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BEFORE THE SNOHOMISH HEALTH DISTRICT HEARING EXAMINER

In Re. the Matter of the Appeal by:	Case No.
Brad Whitsell, Appellant	DISTRICT'S RESPONSE TO BRAD WHITSELL'S APPEAL OF DENIAL OF ON-SITE SEWAGE DISPOSAL SYSTEM PERMIT FOR PROPERTY LOCATED AT 9905 353 RD DR. NE, GRANITE FALLS
Snohomish Health District, Respondent	
RE: Appeal of Denial of On-site Sewage Disposal System Permit for Property Located at 9905 353 rd Dr. NE, Granite Falls	

Statement of Facts

This appeal results from Snohomish Health District's denial of an application received from Brad Whitsell to, in essence, retroactively approve connection of a 2100 square foot residence with one bedroom to an existing onsite septic system in order to retroactively receive building permits from Snohomish County Planning & Development Services (PDS). The subject property located at 9905 353rd Dr. NE in Granite Falls is 0.3 acres in size and is located on the Pilchuck River within the floodplain. In 1981, approval was sought and granted for a 1-bedroom septic system under permit number 1170-81. In 1981, a reserve drain field was not required, so none was identified on the as-built. The system was properly

1 installed and inspected. On the 1981 application materials is a clear directive that the drain
2 field must be held 100 feet from the water supply.

3 At some point after the septic approval in 1981, a one-bedroom cabin was installed on the
4 lot and connected to the septic system. However, use of the system ceased when the cabin was
5 removed. Following his acquisition in 2007, appellant Mr. Whitsell constructed an open-sided
6 storage structure per PDS plan check # 14-115757 AB. Mr. Whitsell subsequently converted
7 this structure to a residence (without permits) and connected to the 1981 septic system. He
8 also had a well drilled (without an application to SHD for an individual water supply site
9 inspection) that was unfortunately located within the 100-foot setback at approximately 82
10 feet from the drain field.

11 In 2010, Mr. Whitsell granted an easement covering area on the subject property to an
12 adjacent property (Lot 6) for a reserve drain field.

13 In 2018, Mr. Whitsell executed a shared well agreement with the adjacent property owner
14 (Lot 6) and connected that property to his well, again without applying for SHD approval.

15 In August, 2022, Mr. Whitsell executed a water easement with the property owner of
16 parcel 00544100001000, resulting in a third connection to the well located on Mr. Whitsell's
17 property. The third connection classifies the water source as a public water system, which
18 falls under Washington State Department of Health drinking water regulations for public
19 systems. The water easement was terminated on October 31, 2022.

20 Mr. Whitsell listed the subject property for sale in August of 2022. The home was
21 originally listed as 2118 square feet and is advertised as being built in 2018 ([9905 353rd Drive
22 NE, Granite Falls, WA 98252 | MLS #1985152 | Zillow.](#)) He now attempts to secure Snohomish
23 County (after the fact) approval of his residence, which requires clearance by SHD, both as to
24 the septic system and water supply.

1 SHD received the clearance application on 4/10/2021. (Note that there has never been an
2 Application for an Individual Water Supply Site Inspection, which is necessary to move
3 forward with analysis of the water supply. However, it is impossible to consider the on-site
4 septic approval request without also analyzing the well concerns, which is done herein.)
5 Corinna Ong, EHS, conducted the site review in June 2021. On 6/28/2022 the application was
6 processed and denied for the following (directly quoted) reasons:

7 *1. A reserve area was never designated. In addition, there is an easement granting*
8 *reserve area for the benefit of parcel 00544100000600. However, it appears that a*
9 *septic designer was not involved as there are no site plans depicting the location of the*
10 *easement. As such, a reserve area must be designated for both lots prior to clearance*
11 *approval. Please contact a licensed septic designer.*

12 **Per WAC 246-272A-0210(5)(c), to design and/or install a soil dispersal**
13 **component sufficient reserve area is required for future replacement to treat and**
14 **dispose one hundred percent of the design flow.**

15 **Per District Code 5.15.040(B), the Health Officer shall review all applications to**
16 **determine compatibility of the proposed addition, alteration, repair, or**
17 **improvement with the existing on-site sewage disposal system.**

18 **1. Factors that must be considered shall include, but not be limited to, the**
19 **following:**

20 **a. Location of septic tank and drainfield in relation to existing**
21 **foundation and proposed improvements;**

22 **b. Size of drainfield in relation to proposed use;**

23 **c. Condition of existing on-site sewage disposal system;**

24 **d. Useful anticipated life of the existing on-site sewage disposal**
25 **system;**

- e. Potential for reconstruction, replacement, and/or repair of the existing on-site sewage disposal system;
- f. Ultimate purpose of the remodeling;
- g. Approved source of water;
- h. Potential use of the structure after remodeling.

