

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Appellant: Robert Herrick II
106 Jackson Rd.
Eastsound, WA 98245

Attorney: Derek Mann
Derek Mann and Associates, PLLC
PO Box 399
Eastsound, WA 98245

Request: Appeal of Notice and Order for failing septic tank

Parcel No: 272622003000

Location: 106 Jackson Road
Orcas Island

Public Hearing: September 10, 2014

Application Policies and Regulations: Chapter 8.16 SJCC

Decision: Appeal denied.

S.J.C. COMMUNITY
SEP 29 2014
DEVELOPMENT & PLANNING

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**BEFORE THE HEARING EXAMINER FOR THE COUNTY
OF SAN JUAN**

S.J.C. COMMUNITY

Phil Olbrechts, Hearing Examiner

SEP 29 2014

RE: Notice and Order Appeal Robert Herrick II	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
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DEVELOPMENT & PLANNING

SUMMARY

The appellant has appealed a Notice and Order requiring him to stop the use of and repair a failing septic system. The appeal is denied and the Notice and Order sustained. The appellant shall cease all discharges to the septic system that serves the 106 Jackson Road property by October 15, 2014. All system repairs and corrections must be completed by January 1, 2015.

The fact that the septic system was failing in the past is uncontested. The basis of this appeal is a difference of opinion as to why the septic system was failing. Mr. Herrick asserts that the system was failing due to overuse. The system was connected to two residences at the time it was failing. It is now only connected to one residence. A septic inspection form prepared for the appellant concluded that the system was not failing shortly after the second residence was disconnected from the system. Two County registered septic inspectors and a private septic designer contracted by the mortgage company for the second residence have concluded that the septic system is failing because the drainfield is not working properly and effluent from the septic tank is draining back into the tank. The County asserts that the septic system was not failing at the time of the appellant's inspection because the septic system had just been pumped. It is significant that the appellant's septic report noted that the water level at the outlet invert was marked as N/A. The fact that the water level was above the outlet invert when inspected by the mortgage inspector is one of the reasons that the County determined the drainfield was not functioning properly.

One of the two County inspectors and the mortgage septic inspector were both at the hearing and available for questioning. Mr. Herrick's inspector was not at the hearing and there was no expert testimony supporting Mr. Herrick's theory that the septic failure was caused by overuse. The County's theory was also corroborated by the

1 appellant's own inspection report with the "N/A" notation. There is no apparent
2 reason for the County or mortgage company experts to have any bias in this case.
3 Given that three septic experts support the County drainfield hypothesis and there was
4 no expert testimony in support of the appellant's over use hypothesis, the
5 preponderance of evidence establishes that the septic system failed due to a
6 malfunctioning drainfield. The disconnection of the second residence would not
7 remedy this failure, so it is concluded that the septic system must still be repaired as
8 required in the Notice and Order.

6 TESTIMONY

7 Mr. Derek Mann, representing appellant, stated that San Juan County Health
8 Department made a determination in 2012 that Mr. Bob Herrick's septic system was
9 failing. In response, according to Mr. Mann, Mr. Herrick said he would not have the
10 property occupied until he determined the nature of the failure and addressed the
11 problem. Since that time, Mr. Herrick has found the problem and determined it needed
12 no fixing. The Health Department claims Mr. Herrick is in violation for occupying the
13 property without submitting a repair plan. The nature of the failure was never
14 adequately determined by the Health Department, the failure was never properly
15 communicated to Mr. Herrick, and the nature of the failure if there is any was overuse
16 of the system and that problem has been remedied. The neighboring property had
17 increased its use of the system, but that property has disconnected from the system. Mr.
18 Herrick's property is now the sole user of the property.

