



Decision on Appeal of Courtney Johnson from Notice and Order of Abatement

The Petersburg Borough Assembly conducted a hearing on October 20, 2020, during which it heard testimony and argument, and received and reviewed documents, relating to the Appeal of Courtney Johnson from an August 3, 2020 *Notice and Order of Abatement* issued by Utility Director Karl Hagerman. The *Notice and Order of Abatement* related to the failure of the residence located at 410 Mitkof Highway to be connected to the borough sewer system and the presence of raw sewage at the property, constituting a nuisance.

Testimony and argument was received from Appellant, Courtney Johnson and from Borough Employees Karl Hagerman (Utility Director), Justin Haley (Wastewater Operations Supervisor), Joe Bertagnoli (Building Official), and Petersburg Police Department Officer Louis Waechter. The written Record on Appeal ("ROA") before the Assembly consists of 40 pages.

In accordance with Petersburg Municipal Code (PMC) 9.16.080G, the Assembly hereby adopts the following Written Decision.

FINDINGS OF FACT

1. Courtney Johnson ("Owner") is the owner of the residence located at 410 Mitkof Highway ("the residence" or "the property"). (ROA page 32¹)
2. The residence is located on a hillside above and adjacent to a body of water referred to as the Wrangell Narrows. (Testimony of Karl Hagerman)
3. The residence is located within 150' of the borough sewer system, but is not connected to the system. (Testimony of Karl Hagerman; ROA page 22)
4. The prior owners of the property received notification requiring connection of the residence to the borough sewer system. (Testimony of Karl Hagerman)
5. On July 24, 2020, Officers Waechter and Popp of the Petersburg Police Department went to the residence in search of a third party on an active felony warrant. Owner gave the Officers permission to search the residence. (Testimony of Officer Waechter)
6. While at the property, Officer Waechter saw raw sewage and toilet paper on the ground, next to what appeared to be a broken sewer pipe, directly off the back deck of the residence. (Testimony

¹ Some pages of the Record on Appeal have two page numbers. The references herein are to the typed numbers located at the bottom right of each page.

of Officer Waechter) Officer Waechter took photographs and forwarded the photographs to the Borough Building Official and to the Wastewater Department. (Testimony of Officer Waechter and Karl Hagerman; ROA pages 17-18, 38)

7. Upon receipt of the photographs, Utility Director Karl Hagerman ("Hagerman") made attempts to contact the Owner at the telephone numbers which had been provided to the utility. All of the numbers known to the utility were either disconnected or not working, and he was not able to reach her. (Testimony of Karl Hagerman)
8. On August 3, 2020, Hagerman issued a *Notice and Order of Abatement*. (Testimony of Karl Hagerman; ROA pages 4-22)
9. On August 3, 2020, the *Notice and Order of Abatement* was posted at the front door of the property, and sent to the Owner by regular and certified mail. (Testimony of Hagerman; ROA pages 23-24)
10. The description of the violations of the Petersburg Municipal Code set out in the *Notice and Order of Abatement* were as follows (ROA page 4):
 - PMC 14.08.020A and B (Sewer Utility) - Unlawful sewage - Disposal methods designated.
 - PMC 14.08.080A (Sewer Utility) - When connection to public sewer is required.
 - PMC 9.16.030B(2) (Nuisances) - Unlawful; enumeration.
11. The description of the nuisances contained in the *Notice and Order of Abatement* were as follows (ROA page 4):
 - Raw sewage, including human excrement, is being discharged from the household onto the hillside and beach of Wrangell Narrows without treatment. There exists a sanitary sewer service lateral pipe which the home must connect to per Municipal Code.
12. The required corrective action to abate the nuisance, as set out in the *Notice and Order of Abatement*, was as follows (ROA page 5):
 1. Area in which the spill is occurring is accessible to the public and domestic pets. The contaminated area must be clearly marked and cordoned off to restrict access.
 2. The domestic sewer from the household must be connected to the Petersburg Borough sanitary sewer collection system by way of excavation and plumbing of the household sewer to the existing sewer service lateral. Map showing approximate location of the sewer service lateral is attached.
 3. Sewer connection must be completed by a licensed construction contractor (excavation), which must be inspected by the Borough prior to any backfill of the connection point.
 4. Site of illegal discharge must be cleansed per DEC Cleanup Guidelines for domestic wastewater spills (enclosed). Access to the area must be restricted for at least 24 hours after the site has been cleansed.

