

NEVADA STATE BOARD OF HEALTH
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

☐

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

☐

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

☐

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

☐

Health Statistics, Planning,
Epidemiology and Response
(NAC 440, 450B, 452, 453, 453A, & 695C)

☒

Public Health & Clinical Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: January 19, 2021

Name of Applicant: Tony Lillak

Phone: 510-909-9205

Mailing Address: City: 1744 Merino Circle, Gardnerville

State: NV

Zip: 89410

We do hereby apply for a variance to chapter/section 444.790 of the Nevada

Title of section in question: Lot Size

Statement of existing or proposed conditions in violation of the NAC:

Our property located at PO Box 91, Ruby Heights Road, Shantytown, Ruby Valley, NV, 89833 is a half acre parcel containing a single family residential structure served by an individual sewage disposal system (ISDS). The existing septic system is failing and needs to be repaired/replaced. The lot was created prior to January 1, 2000, is greater than 1/4 acre in size, and is serviced by a quasi-municipal well (App/Permit No. 25450). The request is to grant a variance allowing the existing ISDS system to be repaired/replaced.

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Date of initial operation (if existing): Unknown (The septic system existed when the parcel was purchased in 1978).

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
 - (2) Will not be detrimental or pose a danger to public health and safety.
2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health

Approval of our application, permitting an updated replacement of our existing septic system, will in fact, improve the quality of health relating to the land, wildlife and persons in the surrounding neighborhood. A new and updated replacement of the system relocated on the property would illuminate all risk to health. There is a relatively low density of septic systems in the area and adjacent drilling logs indicate groundwater depths in the range of 90-135 feet.

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Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:

Denial of the variance will cause a hardship and abridge a substantial property right of the applicant, for without a septic upgrade, we will be denied use of our planned retirement home. Granting the variance is necessary to render substantial justice to the applicant and enable our family to preserve and enjoy our property. By granting the variance, we will not pose a danger to public health and safety due to the location and construction of the septic system (refer to the plot plan and contractor bid).

2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

Granting the variance will not pose a substantial detriment to the public welfare, the existing septic system is simply being repaired/replaced, no additional improvements are proposed on the property.

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

The purpose of the regulation for which this application is requesting a variance would not be impaired upon granting of the requested variance.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

- x 1. Legal description of property concerned:

Small site NO. 46, Section 1, Township 26 North, Range 57 East, M.D.B&M

- x_ 2. General area identification map

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APPLICATION FOR VARIANCE

- x 3. Plat map showing locations of all pertinent items and appurtenances
- N/A 4. Well log (if applicable)
- N/A 5. Applicable lab reports
- N/A 6. Applicable engineering or construction/remodeling information
- x 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing during:

☐

The next regularly scheduled Board of Health meeting, regardless of location.

☒

The next scheduled meeting in Carson City.

☐

The next scheduled meeting in Las Vegas.

Signature: _____

Tony Lillak

Printed Name: _____

TONY LILLAK

Title: _____

OWNER

Date: _____

1-29-2021

Vicinity Map

Write a description for your map.

Legend

- Shanty Town
- Subject Parcel
- Untitled Path



QUASI-MUNICIPAL WELL

Nevada Water Rights Mapping Application

Division of Water Resources

Main

Search Tools

Measure & Location Tools

Drawing Tools

Tasks

Print

Layers

Navigation Tools

Search Tools

Point Identify

Permit Search

Basin Search

View Point of Diversion ...

I want to...

+

-

+

-

Description

Municipal

Details

Manner of Use

QM

Site Name

176 N26 E57 01CBDA1

Application ID

25450

Permit Database Information

25450 SHANTY TOWN WATER USERS

WELL

Site Search

Permit Information

New Search

App/Permit: [25450](#)

Status: CERTIFICATE

Certificate: [8717](#)

General Maps & Due Dates Place of Use Abrogations/Protests/Rulings Ownership and Title

General

Owner(s): SHANTY TOWN WATER USERS Basin: RUBY VALLEY - 176
Sub Basin: Basin Status: DESIGNATED
Region: CENTRAL County: ELKO
Resource Specialist: [Lea Jacobsen-Guy](#) Site Name: 176 N26 E57 01CBDA1

Previous Applications(Base Rights)

Change of App No	POD	POU	MOU
No records to display.			
Source:	UNDERGROUND	Source Description:	
Project Name:		Decree Name:	
Use:	QUASI-MUNICIPAL		
Period Start:	0101	Period End:	1231

Point of Diversion Information

Qtr-Qtr: Qtr: Section: Township: Range:
NW SW 01 26N 57E

Duty-Balance 17.738242 AFA Div Balance 0.33
Acre-Feet Storage 0 Well Logs: [11491](#)

Remarks:

A parcel of land situate in the County of Elko, State of Nevada, according to the official plat of the survey of said land on file in the office of the Bureau of Land Management, more particularly described as follows:

Small Site No. 46, Section 1, Township 26 North, Range 57 East, M.D.B.&M.