14 Under questioning by Mr. Mann, Mr. Bob Herrick stated he owns the property at 106
15 Jackson Road. 168 Jackson Road is his neighbor. He bought the property at 106
16 Jackson Road in 2009. He knew the previous owner and occupants. He knew the
17 previous three owners of the property dating back to the 1980s. These previous owners
18 said the septic system was shared with the neighboring property. The previous owners
19 of 106 Jackson and the previous owner of 168 Jackson, Mr. Chapman, would come
20 together every few years to have the septic system pumped. Mr. Mark Chapman was
21 the owner of 168 Jackson Road for many years. The previous residents of 106 Jackson
22 Road include Chris Hawkins and Don Lloyd. The pumping of the septic system was
23 jointly paid for by the then owners of 106 and 168 Jackson Road.

21 Mr. Herrick explained that Mr. Chapman as well as the previous residents described to
22 him that every few years they joined together to pay for the pumping of the septic
23 system. In response to questioning, he stated that in 2012 he did not receive a call to
24 look at the septic system with Mr. Covington. His first awareness that something was
25 happening at the septic was when Mark from Orcas Septic Design came to do a septic
inspection. He saw Mark leaning over the septic, and he went up to him to ask what he
was doing, and Mark explained that he was doing a septic inspection, and he explained
what that entailed. Mark told him that the septic system was working well; he was there
simply to do an inspection. It was several months later that he saw Mr. Covington. He
stated that around the time that Mr. Covington showed up, he noticed that the
neighbor's driveway was being dug out. He was told that the pipe from the neighbor's

1 house to the septic tank was broken, and it was leaching into the ground. People were
2 there to investigate the possibility of repairing that pipe, but it was his understanding
3 that they never did. He stated that he did not agree with Mr. Covington at the time as to
4 the nature of the failure to his septic system, which is what Mr. Covington claimed in
5 his report. He met with Mr. Covington on the property, and Mr. Covington described
6 problems with the leach field, explaining that there was a problem with outflow to the
7 leach field, but Mr. Covington did not show him anything specific to the tank. A
8 memorandum with several attached exhibits from Mr. Covington was submitted
9 (Exhibit 1).

10 Mr. Herrick looked at the map by Mr. Wiscomb in Exhibit 1a that shows the old
11 drainfield, and stated that the map was not accurate in showing the septic system that
12 serves his house pump. The septic leach field is beyond the barn as well as between the
13 pond and the barn as evidenced by the sand in the area. He clarified that the barn is
14 labeled as the shop building on the map. He began to reoccupy the property about a year
15 after he received a notice from Mr. Covington in 2012. The residents at the front of the
16 property left after he received the notice, which meant the septic system was unused for
17 several months, and he assumed that therefore after a year it had been cleared out
18 enough to support use by a small, two-bedroom trailer. A document labeled "Tax
19 payer's claim for reductions and assessments" as well as an unlabeled data sheet to the
20 record was submitted (Exhibit 2). Mr. Herrick looked at the documents in Exhibit 2, and
21 stated that these documents were shown to him by the County Assessor's Office in
22 response to his request for information about the history of the use of the shared septic
23 between 168 and 106 Jackson Road.

24 Mr. Herrick stated that in June, 2014, Earthworks inspected his septic system. The
25 document that Earthworks provided to him in response to his request for an inspection
of his septic system did not indicate any failures to the system, and it did not
recommend any repairs or alterations. He submitted the document as Exhibit 3.

Under cross-examination by Mr. Dodd, Mr. Herrick stated that the Earthworks
inspection was done on June 27, 2014. Mr. Herrick said the depth of scum later was
zero at that time. The Earthworks report said water level at the outlet invert was not
available. Mr. Dodd stated that the county wanted to admit a report from Abood septic,
who pumped the septic tank on June 5, 2014. Mr. Dodd stated that because the septic
tank was pumped on June 5, there was no sewage in the tank on June 14, thus any
failures in the tank would not be evident in the inspection that Mr. Herrick had
Earthworks do on June 14. The June 5 report was admitted to the record as Exhibit 4.

Mr. Dodd asked Mr. Herrick whether he observed the level of effluent at the time that
Earthworks did their inspection, and Mr. Herrick stated that Earthworks did their
inspection after the system was repaired. He did not observe the water level in the septic
system at the time that Earthworks did their inspection.