13. The *Notice and Order of Abatement* directed the nuisance to be abated by no later than 5:00 p.m. on August 18, 2020. (ROA page 5)
14. On August 18, 2020, Owner filed with the Borough Clerk a Notice of Appeal from the provisions of the *Notice and Order of Abatement*. (ROA pages 31-32)
15. Following the filing of the Notice of Appeal, an inspection of the site was scheduled with the Owner. (Testimony of Karl Hagerman)
16. On August 24, 2020, an inspection of the property was conducted by Joe Bertagnoli, Borough Building Official, Justin Haley, Borough Wastewater Operations Supervisor, and other Borough Officials. (Testimony of Justin Haley and Joe Bertagnoli) Both Joe Bertagnoli and Justin Haley prepared reports of the inspection. (ROA pages 25-26) Photographs were taken by Joe Bertagnoli during the inspection. (ROA pages 27-29)
17. The inspection disclosed that Owner and another individual had reconnected the residence to the septic tank, via a corrugated plastic pipe laying on the ground, and had run a new outfall line from the septic tank to a nearby stream which ran directly into the ocean, the original outfall line being unusable. The top of the septic tank was covered with earth and vegetation, making the inspection hatches inaccessible. (Testimony of Justin Haley and Joe Bertagnoli; ROA pages 25-29)
18. The Owner was advised at that time that the work performed was not acceptable in that the materials used were not in accordance with Borough Code, the outfall into the stream was a code and regulatory violation, and the residence needed to be connected to the borough sewer system. (Testimony of Justin Haley and Joe Bertagnoli; ROA pages 25-26)
19. The Alaska Department of Environmental Conservation (ADEC) recommends that septic tanks be pumped every two years at a minimum. (ROA page 25). The septic tank at the property has not been pumped for many years. Since 2008, neither the Borough nor the private septic pumping company has serviced this septic tank. (Testimony of Justin Haley; ROA page 25)
20. On August 25, 2020, Justin Haley spoke with ADEC official Raymond Zimmer. Mr. Zimmer advised that while marine discharges from septic systems were previously acceptable, secondary treatment and disinfection is now required, and that compliance with the current regulations is required when an owner performs repair or component replacement on an existing system. (ROA page 30)
21. It is probable that the septic system at the property is not functioning properly. The septic tank had earth and vegetation growth on it, and did not appear to have been accessed in many years. (Testimony of Justin Haley; ROA pages 25, 28)
22. On October 9, 2020, the Notice of Hearing on Appeal was served on the Owner by hand delivery. (ROA pages 33-39) Documents to be utilized by the Borough officials at the hearing were provided to Owner. (ROA pages 3-30, 40)
23. On October 20, 2020, the hearing on Owner's appeal was held before the Assembly. Witnesses were sworn in by the Borough Clerk prior to giving testimony. The Owner and the Utility Director were provided the opportunity to testify, and to call and question witnesses and present documents.

24. At the hearing and in her Notice of Appeal, Owner stated, in summary, as follows: (i) Officer Waechter should not have taken photographs of the sewage spill, (ii) she was not aware that the residence was not connected to the borough sewer system when she purchased the residence in 2018, and she has been charged for borough sewer service, (iii) the septic system at the residence is operational and now in use, (iv) the Borough is responsible for the cost of connecting the residence to the borough sewer system since "there should have been a Certificate of Occupancy issued by local government" when she purchased the home (ROA page 32) and it was the Borough's responsibility to ensure that the sewer system connection had been previously made, and (v) the appeal hearing was not timely held within sixty days of her filing the appeal, as required by the Borough Code.

