

BEFORE THE BOARD OF COUNTY COMMISSIONERS

TETON COUNTY, WYOMING

IN THE MATTER OF: Small Wastewater Facility Permit (SWF2023-0086)

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING A SMALL
WASTEWATER FACILITY**

THIS MATTER came before the Teton County Board of County Commissioners (hereafter “Board” or “Board of Commissioners”) for public hearing on January 16, 2024, upon the application of Rachel Ravitz on behalf of Rodney Lewis for a Small Wastewater Facility Permit Variance, pursuant to Title 9 of the Teton County Small Wastewater Facility Regulations, Chapter 9-2-16 to vary standards to build a small wastewater facility. The Board considered a presentation from staff. The Board of Commissioners, being fully advised herein, finds, concludes and orders as follows:

FINDINGS OF FACT

1. The property, 22-39-16-26-2-00-007, is owned by Rodney Lewis, which is located off Hoback Junction South Road, consisting of .64 acres in size. The property is zoned Neighborhood Conservation (NC), is within the Natural Resources Overlay (NRO) and is located about .15 miles south of the Hoback Junction Roundabout.
2. The applicant has requested approval of a small wastewater facility permit variance, to vary Teton County Title 9 to allow a small wastewater facility to serve a single-family residence to be built within the 150-foot Watercourse Protection District along the Hoback River, to be within the 10-foot setback from the property boundary and to use a different infiltrative loading area rate used to calculate the absorption system area.
3. The public hearings of the Board of Commissioners were properly noticed pursuant to Section 8.2.14 of the LDRs.

4. The application was originally scheduled to be heard by the Board of County Commissioners on November 21, 2023. The applicant requested a postponement to a date certain, December 19, 2023.
5. On December 19, 2023, the applicant requested an additional postponement that was reviewed by the Board of County Commissioners.
6. On December 19, 2023, the Board of County Commissioners approved this postponement request and moved the hearing date to January 16, 2024.
7. On January 8, 2024 the applicant submitted revised application materials.
8. The application was brought before the Board of County Commissioners on January 16, 2024.
9. A staff report dated January 16, 2024, was submitted to the Board of County Commissioners for review regarding the Small Wastewater Facility Permit (SWF2023-0086) pursuant to Chapter 9-2-16 of Title 9, to vary the standards to allow a small wastewater facility to be built within 150-foot Watercourse Protection District of the Hoback River, among other standards. Due to review and publishing deadlines, the staff report was not updated to include the information submitted on January 8, 2024, but the updated information was presented in a memo to the Board of County Commissioners dated January 9, 2024 and presented at the hearing.
10. As set forth in the January 16, 2024, staff report, the recommendation from the County Engineer to the Board of County Commissioners was for denial of the Small Wastewater Facility Permit (SWF2023-0086).
11. The Board heard a presentation from staff and a presentation from the applicant on behalf of the property owner. Ted Van Holland of Harmony Engineering also presented on behalf of the applicant.
12. The Board heard public comment on the application. Chair closed public comment, and the Board discussed the application.
13. The Board of County Commissioners reviewed the six findings for a Variance pursuant to Chapter 9-2-16 of Title 9 which are:
 - A. There are special circumstances or conditions which are peculiar to the site that create an excessive hardship on the applicant if strict application of standards were enforced, and;

- B. The special circumstances and conditions have not resulted from any willful modification of the site; and
 - C. The special circumstances and conditions are such that the strict application of the regulation sought to be varied would create a hardship on the applicant far greater than the protection afforded to the community; and
 - D. The variance sought is the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant; and
 - E. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare; and
 - F. The granting of the variance is consistent with the general purpose and intent of these regulations.
14. On January 16, 2024, the Board voted on the matter, which vote was 2 to 3 with Commissioner Gardner and Commissioner Epstein voting in the affirmative resulting in the motion failing and the Board's denial of the Small Wastewater Facility Permit (SWF2023-0086).