Note: The reserve area must be in full compliance with new system construction standards.

- 2. *Your proposed source of water is not consistent with recommendations contained in the "Department of Ecology Availability and Adequacy Guidelines for Individual Water Supplies". Please refer to the attached report for deficiencies.*

Per District Code 4.30.030, assessments for determining water acceptance for issuance of permits for new residences include the following:

- 1. SHD approval of "Application for an Individual Water Supply Site Inspection." Site criteria as established in Chapter [173-160](#) WAC and Chapters [4.25](#) through [4.40](#) SHDC and SHDC Title [5](#).
- 2. SHD approval or "Request for Review: Individual Water Supply" including the following minimum submittals:
 - a. Signed declaration of applicant;
 - b. Copy of water well report (well drillers log) verifying well construction per Chapter [173-160](#) WAC;
 - c. Documentation of well yield testing per WAC [173-160-345\(1\)](#) sufficient in detail to demonstrate a minimum 400 gallons per day per residential connection;
 - d. Satisfactory results of a bacteriological analysis; and
 - e. Satisfactory results of inorganic chemical analyses for the following: arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, sodium, fluoride, and nitrate.

1 **Note: Water supply information report dated 6/28/2021 was attached with the**
2 **denial.**

- 3
4 3. *Due to FEMA's reclassification of flood hazard zones, it appears that the well is*
5 *within a floodway zone, which is an unacceptable location. Please submit a well site*
6 *application and a statement from Department of Ecology regarding the location of the*
7 *well.*

8 **Per WAC 173-160-171, the proposed water well shall be located where it is not**
9 **subject to ponding and is not in the floodway.**

10 **Note: See Noel Phillip's email regarding floodway zone. Well site application still**
11 **required for GMA compliance.**

12 **AS-BUILT REVIEW**

13 On March 23, 2022, SHD received the as-built for construction clearance review. Corinna
14 Ong, EHS, conducted the site review on 6/9/2022. On 6/10/2022 the application was
15 processed and denied for the following (directly quoted) reasons:

- 16 1. *Proposal to excavate the existing drainfield and install sand lined trenches is not*
17 *acceptable. The reserve area must be a separate area of land that is protected and*
18 *maintained for future replacement of the failed OSS. Please depict the proposed*
19 *driplines and demonstrate the appropriate setback to the easement and to the existing*
20 *drainfield trenches.*

21 **Per WAC 246-272A, the definition of "reserve area" is an area of land approved**
22 **for the installation of a conforming system that is protected and maintained for**
23 **replacement of the OSS upon its failure. (Page 12)**

- 24 2. *The well is less than 100 ft from the existing drainfield and proposed reserve area.*
25 *WAC 246-272A-210(4) states that the Health Officer can reduce the setback to 75 ft.*
However, the Health District does not support a reduction to this setback. Per item #4
on the Step One Appeal Letter dated 8/27/2021, the 100 ft setback must be maintained.
Refer to the attached letter.

WAC subsection mentioned. Step One Appeal Letter dated 8/27/2021 by Ragina Gray.

1
2 3. *Neighboring wells and drainfields not depicted/addressed in the application. Please*
3 *verify all appropriate setbacks are met to the existing well, drainfield, and proposed*
4 *reserve area.*

5 The Parties met prior to this Hearing in an effort to fully flesh out the issues. At the
6 time of the appeal, SHD had received a design from a licensed septic designer that depicts a
7 potential reserve drainfield with enhanced treatment. Additional work is necessary on the
8 design and no design for retrofitting the existing system has been received. No application for
9 individual water supply site inspection has been received.

