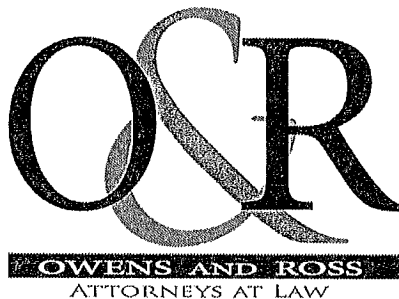


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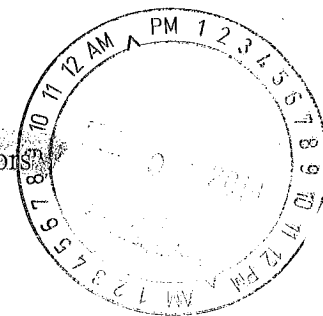


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February 4, 2019

Humboldt County
Department of Health and Human Services
Division of Environmental Health
100 H Street
Eureka, CA 95501

Humboldt County
Clerk of the Board of Supervisors
825 Fifth Street
Eureka, CA 95501



**RE: Proposed Onsite Wastewater Treatment System Design
APN: 204-331-003-000**

***** NOTICE OF APPEAL *****

Dear Sir or Madame:

I am an attorney in Eureka, California. I represent Mr. Mike McEnry, the owner of Humboldt County Assessor Parcel Number 204-331-003-000.

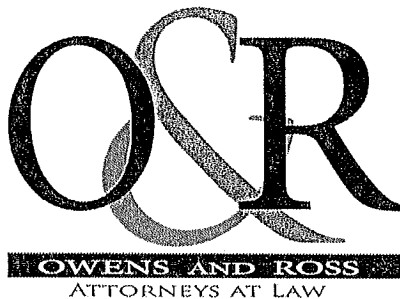
I am in receipt of your letter, dated January 7, 2019, to Mr. McEnry wherein you denied his proposed design for an onsite wastewater treatment system (OWTS) to serve a 2-bedroom residence on APN: 204-331-003-000. You denied that application upon the grounds that the design locates the system 10 feet from the western property line, which does not meet the minimum 50-foot property line setback requirement, and that there is no authorization for a reduced setback granted by the adjoining property owner.

This letter is our notice of appeal, being timely submitted in accordance with Humboldt County Code § 612-3. If you require a specific form for such a notice of appeal, please provide it to me immediately, and it will be promptly submitted. I have reviewed your website and letter, and no such form appears to be on that website. I have also called to request such a form and left a message requesting it. Enclosed herewith is a money order for \$969.00 representing the fees for appealing this decision in accordance with PE Code 2715 of the Land Use Program Fees schedule effective November 5, 2018.

In accordance with Humboldt County Code § 612-3(b), the following are the facts and circumstances which make the action of the Health Officer unreasonable, as well as citations to applicable laws and/or regulations:

- Relevant Facts: This appeal concerns the January 7, 2019 denial, by the Humboldt County Department of Environmental Health of an application by Mr. Mike McEnry, the owner of Humboldt County Assessor Parcel Number 204-331-003-000, for approval of an onsite wastewater treatment system.

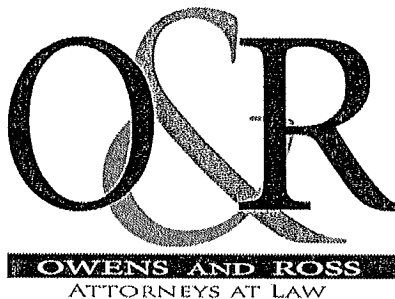
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- Parcel Information: The parcel in question is a 106' by 155' property located on River Bar Rd., Hydesville, California. It was divided in the late 19The setbacks for the parcel are 30' in front, 11' on each side, and 20' in the rear. In addition to those setbacks, there is a requirement that dispersal systems for private water properties be at least 50' from the property boundaries. The parcel is a total of .38 acres, and has gradual slopes of 0-2%. The current zoning for the subject parcel is AE, Agricultural Exclusive. A single-family residence is a principal permitted use on this type of parcel.
- Construction of Residence. Mr. Mike McEnry purchased this parcel with the intent of building a residence upon it. He did, in fact, build a residence on the parcel although it was not initially properly permitted spending a significant amount of money on construction. At this point in time, Mr. McEnry is in the process of obtaining permits after the fact, and engaged A.M. Baird Engineering & Surveying, Inc. to prepare a Septic Design Proposal which was prepared, submitted, and denied. This was the third professionally engineered design proposal submitted by Mr. McEnry that was denied. There are, as the Board of Supervisors knows, many unpermitted structures in the County and there would a be severe negative effect upon the County's economy if the County does not permit those structures after the fact. The construction is up to code. The home is beautifully constructed. It is our understanding that, except for the OWTS, all permits are signed off and ready to be issued pending approval of the OWTS.
- Setback Consent: The subject parcel was previously owned by John Edward Kenney, Jr. and Carol J. Kenney. Who also owned the adjacent parcel, APN: 204-331-002-000. On January 24, 2008, the Kenney's executed a consent that authorized the placement of leach fields and septic systems within 10' of the property line. That document is contained in the file for Mr. McEnry's property, but not in a file for the adjacent parcel which evidences the intent to make this parcel buildable and authorize a smaller setback. Notably, there are no 2008 applications, or other contemporaneous applications, for such systems for the adjacent parcel. This indicates that the consent was intended to apply to Mr. McEnry's parcel. However, the owner of APN 204-331-002-000 has refused to acknowledge that fact, or to sign a consent to the setback reduction for the residence that Mr. McEnry built on APN 204-331-003-000. The other neighboring parcel owner has indicated a willingness to execute a setback reduction in exchange for a payoff of \$100,000.00 which is extreme and unreasonable, to say the least.
- Septic Design Proposal: Mr. McEnry engaged Alan M. Baird, a registered professional engineer, to prepare and submit a septic disposal design. A true copy of

