



ORDER TO VACATE DANGEROUS BUILDING UNTIL REPAIRS ARE COMPLETED

(Issued by the Borough Assembly under PMC 9.20.090)

Pursuant to Petersburg Municipal Code (PMC) 9.20.060, of Chapter 9.20 - *Dangerous Buildings*, the Petersburg Borough Assembly conducted a noncompliance hearing on September 18, 2023, during which it heard testimony, and received and reviewed documents, relating to the Report of Noncompliance received from the Borough Building Official/Borough Utility Director relating to the failure of the residential building located at 410 Mitkof Highway to be connected to the borough sanitary sewer system.

Testimony and argument was received from Borough Employee Karl Hagerman (Utility Director), and Ray Wesebaum (Building Official) was available to answer questions via Zoom . Additionally, the owner of the property located at 410 Mitkof, Courtney Johnson, appeared and provided testimony and argument.

By a vote of 7-0, the Assembly determined that the building located at 410 Mitkof Highway in Petersburg, Alaska constitutes a Dangerous Building under the provisions of Chapter 9.20 of the Petersburg Municipal Code. The Assembly hereby adopts the following Findings and Conclusions, and issues the following Order.

FINDINGS

1. Courtney Johnson ("Owner") is the owner of the residential building located at 410 Mitkof Highway in Petersburg, Alaska ("the building" or "the property"). The building is located on a hillside above and adjacent to the Wrangell Narrows.
2. In 2020, borough employees observed a broken sewer pipe and raw sewage on the property. Upon further inspection, it was determined that a) the property had a nonfunctional septic tank, and b) the property is located within 150' of the borough sanitary sewer system, but was not connected to the system as required by borough ordinance. See, Petersburg Municipal Code (PMC) 14.08.080(A).
3. On August 3, 2020, the Borough Utility Director issued a *Notice and Order of Abatement*, directing that the domestic sewer from the building be connected to the Petersburg Borough sanitary sewer system. See, Borough Exhibit A. That *Notice and Order of Abatement* was affirmed upon appeal to the Borough Assembly. See, Borough Exhibit B. The Assembly's Decision on Appeal, dated November 2, 2020, ordered the Owner to abate the nuisance by bringing the property into full compliance with the requirements set out in the *Notice and Order of Abatement* within thirty (30) days.

4. In March of 2021, the Alaska Department of Environmental Conservation (ADEC) issued a Notice of Violation to the property owner, for violation of state domestic wastewater regulations. See, Borough Exhibit D. The Owner has not addressed the violations cited in the ADEC Notice.
5. On August 6, 2021, as the required abatement had not been performed, the borough water service was disconnected. See, Borough Exhibit C.
6. After August of 2021, activity at the building was intermittent and the structure appeared to be largely vacant.
7. In May of 2023, the Borough Utility Director received information that someone was again residing in the building. The Director confirmed this information, and the Borough obtained an administrative search warrant for the premises on June 5, 2023. See, Borough Exhibit E. An inspection of the property was conducted on June 7, 2023.
8. The inspection of the property disclosed that the previously ordered abatement had not occurred. The building is not connected to the borough sanitary sewer system, and an improper outfall line had been installed from the building to a nonworking septic tank, and then from another pipe from the tank running down the hill and onto the beach of Wrangell Narrows.
9. ADEC recommends that a septic tank be pumped every two years at a minimum. The septic tank at the property has likely not been pumped for at least 15 years. Since 2008, neither the Borough nor the private septic pumping company has serviced this septic tank. See, Borough Exhibit B, para. 19.
10. On June 20, 2023, under the provisions of PMC Chapter 9.20, the Borough Building Official/Utility Director issued a *Notice of Dangerous Building*. See, Borough Exhibit F. The *Notice* contained the following determination:

The building is being used as a residence by one or more persons, however the structure is not hooked up to the Borough's sewer system and has no water service due to prior abatement proceedings. The inspection of the property disclosed that an improper outfall line runs from the building to a nonfunctional septic tank and then from the tank down the hill and onto the beach of Wrangell Narrows, resulting in untreated human waste being deposited into public waters.