10 **Issue**

11 SHD regulations require that a proposed on-site sewage disposal system be designed
12 in compliance with all requirements outlined in Snohomish Health District Code Title 5, as
13 well as Washington Administrative Code (WAC) 246-272A. As detailed in SHD's step one
14 appeal denial letter dated August 19, 2022, the main "sticking point" in this case is item #2 of
15 the as-built denial letter dated June 10, 2022 (directly quoted):

16 *The well is less than 100 ft from the existing drainfield and proposed reserve area.*
17 *WAC 246-272A-210(4) states that the Health Officer can reduce the setback to 75 ft.*
18 *However, the Health District does not support a reduction to this setback. Per item #4*
19 *on the Step One Appeal Letter dated 8/27/2021, the 100 ft. setback must be*
20 *maintained. Refer to the attached letter.*

21 WAC 246-272A-0210(4) states as follows: The horizontal separation between an OSS
22 dispersal component and an individual water well, individual spring, or surface water that is
23 not a public water source can be reduced to a minimum of seventy-five feet, by the local
24 health officer, and be described as a conforming system upon signed approval by the health
25 officer if the applicant demonstrates:

- a) Adequate protective site-specific conditions, such as physical settings with low hydrogeologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquatards separating potable water from the OSS treatment zone, excessive depth to ground water, down-gradient contamination source, or outside the zone of influence; or

- 1 b) Design and proper operation of an OSS system assuring enhanced treatment
2 performance beyond that accomplished by meeting the vertical separation and
3 effluent distribution requirements described in WAC 246-272A-0230 Table VI; or
4 c) Evidence of protective conditions involving both (a) and (b) of this subsection.

5 The appellant has argued the reason for the Health District's decision is based on
6 institutional resistance to approving anything less than 100 feet under WAC 246-272A-0210
7 Table IV. In response SHD provides the following justification:

- 8 1) WAC 246-272A-0210(4) states the health officer "can" reduce the setback if either
9 subsections (a), (b), or (c) - evidence of both (a) and (b) exist. This section allows for
10 evaluation of all relative site-specific conditions to determine the appropriateness of
11 either subsection (a), (b), (c), or applying no reduction in the 100' setback on the basis
12 of protection of public health. The health officer is under no obligation to reduce this
13 setback, regardless of the evidence provided in support of either option. However,
14 SHD has offered an option to the appellant where SHD would agree to approve the
15 reduction if subsection (c) was satisfied.
- 16 2) The appellant provided SHD with 7 examples where other health jurisdictions have
17 approved the reduction in question. To this, SHD provides the following response:
- 18 a. Example 1 - Snohomish County 005974 000 04700: Approved setback of 75'
19 to surface water. This example is a reduced setback to surface water and not a
20 drinking water source. This does not represent an example of approving the
21 reduced setback to an individual water well.
- 22 b. Example 2 - Mason County 221055200023: The justification for approval of
23 this example includes both increased treatment level as well as evidence of
24 confining layers documented on both well logs provided. In each well log the
25 surface seal of 18' extends into a clay or hardpan layer, thus representing a
26 confining layer. As such, in relation to WAC 246-272A-0210(4) option (c) is
27 satisfied providing evidence involving both (a) and (b) of the subsection.
- 28 c. Example 3 - Mason County 221055100074: The justification for approval of
29 this example includes both increased treatment level as well as evidence of
30 confining layers supported by each of the 3 well logs provided. In addition, the
31 disposal component was demonstrated to be downslope from the wells. The
32 three well logs provided include surface seals of 18', 25', and 31'. Each seal
33 extends into a documented hardpan (compact), confining layer. As such, in
34 relation to WAC 246-272A-0210(4) option (c) is satisfied providing evidence
35 involving both (a) and (b) of the subsection.
- 36 d. Example 4 - Mason County 221035000035: The justification for approval of
37 this example includes both increased treatment level as well as evidence of
38 confining layers supported by each of the 3 well logs provided. The three well
39 logs provided document surface seals of 18/30', 18', and 20'. Each seal is
40 documented on their respective well logs as extending into a hardpan, or

1 conglomerate, confining layer. As such, in relation to WAC 246-272A-0210(4)
2 option (c) is satisfied providing evidence involving both (a) and (b) of the
subsection.