Mr. Russell Wiscomb stated that he was a licensed septic installer in the county for 34
years, and he prepared the documents that were under discussion earlier. Mr. Mann

1 asked Mr. Wiscomb whether he looked at the drainfield, and he stated that he did not.
2 He stated that one of his operators told him about the condition of the drainfield. Mr.
3 Wiscomb stated that the system was clearly failing, and the whole thing was clearly
4 backed up. The effluent was coming up right by the inlet tank. The outlet was
5 completely full. He was aware that Mark kept the tank pumped. He agreed with a
6 statement from Exhibit 5 that there are many reasons for system failure including over-
7 use of water generating appliances and improper installation. He also agreed that there
8 is very little that can go wrong with the septic tank itself as long as it is water tight and
9 pumped on a regular basis. Mr. Wiscomb also agreed with Exhibit 5's conclusion that
10 drain-field failure can be caused by many things including vehicles driving over the
11 tank, but the two most common causes are hydraulic and biologic overload. He also
12 agrees with Exhibit 5 in that, when a system fails, it is important to gather information
13 about the cause and visual observation is an important part of this information
14 gathering. At the time he completed his report, he conducted visual observation of the
15 septic tank. He did not review a history of the system maintenance when he conducted
his report. He did not obtain a copy of the original permit nor any updates. He was
aware of the loading rates for the system. He determines the loading rate from the
number of bedrooms. At the time of the report, the system was serving three bedrooms.
From his perspective, the second residence using the system was illegal so he did not
calculate which side the bedrooms were serving the system from in his report. With
two residences serving the system, the tank and drain-field were undersized. In regard
to remediation techniques and Exhibit 5, Mr. Wiscomb agrees that sometimes allowing
the drain-field to dry out is a method of recovery, but it depends on the ground. The
system was overloaded, especially because Mr. Chapman's pipe was broken. The
Chapman's installed a new system resulting in a three-bedroom reduction in use of the
system.

16 Under questioning by the Hearing Examiner, Mr. Wiscomb stated that he is not an
17 employee of the county. He owns his own business called Orcas Excavators and has
18 been in business for over thirty years. He was contacted by Washington Federal or a
19 realtor who had a possible buyer for the Chapman property. He looked at the septic
20 tank and saw that the effluent was boiling out of the tank. There was a pond and a well
owned by Mr. Herrick close to the tank. Setback requirements apply to the septic
system for these land features. The setback requirements appeared to be in violation.
Washington Federal paid Mr. Wiscomb to review the system, not San Juan County.

21 Under cross-examination by Mr. Dodd, Mr. Wiscomb stated that, in his experience, if a
22 tank is overloading, the effluent will surface both above the tank and in the drain-field.
23 If it is overloaded, the effluent will come out of the ground. In this instance, if the
24 drain-field was accepting effluent because it is at a lower-gradient than the tank, he
would expect to see surfacing over the drain-field area. He did not witness that
surfacing in this case.

25 Mr. Herrick testified that his home has one bathroom.

County Testimony

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2 Mr. Dodd stated that septic systems must be evaluated at certain frequencies and
3 inspected during any property transfer. A property transfer of the property at 168
4 Jackson is what triggered the initial investigation. The initial inspection was done for
5 Washington Federal by Orcas Sewage Design on September 19, 2012 (Exhibit 6). In
6 Exhibit 6, under "Septic Tank," the area labeled "indications of water levels" was
7 marked as having effluent draining back from the drain-field. Orcas Sewage Design
8 had reported issues with the system, contrary to previous testimony by Mr. Herrick.
9 Mr. Dodd testified that Exhibit 6 says the effluent level was out of the tank. Once a
10 failure is identified, the County Health Department requires a repair permit to alleviate
11 the failure. For this permit, applicants must contact a state-licensed on-site wastewater
12 treatment designer to design a repair and submit the design and application to the
13 county. Mr. Wiscomb was contacted in this capacity. The repair permit process is
14 initiated with an on-site meeting with the County Sanitarian. The County Sanitarian
15 reviews the repair permit application. Mr. Covington met with Mr. Wiscomb on-site in
16 2012. Mr. Herrick was present for this meeting. They discussed the on-site sewage
17 repair options for Mr. Herrick's property in addition to the Washington Federal
18 property. Mr. Dodd submitted a letter from Mr. Wiscomb which attests to this meeting
19 (Exhibit 7). At the time Mr. Covington and Mr. Wiscomb were on site, the two of them
20 were looking at sewage backing up above the tank which meets the definition of failure
21 (WAC246.247a). Mr. Wiscomb was hired by Washington Federal to repair the system,
22 thus he began to prepare a repair permit application, according to Mr. Dodd. The repair
23 system for 168 Jackson (the Washington Federal property) was approved and installed.
24 No repair permit application was submitted for Mr. Herrick's property at 106. San Juan
25 County Health Department submitted two written notices to Mr. Herrick citing the
nature of the failure and violation. The notices indicated the process to repair the
system.