...

As a result of the continued use and occupancy of the building, the building meets the definition of a dangerous building under the standards of PMC 9.20.010(F) and (I):

F. Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein;

...

I. Those which, because of their condition, are unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of the city; (Exhibit F, pages 1-2, footnotes omitted)

11. Attached to the *Notice of Dangerous Building* are photographs showing the septic at the property, with substantial vegetation growing on top and out of the sides. See, Borough Exhibit F, page 8 of 11. The earth and vegetation make the inspection hatches inaccessible. See, Borough Exhibit B, page 3, para. 17.
12. The *Notice of Dangerous Building* was sent by electronic mail and certified US mail to the Owner, as well as to the mortgage holders of record. See, Borough Exhibits F, page 11 of 11 and G, page 2 of 3. A separate Notice was also posted on the building. See, Borough Exhibit G, pages 1 and 3.
13. The required corrective action set out in the *Notice of Dangerous Building* was as follows:
 1. The building must be immediately vacated by all persons until the dangerous condition is fully repaired; and
 2. The building must be repaired by properly hooking it up to the Borough sewer and water system within thirty (30) days of the date of this Notice. (Exhibit F, page 2 of 11)
14. On July 27, 2023, the Building Official/Utility Director reported to the Assembly that the required corrective action had not been taken. See, Borough Exhibit H. The *Report of Non-Compliance* was sent to the Owner by electronic mail and certified US Mail. See, Exhibit H, page 5 of 5.
15. Pursuant to PMC section 9.20.060, the Assembly scheduled a noncompliance hearing for September 18, 2023.
16. On August 25, 2023, the *Notice of Noncompliance Hearing* was sent by electronic mail and US mail to the Owner, as well as to the mortgage holders of record. See, Borough Exhibit I.
17. On September 18, 2023, the Noncompliance hearing was held before the Assembly. Karl Hagerman, Borough Utility Director, testified and presented documents labeled Exhibit A through J. The property owner, Courtney Johnson, provided testimony. She referred to documents during her testimony, but did not present any to the Assembly.
18. At the hearing, the Owner stated, in summary, as follows:

The Owner described how a toilet repair by her brother, and her brother's arrest by a member of the Petersburg Police Department (PPD), resulted in a PPD Officer discovering raw sewage on the property. The Owner stated that she was not personally aware prior to that incident that the building was not connected to the Borough sewer system. She indicated that paperwork she received when she bought the house says it was connected to the Borough's system, but that the owners had passed away so there was no "fact check." She apologized for pumping raw sewage into the ocean. She is a biologist and would never want to do that. She further stated that it is obvious that the building needs to be hooked up to the borough sewer system, and it is going to happen. She is selling the house. The buyer is paying cash and is going to fix the sewer.

The Owner further said she had her dad watch her house while she was working in Florida, to water her plants and make sure no one broke in, and didn't think he used the toilet. She said that she crawled down the hill recently and found a blanket that looked like toilet paper on the beach.

She took pictures of it. She claimed that she hasn't seen raw sewage on the property since the prior incident.

The Owner stated that she received and paid sewer bills from the Borough once she bought the house in 2018. She has her prior sewer bills. She is no longer being billed for sewer. She further stated that she can't afford the cost to hook the building up to the borough sewer system, but she is selling the house and the buyer will come in and talk with the borough and make everything right. She apologized again and said she would never knowingly pump sewage into the ocean. It was never her intention. She stated that she did twice discuss this matter with ADEC, in Juneau, and received tips as to how to fix it.

When asked if she had other witnesses, she stated that her mother was going to call in, and that Sarah Holmgrain was going to email or call in. Her mother, Denise Wicker, called into the meeting, but did not testify. The Owner stated that her mother had intended to testify that she was there in 2020 when her brother was arrested and this issue began, and that she was going "to go in line with everything that is happening." The Borough received no written testimony from Ms. Holmgrain and she did not call into the meeting. The Owner indicated that Ms. Holmgrain, who was involved in the 2018 sale to the Owner, was going to testify that the previous owners told her that the house was hooked up to the borough sewer system. The Owner said that the previous owners "skirted the system". They had 180 days to comply and didn't. Everyone just assumed it was connected.