- 3 e. Example 5 - Jefferson County 9685519973: The justification for approval of
4 this example includes increased level of treatment as well as evaluation of
5 hydrologic sensitivity. As stated in the application comments/conditions, “well
6 upgradient drilled in 1982, well sealed 18’, aquitard 3’-33” cemented sand
7 w/clay on well log.” A well log was not provided in this example for reference
8 by SHD. As such, in relation to WAC 246-272A-0210(4) option (c) is satisfied
9 providing evidence involving both (a) and (b) of the subsection.
- 10 f. Example 6 - Jefferson County 971100337: Approved setback of 75’ to surface
11 water. This example is a reduced setback to surface water and not a drinking
12 water source. This does not represent an example of approving the reduced
13 setback to an individual water well.
- 14 g. Example 7 - Jefferson County 996600013: Per application cover page, the
work was completed under repair conditions. Based on the site plan it appears
there was limited availability for locating a replacement of the septic system on
the property, resulting in repairing to the greatest extent allowed by the site.
This example differs from the appellant’s case based on the proposed
construction of a new residence, not a repair application. As such, all
requirements of Snohomish Health District Code Title 5, as well as
Washington Administrative Code (WAC) 246-272A must be met for Mr.
Whitsell’s project.

15 There is no support in the examples cited that suggests SHD is acting in a manner
16 inconsistent with other jurisdictions. Based on the examples referenced above, the
17 requirement by SHD for the appellant to satisfy WAC 246-272A-210(4)(c): evidence of
18 protective conditions involving both (a) and (b) of this subsection, is consistent with other
19 jurisdictions that agreed to a reduction of the setback to individual water supplies.

- 20 3) The well log submitted by the appellant for parcel 00544100000700 contains distinct
21 differences than the examples referenced in item #2 above. A well seal of 18’ exists.
22 However, a confining layer in the soil is not documented by the log until 24’-30’ of
23 depth, “blue silty clay.” Above 24’ the log describes gravel, sand and boulders. The
well surface seal does not extend into a confining layer to justify WAC 246-272A-
210(4)(a). As such, subsection (c) is not supported where evidence of protective
conditions involving both (a) and (b) of the subsection exist.

24 SHD reached out to Noel Philip, Washington State Department of Ecology Well
25 Construction Coordinator, as detailed in an email dated August 5, 2022. As discussed in the

1 email, typical mitigation for reduced setbacks is to install a surface seal six feet into a
2 confining layer, or to the top of the screened interval of the well, or 36 feet. This would be
3 represented by the clay layer between 24-30' per the referenced well log. The lengthened seal
4 provides greater protection of the groundwater resource. The well seal present in this case
5 extends 18', or half of the recommended length.

6 4) SHD also discussed this situation with Jeremy Simmons, Washington State
7 Department of Health Wastewater Section Manager on August 10, 2022. Per this
8 discussion Jeremy indicated he is not aware of an example of a local health
9 jurisdiction reducing the setback to a well from 100' to 75' based on increased
10 treatment of the septic system alone. Email exchange between Jeremy Simmons and
11 appellant enclosed in supporting documents. As described in this email, based on this
12 conversation, and the information that WAC 246-272A-210(4)(a) is not supported by
13 the site, Jeremy describes his belief that SHD took the appropriate action in this case.

14 5) Based on Snohomish County recording 201811260634, the well located on parcel
15 00544100000700 is a shared well with parcel 00544100000600. This increases the
16 concern of protecting the water supply for not only the residence served by the
17 drainfield/reserve area in question, but also for individuals residing on a neighboring
18 parcel. Given the size of the lots in this plat, the neighboring parcels are close
19 proximity to the subject parcel.

20 **Conclusion**

21 The Health District properly denied the on-site sewage system (OSS) as-built
22 submitted by the Appellant. It will not consider a reduced drainfield setback based solely on a
23 design concept for a proposed future reserve area. The existing on-site sewage system must
24 also meet the enhanced treatment requirements. Both the primary system and proposed
25 reserve area must incorporate enhanced treatment components within the space available that
is unencumbered by the drain field easement. No design has been provided that would
accomplish this. In addition, no water supply application has been received. The existing well
must also be taken into consideration. It is not possible to consider the on-site septic system
without also analyzing the well and its location. SHD's suggestions with regard to well

1 options have been provided to the Appellant for its consideration. Both water and septic must
2 be approved by SHD before Snohomish County can approve construction permits. At this
3 juncture, SHD can approve neither.
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5 THOMPSON, GUILDNER & ASSOCIATES, INC., P.S.
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7 _____
8 Nikki Thompson, WSBA#37884
9 Attorney for Respondent
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