CONCLUSIONS OF LAW

1. The *Notice and Order of Abatement* was proper in form and properly posted and served upon the Owner under PMC 9.16.050B. Actual receipt of the document is demonstrated by the filing of the Notice of Appeal by the Owner.
2. The Owner's August 18, 2020 Notice of Appeal was timely and properly filed under PMC 9.16.080A.
3. PMC 14.08.080A requires that the owner of a residence situated within the Borough, within 180 days after official notice to do so, connect the toilet and wastewater facilities of the residence to the borough sewer system if such sewer system is within 150' of the property line.
4. Following such connection, PMC 14.08.080B requires that the septic tank be abandoned, all waste be pumped from it, and that it be filled with sand or other suitable material.
5. The failure of the residence located at 410 Mitkof Highway to be connected to the borough sewer system, and the Owner's continued use of the septic tank, constitutes violations of PMC 14.08.080A and B.
6. Officer Waechter was on the property on July 24, 2020 with the permission of the Owner, and the photographs he took were forwarded to the proper Borough Officials.
7. Under PMC 9.16.030, the deposit or presence of human excrement on the ground constitutes an unlawful nuisance. The photographs taken by PPD Officer Waechter on July 24, 2020 demonstrate the presence of a nuisance on the property in that human excrement was deposited on the ground due to an open pipe from the residence. The Owner does not dispute the accuracy of the photographs.
8. The plumbing work performed by the Owner, as reflected in the August 24, 2020 inspection, is not in compliance with the building or plumbing codes adopted in Borough Code in regard to the materials used or the manner of connection. Additionally, the outfall pipe is improperly routed to a stream, which flows into the ocean, constituting, at a minimum, a violation of PMC 14.08.020B and 18 AAC 72.050. Accordingly, the current plumbing facilities at the residence are unsafe and not in conformity with the law, and create an unlawful nuisance on the property.
9. The Owner's claim on appeal that the Borough is responsible for the cost of connecting the residence to the borough sewer system is not supported by the Borough Code. PMC 14.08.080A

states that the connection shall be at the expense of the owner. Further, the Borough does not issue a "Certificate of Occupancy", or undertake to verify code compliance, when a house is sold within the Borough.

10. Under PMC 14.08.080C, following the official notice, the property owner is charged for borough sewer service even if the owner has failed to complete the required connection.
11. Whether the Owner was aware, or should have been aware, of the lack of connection from the residence to the borough sewer system at the time she purchased the residence is not relevant for purposes of this appeal. The Owner is the party responsible under PMC 14.08.080A to comply with the connection requirements, and lack of knowledge of the applicable state of facts does not excuse compliance.
12. The Notice of the Hearing on Appeal was served upon the Owner in accordance with PMC 9.16.080B.
13. The Appeal Hearing was timely held under PMC 9.16.080B, which requires that a hearing be held no less than ten days, nor more than sixty days, from the date the appeal was filed with the Borough Clerk. The sixtieth day fell on a weekend (October 17, 2020), and the hearing was held on the next following business day (October 20, 2020).

Accordingly, the appeal filed by the Owner from the Utility Director's August 3, 2020 *Notice and Order of Abatement* is hereby DENIED, and the existence of a nuisance is AFFIRMED. The Owner is ordered to abate the nuisance by bringing the property into full compliance with the requirements set out in the *Notice and Order of Abatement*, no later than thirty (30) days from the date of the Borough Clerk's distribution of this Decision. If the required corrective action is not taken, and timely and proper abatement does not occur, the Utility Director is authorized to take action on behalf of the Borough as set out in the *Notice and Order of Abatement*, including without limitation (1) disconnecting water service to the residence under PMC 14.04.130, (2) undertaking abatement under PMC 9.16.070A(2), the cost and expense of which is to be charged to the Owner, and/or (3) imposing civil penalties and/or seeking criminal fines.

In accordance with PMC section 9.16.090, this Decision may be appealed to the Superior Court, First Judicial District, for the State of Alaska within 30 days of the date of the Clerk's distribution.

November 2, 2020



Mark Jensen, Mayor

Certificate of Service:

This Decision was distributed by Debra K. Thompson, Borough Clerk, on November 4, 2020, by US Mail and email to the following: Courtney Johnson, PO Box 1904, Petersburg, Alaska 99833; cjohnson5047@gmail.com.

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