EXCEPTING AND RESERVING TO THE UNITED STATES a right of way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

AND ALSO EXCEPTING AND RESERVING TO THE UNITED STATES all mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

SUBJECT TO a right of way not exceeding 33 feet in width, for roadway and public utility purposes, to be located along the easterly boundary of said land;

AND ALSO SUBJECT TO those rights for transmission line purposes which have been granted to Wells Rural Electric Company, Inc., its successors or assigns, under the Act of March 4, 1911, 36 Stat. 1253, as amended 43 U.S.C. 961, which are due to expire February 27, 2013.

TOGETHER WITH all buildings and improvements situate thereon.

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

Private well
Community well

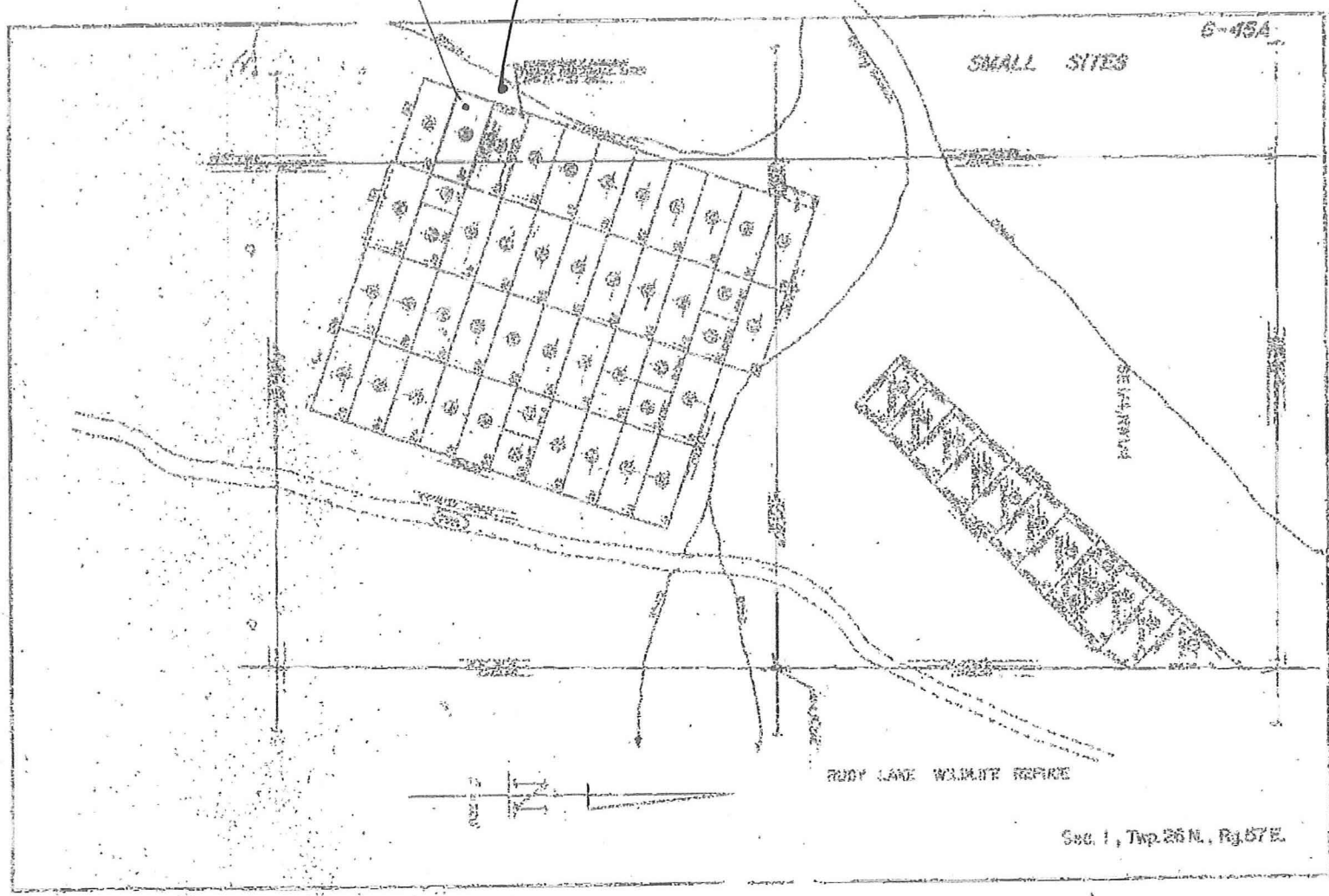
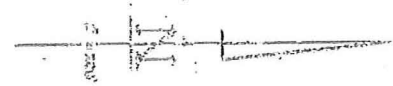
6-45A

