leased property look again at CS 631065. The small rectangle marked 2,000 square feet is the basis of his leased property. In 2003, Mr. Newlon added 25 feet to the southeast corner of the leased land and extended the northeast corner to the boundary listed as N 72 55 02 E. As you can see the leased land is an irregular shape that covers less than 7500 square feet. Mr. Newlon placed his illegal system on the original 2,000 square foot section. It may infringe on Forest Service land.

Respectfully,


Margaret and Terry Osburn



Ravalli County Environmental Health
215 South 4th Street – Suite D
Hamilton, MT 59840
(406) 375-6565
FAX (406) 375-6566

MEMORANDUM

TO: OSBURN CABIN POTENTIAL VIOLATION FILE
FROM: LEA GUTHRIE (LG)
SUBJECT: RESPONSE TO AUGUST 19, 2013 LETTER FROM TERRY AND MARGARET OSBURN
DATE: AUGUST 22, 2013
CC: RAVALLI COUNTY ATTORNEY'S OFFICE, TERRY AND MARGARET OSBURN, HARRY,
NEWLON, WILLIAM WAGNER

Response to August 19, 2013 letter from Terry and Margaret Osburn regarding complaint on their property at 5171 Little East Fork Road (Parcel #1199200).

I have had numerous conversations with Mr. and Mrs. Osburn regarding the nature of this complaint. Mr. and Mrs. Osburn are the owners of record for the property and filed the complaint. Mr. Newlon owns the cabin and has a long term lease with the Osburns for the land. I informed Mr. and Mrs. Osburn of the unique conditions of this particular complaint. For one, it is my opinion that the owner of the tract of land (even if another party is involved and also charged with a violation) may be responsible for any violations that occur on that land. Therefore, if I were to ask the Board of Health to issue a Compliance Order, it may include the land owners, Mr. and Mrs. Osburn. Since it's their argument that their tenant caused the violation, we agreed I would hold off on issuing another violation letter that included them as violators. In the meantime, Mr. and Mrs. Newlon and their attorney have been working with us to remedy the violation including removal of the portapotty and ceasing use of the grey water system. They are also working toward a possible solution for the wastewater and made application for a permit. I detailed this in a letter of INFORMATION (June 4, 2013) to the Osburns rather than another violation letter issued to them. I sent this to them so they would understand what the potential remedies were in case they were named as the violators. On the telephone they implied they were happy to have me issue them the information letter.

The Newlons and their attorney met with us in late July, 2012 and told us they had removed the portapotty and ceased using the grey water system. I detailed the possible remedies (see letter dated July 26, 2012 that I never mailed because I conveyed this in person and Mr. Wagner took copious notes). That meeting ended with Mr. Wagner stating he would research the "duly authorized agent" issue and discuss with our Deputy

County Attorney Dan Browder. He would then contact me with their decision on how to move forward.

Mr. and Mrs. Osburn called me repeatedly to check on the progress of the complaint. Each time I informed them that I hadn't heard from Mr. Newlon's attorney or the Newlons since they met with me in late July of 2012. Each time they called, I emailed or called the Newlon's attorney and inquired about the status. (To our knowledge, the cabins are not occupied in the winter.)

On July 25, 2013, Mr. Newlon was back in the area and made application for a holding tank. Our regulations state that the owner of the tract of record or their duly authorized agent must submit the permit application. Knowing the Osburns are not supportive of the Newlons, I requested that both parties state their legal rationale for whether Mr. Newlon is a duly authorized agent. I intended to submit these arguments to the County Attorney's Office to get their input. I notified the Osburns and the Newlon's attorney that I would make a decision by July 23, 2013. In the meantime, the Newlon's attorney told me that he will file a lawsuit regarding this matter and have the court make the determination regarding the duly authorized agent question. Therefore, we are now waiting for the court action to be filed and completed and for a judge's opinion on the matter before approving or denying Mr. Newlon's application.

As with any violation, if the alleged violator(s) is (are) making progress toward a solution and there is no immediate public health threat, we work with the people involved to get the problem remedied. This situation is extra complicated with the landowner and cabin owner not being one and the same and our office does not interpret lease agreements. I look forward to the Court's decision.

Response to the specific rules and regulations the Osburns cite in their correspondence:

ARM 17.36.913: there has been no evidence submitted that suggest that drinking water supplies are being contaminated. Though potentially illegally installed, the means of treatment described on the property (a possible holding tank or possibly a septic tank with a seepage pit) are acceptable methods of wastewater treatment and the well logs that Mr. and Mrs. Osburn submitted show static water levels between 37 and 87 feet below the ground surface. Both wells pull water from approximately 54 feet below the ground surface and both wells are grouted to 20 feet. They both state 20 gallons per minute yield which suggests adequate water availability and dilution. Additionally, if a holding tank is permitted, it has to meet all setbacks including the 50 foot setback from any well.