17 According to Mr. Dodd, Mr. Herrick responded to the Department's letter on January
18 21, 2013 (Exhibit d in Staff report). Mr. Herrick's response noted the "failing septic
19 tank system" servicing his residence. This letter demonstrates that Mr. Herrick was
20 aware of the failure and knew of the county's requirement that he vacate the property
21 until necessary improvements were completed. The county believed Mr. Herrick had
22 vacated the property; however, in May, 2014, the property was found to be occupied.
23 The county was never informed of any repairs made to the system. The septic tank was
24 pumped shortly after this finding. The 1,000 gallon tank was empty after it was
25 pumped on June 5, 2014. The Earthworks evaluation (Exhibit 3) was done on June 27
after the tank was recently pumped, thus its findings are inaccurate. The county moved
forward with a notice and order directing Mr. Herrick to stop all discharges and repair
the system within 90 days. This order was appealed. The nature of the failure as
indicated by Mr. Wiscomb on his repair permit application is that the drain-field is not
accepting effluent due to large shop building placed on it. When the system is in use,
the effluent backs up into the tank because the drain-field is not accepting effluent. The
effluent then surfaces above the tank. It is the county's opinion that in high-use
scenarios, effluent will make it through the tank and into the drain-field and surface in

1 the drain-field area. However, the county saw no evidence of this on site near the drain-
2 field. These conclusions are based on the Health Department's site visit and survey of
3 the property. Since the time the septic system was pumped and the evaluation done by
4 Earthworks, the Health Department has made several site visits to the property at 168
5 Jackson. The last visit on September 3rd showed very minimal use and flow into the
6 septic tank. With continued use, the effluent in the tank will reach the outlet and will
7 attempt to reach the drain-field. Because the previous issues have not been corrected
8 with the failed drain-field, the county expects tank back-up when these levels are
9 reached. He submitted declarations from the adjacent property owners (Exhibits 8 and
10 9). The county believes Mr. Herrick was adequately informed of the failure as he was
11 present on-site for both the Orcas Sewage Design evaluation that indicated effluent was
12 above the tank and the inspection with Mr. Wiscomb and Mr. Covington. Additionally,
13 Mr. Herrick also reported back to the Health Department in writing to address the
14 failing septic system on his property, according to Mr. Dodd.

15 Under questioning by the Hearing Examiner, Mr. Dodd stated that, if the tank is set
16 level, there is a possibility of surfacing at both sides (intake and outlet). The tank could
17 be tilted toward the outlet so the affluent was surfacing above the outlet. Mr. Dodd is
18 unsure how this tank is positioned. Exhibit A to the staff report is a site plan. The
19 drain-field is under the shop-building labeled on the plan.