The Owner stated that she has applied for grants and tried to get loans to fix this. She stated that the federal grants require that the Petersburg Borough apply for them. She said it would have been nice "to have some assistance." The State of Florida helps people replace their septic or hook up to a city system, where possible, by providing \$18,000 to anyone in the state.

19. Under the Borough Code, Borough residents are billed for borough sewer after the owners receive a notice to hook up their residence to the borough sanitary sewer system. See, PMC 14.08.080(C).
20. The previous owners of 410 Mitkof received a notice to hook up and received monthly borough sewer billings. That carried over to the current owner when she purchased the property.

CONCLUSIONS OF LAW

1. The Borough Assembly has jurisdiction over this matter under Chapter 9.20 of the Petersburg Municipal Code.
2. The *Notice of Dangerous Building* was proper in form and properly posted and served upon the Owner and the mortgage holders of record under PMC 9.20.050(A), (B) and (E).
3. A *Report of Noncompliance* was properly made to the Assembly under PMC 9.20.050(C), a copy of which was sent to the Owner.
4. The *Notice of Noncompliance Hearing* was proper in form and properly served upon the Owner and the mortgage holders of record under PMC 9.20.070.
5. The Noncompliance hearing was properly scheduled, noticed and held, and all interested parties present were provided the opportunity to be heard and to submit documentary evidence.
6. Based upon the testimony and documents submitted, the Assembly finds that the building is a “dangerous building”, as defined in PMC 9.20.010, paragraphs (F) and (I).
7. For the reasons stated in the *Report of Noncompliance*, specifically the use of the building as a temporary or permanent residence or otherwise for overnight stays when the building is not connected to the borough sanitary sewer system and human waste is being improperly deposited onto the beach below the building and into the Wrangell Narrows,
 - a. The building's sanitation facilities are inadequate to protect the health, safety and general welfare of human beings who live or may live therein (PMC 9.20.010(F)); and
 - b. The building is unsafe, unsanitary, or dangerous to the health, safety and general welfare of the people of the borough (PMC 9.20.010(I)).

Order

Based upon its finding and conclusions, and pursuant to Borough Code section 9.20.090, the Assembly issues the following order:

IT IS HEREBY ORDERED THAT the building located at 410 Mitkof Highway be immediately vacated, and not used as a temporary or permanent residence or otherwise for overnight stays, unless and until the building is properly connected to the borough sanitary sewer system. The Owner is responsible for compliance with this Order.

IT IS FURTHER ORDERED THAT in the event that the Owner does not comply with the foregoing Order, the Borough may, at its discretion, take all necessary actions to ensure that the building is and remains vacated in compliance with this Order, under authority of PMC 9.20.100. The Borough Building Official and the Borough Utility Director are each authorized to take action on behalf of the Borough to ensure compliance with this Order, and the costs and expense of the same shall be charged to the Owner under authority of PMC 9.20.110.

Dated: _____

By: _____
Mark Jensen, Mayor

Certificate of Service:

This Decision was distributed by Debra K. Thompson, Borough Clerk, on October 10, 2023 to the following:

Via email and certified US Mail:

Courtney Johnson
PO Box 1904
Petersburg, AK 99833
cjohnson5047@gmail.com

Courtney Johnson
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Vanceleave, MS 39565

and

Via certified US Mail:

Alaska Housing Finance Corporation, holder/beneficial owner
PO Box 101020
Anchorage, AK 99510

and

Via email and certified US Mail:

First Bank, lending institution/originator
Loan Servicing
Attn: Heather Borch
2030 Sea Level Drive, Suite 200
Ketchikan, AK 99901
Heather.Borch@firstbankak.com

Debra K. Thompson, Borough Clerk

Notice: This is notification of a Final Decision of the Borough Assembly. This Decision may be appealed by an aggrieved person to the Superior Court, State of Alaska, First Judicial District, within thirty (30) days of the date of mailing, in accordance with the applicable rules of court.