CONCLUSIONS OF LAW

- I. Based on the presentation and staff report of the Engineering Department, the information presented by the applicant and agent, the application from Rachel Ravitz for Small Wastewater Facility Permit (SWF2023-0086) does not comply with all applicable provisions of Teton County Title 9.
- II. The Board concludes and hereby finds that the application dated September 27, 2023, for a Small Wastewater Facility Permit (SWF2023-0086) does not comply with and does not meet all six (6) findings required pursuant to Chapter 9-2-16 of Title 9 to vary the standards to allow for a small wastewater facility to be built.
 - A. There are special circumstances or conditions which are peculiar to the site that create an excessive hardship on the applicant if strict application of the standards were enforced;
Can be made. There are special circumstances peculiar to the layout of the site that do not apply generally to the neighboring land. Eighty percent of the parcel slopes are in excess of 30% so the development area is limited. The parcel is adjacent to both Hoback Junction South Road and the Hoback River

and the property is only about 90 feet at its widest point while the river setback is 150 feet, making it impossible to meet the required setback.

All County Commissioners can make this finding.

B. The special circumstances and conditions have not resulted from any willful modification of the site;

Can be made. The unusual size, shape and location of the site are not a result of willful modification related to wastewater.

All County Commissioners can make this finding.

C. The special circumstances and conditions are such that the strict application of the regulation sought to be varied would create a hardship on the applicant far greater than the protection afforded to the community;

Can be made. The application of the regulations would not allow for an on-site wastewater treatment facility and no community sewer system is available.

All County Commissioners can make this finding.

D. The variance sought is the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant;

Can be made. The applicant has requested to build a small single-family home on this parcel. Dimensional constraints do not appear to be able to be reasonably further reduced.

All County Commissioners could make this finding.

E. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare;

Cannot be made. The number of regulations requiring a variance from the standards cumulatively adds risk that the system could be detrimental to the public welfare. The collective need for multiple variances demonstrates that the site has too many constraints to accommodate a small wastewater system, even with the special mitigation methods proposed to be employed by the applicant. Therefore, the Board finds that granting the variance can be injurious to the neighborhood surrounding the land where the variance is proposed and can otherwise be detrimental to the public welfare.

Commissioner Gardner and Commissioner Epstein could make this finding. The other 3 County Commissioners agreed that they were unable to make this finding as they were unwilling to take the risks associated with this proposal due to the location and constraints of the parcel.

F. The granting of the variance is consistent with the general purpose and intent of these regulations.

Cannot Be Made. As stated in Title 9, “The fundamental objective of these regulations is to safely handle, treat, and dispose of human wastes and domestic wastewater in a manner that protects the life, health and safety of persons from the risks that are known to arise from direct or indirect exposure to such wastes and wastewaters. As a complementary objective, it is recognized that the preservation and restorative of the natural environment is integral to long-term human welfare, and therefore the prevention of environmental pollution from the handling and disposal of human wastes and wastewater is essential.” The variance petition proposed by the applicant does not definitively demonstrate the assurance that the site can safely accommodate the wastewater loading given the many site constraints.

Commissioner Gardner and Commissioner Epstein could make this finding. The other 3 County Commissioners agreed that they were unable to make this finding as they were unwilling to take the risks associated with this proposal due to the location and constraints of the parcel.

IT IS HEREBY ORDERED:

The Board **DENIES** the application for a Small Wastewater Facility Permit dated September 27, 2023, SWF2023-0086, to vary regulations within Title 9 to a build a small wastewater facility system, not being able to make all six (6) findings of approval for a Variance pursuant Chapter 9-2-16 of Title 9, Teton County Small Wastewater Facility Regulations.

DATED this ____ day of February 2024.

BOARD OF COUNTY COMMISSIONERS
TETON COUNTY, WYOMING

BY: _____
Luther Propst, Chairman

ATTEST: _____
Maureen E. Murphy, County Clerk

CERTIFICATE OF SERVICE

I, Maureen E. Murphy, Teton County Clerk, do hereby certify that I sent a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DENIAL OF SMALL WASTEWATER FACILITY PERMIT, postage prepaid by U.S. Mail or other delivery as indicated below on this ____ day of February 2024 to the following addresses:

Rachel Ravitz
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Maureen E. Murphy, County Clerk