20 Under cross-examination by Mr. Mann, Mr. Dodd testified that the regulation that
21 requires a repair is WAC 246.247.2a. In regard to the June 13 letter from the Health
22 Department to Mr. Herrick, a "plan of action" for repair is a timeline of the repair to the
23 functioning septic system. According to Mr. Dodd, Mr. Herrick did submit the "plan of
24 action" on January 21, 2013. The plan was to vacate the property by January 31, 2013
25 and keep the property vacated until necessary improvements were made. These
improvements were to include a new septic tank and drainage field. In regard to
acceptable repairs, repairs are approved to address the nature of the failure. In this
instance, the county found that the drain-field was not accepting effluent; therefore, a
repair of the drain-field is required. The county relied upon a report by Orcas Sewage
Design, an investigation by Mr. Wiscomb, and county staff on-site. He does not have
the county staff evaluation of the site. He is not sure the evaluation was conducted in
this instance, but it is routine. The county and Mr. Wiscomb jointly evaluated the site.
Mr. Dodd cannot speak to the work Mr. Covington did on the site. It does not require a
permit to vacate the property and not use the system. Hypothetically, if the failure of a
drain-field is caused by overuse and there is a reduction in the use, this would address
the failure of the system if it was the only cause of failure. It does not require a permit
to reduce use.

26 Appellant Rebuttal

27 Mr. Mann stated that the county is relying upon initial findings that occurred in this
28 case. The county met by accident with Mr. Herrick on the site in 2012 when inspecting
29 the neighboring property. As demonstrated by the Assessor's records, up until 2007,
30 the residence on the Chapman property was a 1.5 bath cabin. The combined use on the

1 system was only 2.5 baths. However, in 2007, the Chapman property replaced the cabin
2 with a 3-bedroom, 3-bath house, increasing the use. The Chapmans overtaxed the
3 system. The Chapmans have since disconnected and built a new septic system. This
4 reduced the system use back to a manageable amount. The neighbors were responsible
5 for pumping the tank in June, 2014. Overuse is one of the main causes of failure for
6 septic systems. When you abate use for a certain amount of time, the system will
7 function again. Mr. Wiscomb is unaware of the exact location of the drain-field,
8 according to Mr. Mann. There is no evidence that the drain-field is under the shop. The
9 county failed to conduct a full investigation of the system and its history. The violation
10 is unwarranted because there was no repair process he could have taken. The county's
11 theory does not account for the overuse and the abatement of the overuse. The county
12 never properly investigated why the drainage field was not taking affluent. There is no
13 reason for Mr. Herrick to build a new system and drainage field.

9 Mr. Dodd testified that there was panic upon discovering the drain-field was not taking
10 effluent because there was sewage on the surface and ground. When the sewage
11 surfaced, it was on the neighboring property. There has been no information to
12 corroborate Mr. Herrick's claim that the drain-field is beyond the shop structure. When
13 a failure is identified, it needs to be addressed. Washington Federal took action to
14 install a new drain-field on their property, but Mr. Herrick did not take action. The
15 county believes the drain-field is not receiving effluent because the sewage surfaced
16 over the tank, not the drain-field. If the system was overloaded, the county believes
17 there should be sewage in the drain-field area as well. Mr. Dodd stated that he has been
18 an environmental specialist and registered sanitarian for the past 15 years. He is a state-
19 licensed on-site sewage inspector. The county's opinion comes from Mr. Dodd and Mr.
20 Covington jointly. Mr. Covington has similar training to Mr. Dodd.

17 Mr. Mann stated that the county failed to give any basis for assuming there would be
18 effluent in the drain-field if the problem was only overuse on the system. The county
19 does not cite any authority for this assumption, and the county relied on Mr. Wiscomb
20 who did not even look at the drain-field. According to Mr. Mann, Mr. Wiscomb only
21 looked at the actual tank.