ARM 17.36.321: this rule is specific for lots being reviewed under the Montana Sanitation and Subdivision Act (MSSA). This lot is not being reviewed under the MSSA. The correct citation for parcels not being reviewed by the MSSA is ARM 17.36.916 which allows for holding tanks if they are utilized no more than 120 days out of the year.**ARM 17.36.601:** this also refers to the Sanitation in Subdivisions Act. The rules specifically list which requirements can receive a waiver or deviation which is moot because this lot is not being reviewed under the Sanitation in Subdivisions Act.

Ravalli County Wastewater Treatment and Disposal Regulations Section 6.1: RCEH provided written documentation of the violation to both Mr. Newlon and Mr. Osburn. Mr. Newlon approached our office wanting to remedy the situation. He removed the port-a-potty, stopped discharging grey water on the ground and has made application for a holding tank permit. Ravalli County Septic Regulations Section 3.1.H states that the application for an installation permit shall be submitted by the owner or the owner's duly authorized agent. We explained to Mr. Newlon and his attorney that we weren't sure if Mr. Newlon could be a duly authorized agent knowing that the Osburns were opposed to allowing Mr. Newlon installing any kind of system (they've explained to me numerous times they want him evicted). Mr. Newlon's attorney said he would research the matter, and he sent me an email on August 7, 2013 with his argument for Mr. Newlon being a duly authorized agent. Osburns responded on August 1, 2013 (letter), August 13, 2013 (letter), August 19, 2013 (letter) and August 20, 2013 (email).

Ravalli County Wastewater Treatment and Disposal Regulations Section 6.3. It is true that Ravalli County can ask for criminal prosecution of violations. There is only one recent case where a violation of the septic regulations actually went to court (civil) because the property owners did nothing in response to our violation letters and compliance order. In cases where the alleged violator is working toward a solution and there is no immediate public health threat, we do not waste the court's time and resources. We are solution driven.

Lot size requirement: ARM 17.36.340 (adopted by reference in the septic regulations) states in subsection (a), "if an applicant proposes to use subsurface wastewater treatment systems, as described in department Circular DEQ-4, the minimum lot size must be one acre for each living unit". That is why this parcel can only qualify for a holding tank – it is less than an acre. A holding tank does not discharge effluent into the ground.

ARM 17.36.601 – again this is the Sanitation in Subdivisions Act. This lot is not being reviewed under the MSSA.

ARM 17.36.916 – the correct citation for a holding tank. If permitted, the permit will spell out that all the requirements of this rule be met.

ARM 17.36.102 – refers to the application for Subdivision in Sanitation Act review. This lot is not being reviewed under the MSSA.

ARM 17.36.110 – refers to a certificate of subdivision approval under the Sanitation in Subdivision Act. This lot is not being reviewed under the MSSA.

Ravalli County Subsurface Wastewater Treatment and Disposal Regulations Section 3.1 – there is no septic system permit on file for this parcel (nor are there any for the surrounding cabins), and a system was likely installed without a permit (RCEH staff observed what they suspected was a seepage pit and Osburns submitted photo of a discharge pipe leaving the cabin). This was detailed in the violation letter sent to Mr. Newlon and Mr. Osburn. Mr. Newlon is attempting to remedy the situation by applying for the only type of wastewater treatment system that could be allowed on that parcel. RCEH has not discussed if there will be a penalty assessed for installing the system without a permit or having a non-certified installer install the system. If permitted, the

system will have to be inspected including the abandonment of any drainfield or seepage pit. The holding tank must meet the requirements of ARM 17.36.916 and RCEH will inspect all work.

Ravalli County Subsurface Wastewater Treatment and Disposal Regulations

Section 3.5.D: this section details the ability for RCEH to revoke a certified installer's certification or deny application for certification if they have not passed the written exam.

Regarding the water supply system: RCEH does not regulate water systems nor are we involved with water rights.

ARM 17.36.108: Referencing the Sanitation in Subdivisions Act. This lot is not being reviewed under the MSSA.

Conditions of the Lease: our office does not determine compliance with a lease agreement. I've encouraged the Osburns on numerous occasions to obtain their own legal counsel as this appears to be a private, civil matter. Our only concern is getting the septic system fixed and there seems to be at least one possible solution that Mr. Newlon is pursuing.