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- that design is attached hereto and incorporated herein by reference. Mr. McEnry's engineer also submitted two previous draft plans.
- Buildable Parcels/Negative Consequences: Without approval of a septic system, there would be a series of extreme and unfair negative consequences. The subject parcel would be unbuildable. It would diminish in value. Mr. McEnry would be required to remove the unfinished building and would have a loss of the significant funds used upon construction. This parcel would, ultimately be likely to become dilapidated as it is unusable and there would be no reason to continue maintaining or improving it. It would likely end up becoming a nuisance to the County and neighboring parcel owners. Furthermore, a failure to approve this design would improperly treat Mr. McEnry and the neighboring parcel owners disparately.
 - Relevant Law and Regulations: Notably, the denial by the Department of Environmental Health cites no regulations, County Code sections, or other authority concerning the reasons for the denial. The applicable code sections, as well as related arguments, are described below:
 - HCC § 611-1: Explains that the purpose of those code sections is to help prevent water pollution, nuisances, and threats to public health. Approving an onsite wastewater system for this project would, quite obviously, assist in each of these area by reducing and preventing contamination to other parcels. *Argument*: Approval of the professionally engineered septic system would prevent contamination and pollution, thereby promoting the purpose of the zoning code.
 - HCC § 611-3: Requires the installation of an approved Sewage Treatment System. *Argument*: In order to keep the structure on the parcel and not lose a significant investment the variance is required.
 - HCC § 611-12(c): Provides that onsite wastewater treatment systems in a subdivision should be analyzed as a single system for purposes of analysis. *Argument*: The adjoining parcel has a septic system that does not meet the minimum setback requirement and is within 10' of the property boundary for Mr. McEnry's parcel. Each parcel in the subdivision should be treated the same way, rather than disparately, with an eye towards making the most beneficial use out of each parcel. Without a variance, the subject property cannot be beneficially used. Although it is zoned for agriculture, it is too small for agriculture uses. The only beneficial use is as a personal residence, for which an OWTS is required.
 - HCC § 612-2: Requires permits for wastewater treatment systems. *Argument*: In order to keep the structure on the parcel and not lose a significant investment, a permit must be issued for the OWTS and, as such a variance is required.
 - HCC § 613-5. Provides that parcels under 2 acres in size may not have a pit privy.

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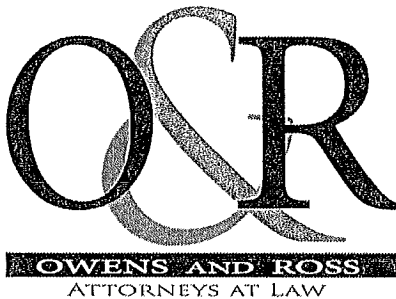
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Argument: This parcel is not eligible for other alternative septic designs.

Additionally, alternative toilets are insufficient as they are only allowed as add-ons to approved OWTS systems.

- Zoning Regulations § 1.2, et seq: Provides that the purpose of zoning regulations is to promote public health, safety, comfort, accomplish the fewest restrictions on the use of property, and assure social and economic stability. *Argument:* The septic design meets health and safety requirements. A setback that would make the property unbuildable is bad for the economy and economic stability. It makes no sense to have unbuildable parcels. This is an unreasonable restriction upon this parcel.
- Zoning Regulations, § 163.1.9.9: Provides that a single-family residence is a principal permitted use on this type of parcel. *Argument:* Without a variance, this parcel will be unbuildable and cannot meet its principal permitted uses.
- Humboldt County OWTS Regulations Appendix E: Sets forth setback requirements. Has a 50' set back where there are private water systems, although setbacks for *Argument:* These are contained in OWTS Regulations are not the officially adopted zoning regulations, nor any state or local law.
- Humboldt County OWTS Regulations 3.8.3: This is the variance policy which provides that, where a proposed design cannot meet a specific standard (ie. the subject setback), the DEH may grant a variance if the applicant can establish that water quality or public health will not be impacted. *Argument:* The professionally engineered Septic Disposal Design will not adversely effect public health or water quality. A neighboring parcel owner already has the same variance. There is no requirement that neighboring property owners consent to the variance. A variance can, and should, be granted even without consent from neighboring property owners where it will not harm water quality or public health.
- Humboldt County OWTS Regulations Pages 2 – 3: Shows that the subject parcel is not in a variance prohibition area. *Argument:* A variance can lawfully be granted.
- State OWTS Policy 9.3.1.1: Provides that separation requirements should be met to the extent practicable. *Argument:* These set backs are not strict in nature, and a reduction should be accommodated in situations calling for it.

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It is therefore our respectful request that the Board of Supervisors grant a variance in accordance with HCC § 612-3 approving my client's septic design and waive the purported, but uncited, 50' setback requirement and therefore approve the professionally engineered Septic Disposal Design or, perhaps, one of the previously submitted draft proposals.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Owens', written over a horizontal line.

Dustin E. Owens

DEO
Enclosures
Cc: client