21 EXHIBITS

22 Exhibit 1 Memorandum with several attached exhibits from Gary Covington
23 Exhibit 2: "Tax payer's claim for reductions of assessments..." filed by Mark
24 Chapman
25 Exhibit 3: Earthworks septic inspection form dated 6/27/14
Exhibit 4: Abood Septic 7/27/14 septic pump out invoice for 168 Jackson Rd.
Exhibit 5: "Investigating Drainfield Rehabilitation" internet article
Exhibit 6: Orcas Sewage Design septic inspection form date 9/19/12
Exhibit 7: 9/3/14 letter from Bruce Wiscomb to Gary Covington
Exhibit 8: Declaration of property owner Datura Boes

2 **FINDINGS OF FACT**

- 3 1. The appellant is Michael Herrick. He resides at 106 Jackson Road, Eastsound.
- 4 2. This appeal is of a Notice and Order directing the nonuse and repair of a failing
5 septic system located on 168 Jackson Road, Eastsound. 168 Jackson Road
6 adjoins the appellants property at 106 Jackson Road.
- 7 3. The septic system on 168 Jackson Road serves the home on 168 Jackson as well
8 as the appellant's home on 106 Jackson Road.
- 9 4. According to the appellant, the septic system at issue has served the 106 and 168
10 Jackson Road properties since the 1980s. The appellant purchased the property in
11 2009. The pumping of the system was always jointly paid by the adjoining
12 owners.
- 13 5. The septic system was subject to inspection as part of a contemplated sale of 168
14 Jackson by Washington Federal Savings, which was apparently the owner of 168
15 Jackson at the time. Orcas Sewage Design conducted the inspection.
- 16 6. Orcas Sewage Design ("OSD") conducted the septic investigation for Washington
17 Federal Savings on September 19, 2012. OSD completed an "On-Site Sewage
18 Inspection Form" provided by San Juan County Health and Community Services,
19 which identified that the water level was above the outlet invert of the septic tank
20 by $\frac{3}{4}$ ". The Form noted that "the drainfield appears to be upgradient from the
21 septic tank outlet causing effluent to drain back into the septic tank".
- 22 7. San Juan County licensed sanitarians Gary Covington and Kyle Dodd both
23 inspected the site and both concluded that effluent was draining back into the
24 septic tank due to an inadequate drainfield, causing sewage to surface at the
25 location of the tank. Mr. Dodd has been a registered sanitarian for 15 years and
Mr. Covington has similar training. Bruce Wiscomb is a licensed septic tank
installer of 34 years. Mr. Wiscomb was hired by Washington Federal Savings to
repair the septic system. He too concluded that the tank was overflowing because
of an inadequate drainfield.
8. San Juan County and Mr. Wiscomb assert that a barn is located in the drainfield
and this is why the drainfield does not function properly. The appellant disagrees,
stating that the drainfield is located beyond the barn as evidenced by sand.
9. San Juan County notified the appellant of the failing system and the appellant
agreed by letter dated January 21, 2013 to not occupy the property until the septic
system was repaired. The appellant left the property and then returned once he
determined that the system was working again. The appellant determined that the

1 system had failed because it had been overburdened by joint use from the 168 and
2 106 Jackson Road properties. The 168 Jackson Road property disconnected from
3 the septic system after the appellant vacated his property. The appellant concluded
4 that since the septic system had failed because it was overburdened, the problem
5 was solved by the disconnection and he could move back to the property without
6 having to do any repairs.

7 10. The septic tank was pumped out on June 5, 2014. See Ex. 4.

8 11. Gary Covington issued a Notice and Order to the appellant dated June 13, 2014.
9 The Notice and Order noted that the appellant had not repaired the septic system
10 prior to returning to his property as agreed.

11 12. The appellant had the septic tank inspected on June 27, 2014 by Earthworks.
12 Earthworks filled out an "On-Site Sewage Inspection Form" supplied by San Juan
13 County. The Form noted that the system was not failing. The form also noted that
14 Earthworks could not find the drainfield, although upon potholing, sand and drain
15 rock were located between the barn and a seasonal pond. The form was checked
16 "N/A" for the water level at the outlet invert.

17 13. Until 2007, the 168 Jackson Property was occupied by a 1.5 bath cabin. In 2007
18 the cabin was replaced with a 3-bedroom, 3-bath house. This larger home may
19 have increased the burden on the septic system.

20 14. The appellant filed his appeal of the Notice and Order on July 7, 2014.