Easement: our office also does not enforce covenants or easements. If permitted, the conditions of the permit must be met. It is the responsibility of the permit holder to ensure the requirements of the permit are met. In signing the application, the applicant agrees that, "I certify that the use of this property for which the permit is issued does not violate any terms or conditions of any zoning, floodplain or restrictive covenant". I reviewed Certificate of Survey 5902-T and Certificate of Survey 631065-CT and did not see a platted easement or any restrictive language on those documents (attached). It is the responsibility of the applicant to research any restrictive covenants or easements.

Summary

In working through any potential violation, we always give the alleged violator the opportunity to comply. As long as they are working with us and there is no immediate public health threat, we will continue to work with them. Between the depth of the wells, static water levels, remote location and limited use of the cabins, RCEH determined there is not an immediate public health threat. The Newlons are being cooperative and attempting to remedy the wastewater treatment situation. Because this issue will be litigated, we will wait for direction from the Court on whether Mr. Newlon is a duly authorized agent based on the long term lease before processing the application for the holding tank.

CERTIFICATE OF SURVEY

PURPOSE: COURT ORDER CAUSE NO. _____
 OWNERS: MELODY D. ANACKER, JOSEPH L. OSTERBAUER,
 JULIE MASON, DYAN J. SCHERTLER &
 ARLENE J. ANDERS.



- SET 1" REBAR W/ 1" PLASTIC CAP
- FOUND 1" PLASTIC CAP
- ★ FOUND 2" BRASS CAP

PREPARED BY
Applebury
 Survey

DEBIS APPLEBURY
 PROFESSIONAL LAND SURVEYOR
 914 HWY 95 VICTOR, MT. 59873
 (406) 881-3357



A PORTION OF THE SE $\frac{1}{4}$, SECTION 16, AND THE NE $\frac{1}{4}$, SECTION 21 T2N, R17W, P.M., M. RAVALLI COUNTY, MONTANA
LEGAL DESCRIPTION

A tract of land located in and being a portion H.E.S. No. 1117, also being a portion of the SE $\frac{1}{4}$, Section 16 and the NE $\frac{1}{4}$, Section 21, T2N, R17W, P.M., M., Ravalli County, Montana and being more particularly described as follows;
 Beginning at Corner No. 11 of said H.E.S. No. 1117, said point being the true point of beginning; thence N. 23° 15' 19" W., a distance of 458.00 feet thence N. 72° 55' 02" E., a distance of 99.82 feet; thence S. 04° 15' 00" E., a distance of 56.84 feet; thence N. 85° 45' 00" E., a distance of 100.00 feet; thence N. 04° 15' 00" W., a distance of 75.00 feet; thence S. 85° 45' 00" W., a distance of 87.95 feet; thence N. 12° 00' 00" E., a distance of 45.74 feet; thence N. 03° 00' 00" E., a distance of 80.00 feet; thence N. 72° 55' 02" E., a distance of 199.13 feet; thence S. 11° 28' 00" W., a distance of 645.14 feet to the true point of beginning, containing 1.67 acres and all according to Certificate of Survey No. _____

Excepting and reserving any easements shown, also subject to all easements of record and as apparent upon the ground. Also subject to a Lease as per Book 16, Page 307 and being more particularly described as follows; Commencing at Corner No. 11 of said H.E.S. No. 1117; thence N. 16° 13' 20" W., a distance of 387.79 feet to the true point of beginning; thence N. 81° 50' 00" W., a distance of 50.00 feet; thence N. 08° 10' 00" W., a distance of 40.00 feet; thence S. 81° 50' 00" E., a distance of 50.00 feet; thence S. 08° 10' 00" W., a distance of 40.00 feet to the true point of beginning, containing 2,000 square feet.

Further, that these parcels are created by order of a court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain. Therefore this survey is exempt from review pursuant to Section 76-3-201(1)(a) MCA.

CERTIFICATE OF SURVEYOR

I hereby certify that this is a true and accurate description of a survey made by me or under my supervision during the month of December, 2009.

Theron Nelson Date 12-29-2009
 Theron Nelson, Professional Land Surveyor, Montana Registration No. 126731S



$\frac{1}{4}$	SEC	T	R	CERTIFICATE OF SURVEY NO: _____
	16	2N	17W	
	21	2N	17W	

RAVALLI COUNTY, MONTANA
 SHEET 1 OF 1

STATE OF MONTANA RAVALLI COUNTY
 RECORDED: 05/13/2010 2:24 CERT/SRVY
 REGINA PLETTEBERG CLERK AND RECORDER BY: *Lisa J. Bennett* FEE: \$6.00
 PA: 631066, Easement: 631067