21 15. The hearing on the appeal was held by the San Juan County Hearing Examiner on
22 September 10, 2014.

23 16. Kyle Dodd testified that the reason the septic tank was functioning during the
24 6/27/14 inspection was that it had been pumped out just shortly before the
25 inspection. The 6/27/14 Earthworks inspection form, Ex. 3, prepared for the
appellant did note that Earthworks was aware of the pump out when it marked the
septic system as not failing.

17. Mr. Dodd and Mr. Wiscomb were both present at the appeal hearing to testify.
Mr. Covington (another licensed sanitarian working for the County who issued
the Notice and Order) and the appellants septic inspector were not present.

18. Under cross-examination, Mr. Wiscomb acknowledged that that the system was
overloaded by the two residences. He acknowledged that overloading a septic
system can cause it to fail. However, he didn't believe that the overloading
caused by the two residences was the reason for the septic system failure. He
noted that if the failure were caused by the residences, he would have observed
sewage both above the tank as well as in the drainfield. However, in this case
there was only sewage on top of the tank, which shows that the failure is caused

1 by a nonfunctioning drainage field. Mr. Dodd testified that the absence of sewage
2 in the drainfield was also why he also concluded that overuse by the two
residences was not the cause of the failure.

3 19. For the reasons stated in the introduction section of this decision, it is determined
4 that the preponderance of evidence establishes that the septic system failed
5 because the drainfield is not functioning properly. The appellant certainly raises a
6 reasonable doubt with his overburden theory, but this is a civil proceeding and the
7 reasonable doubt standard does not apply. This case presents a one-sided “battle
8 of experts” where the appellant presented no expert testimony to oppose that
9 presented by Mr. Dodd, Wiscomb and Covington. The appellant did present his
10 own “On-Site Sewage Inspection Form”, but the form only concluded that the
11 septic system was not failing at the time of inspection. The author of the report
12 was not present at the hearing to explain whether this conclusion would still apply
13 once the tank became more full of waste. The author wasn’t available to identify
14 whether or not he agreed with the County’s theory on why the system was failing.
15 Without being present for this important information, the appellant’s “On-Site
16 Sewage Inspection Form” had little probative value in comparison to that
17 provided by the County. Note that the evidence of this case was evaluated with
18 the understanding that the County has the burden of proof.

13 CONCLUSIONS OF LAW

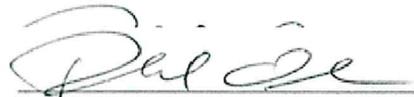
- 14 1. SJCC 8.16.370 provides that decisions by the health officer made pursuant to
15 Chapter 8.16 SJCC may be appealed to the hearing examiner.
- 16 2. SJCC 8.16.170(A) requires that an on-site sewage owner shall ensure failing
17 systems are repaired in a timely fashion. WAC 246-272A-0280(1) also requires
18 repair of a failing system or in the alternative connection to a public or large on-
19 site septic system. WAC 246-272A-0430 authorizes the health department to issue
20 orders requiring corrective action of septic tank regulations. As determined in the
21 findings of fact, the appellants septic system is failing and its deficiencies have not
22 been remedied by the disconnection of the 168 Jackson Road residence. The
23 County was authorized to issue its Notice and Order to require the septic system to
24 be repaired and the applicant has not repaired the system as directed.

21 DECISION

22 The appeal is denied and the June 13, 2014 Notice and Order is sustained. The
23 appellant shall cease all discharges to the septic system that serves the 106 Jackson
24 Road property by October 15, 2014. All system repairs and corrections must be
25 completed by January 1, 2015.

Dated this 29th day of September, 2014.

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Phil A. Olbrechts

County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100. This decision appears to qualify as a land use decision as defined by RCW 36.70C.020(2)(c) and is hence appealable to superior court as governed by the Land Use Petition Act, Chapter 36.70C RCW. However, the status of a decision regarding sanitary health regulations as a land use decision has not been directly addressed by the courts and consultation with an attorney is recommended to ensure that the appeal is filed in the proper forum.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.