SMALL SITES

SEMINARY

RUDY LAKE WILDLIFE REFUGE

Sec. 1, Twp. 26 N., R. 57 E.



INDIVIDUAL SEWAGE
DISPOSAL SYSTEM
REPLACEMENT SITE
PLAN

PROJECT DATA :

LEGAL DESCRIPTION: A PARCEL OF LAND SITUATE IN THE COUNTY OF ELKO, STATE OF NEVADA, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF SAID LAND ON FILE IN THE OFFICE OF THE BUREAU OF LAND MANAGEMENT, MORE PARTICULARLY DESCRIBED AS: SMALL SITE NO. 46, SECTION 1, TOWNSHIP 26 NORTH, RANGE 57 EAST, M.D.B.&M.

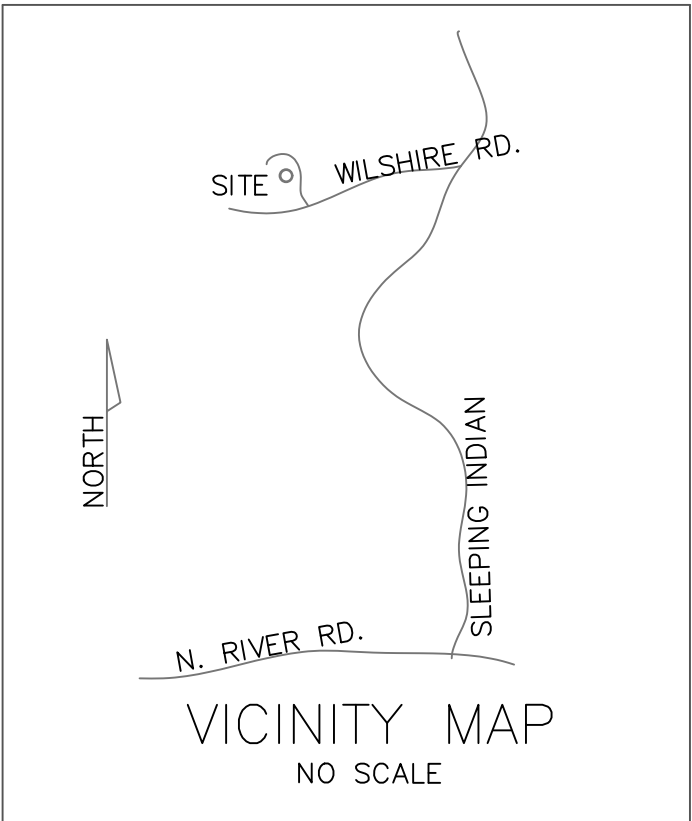
UTILITY SERVING AGENCIES:

WATER: COMMUNITY WELL SITE NAME 176 N26 E57 01CBDA1
SEWER: INDIVIDUAL SEPTIC SYSTEM
NO CITY SEWER AVAILABLE
GAS/ELECTRIC: INDIVIDUAL PROPANE/.....

GENERAL NOTES:

NO. LOTS: 1 EXISTING,
NO. OF DWELLING UNITS: 1 EXISTING
NO EXISTING WATER COURSES WITHIN 500' OF PL

CONTOUR INTERVALS:



LEGEND

SUBDIVISION BOUNDARY
PROPOSED LOT LINE
BUILDING SET BACK LINE
EP
PP
FH
WM
EX
TOP AND TOE OF
PROPOSED 2:1 SLOPE
EX. CONTOUR LINE
BEARING/DIST PER PM 9225
NT = NEW 1000 GAL TANK

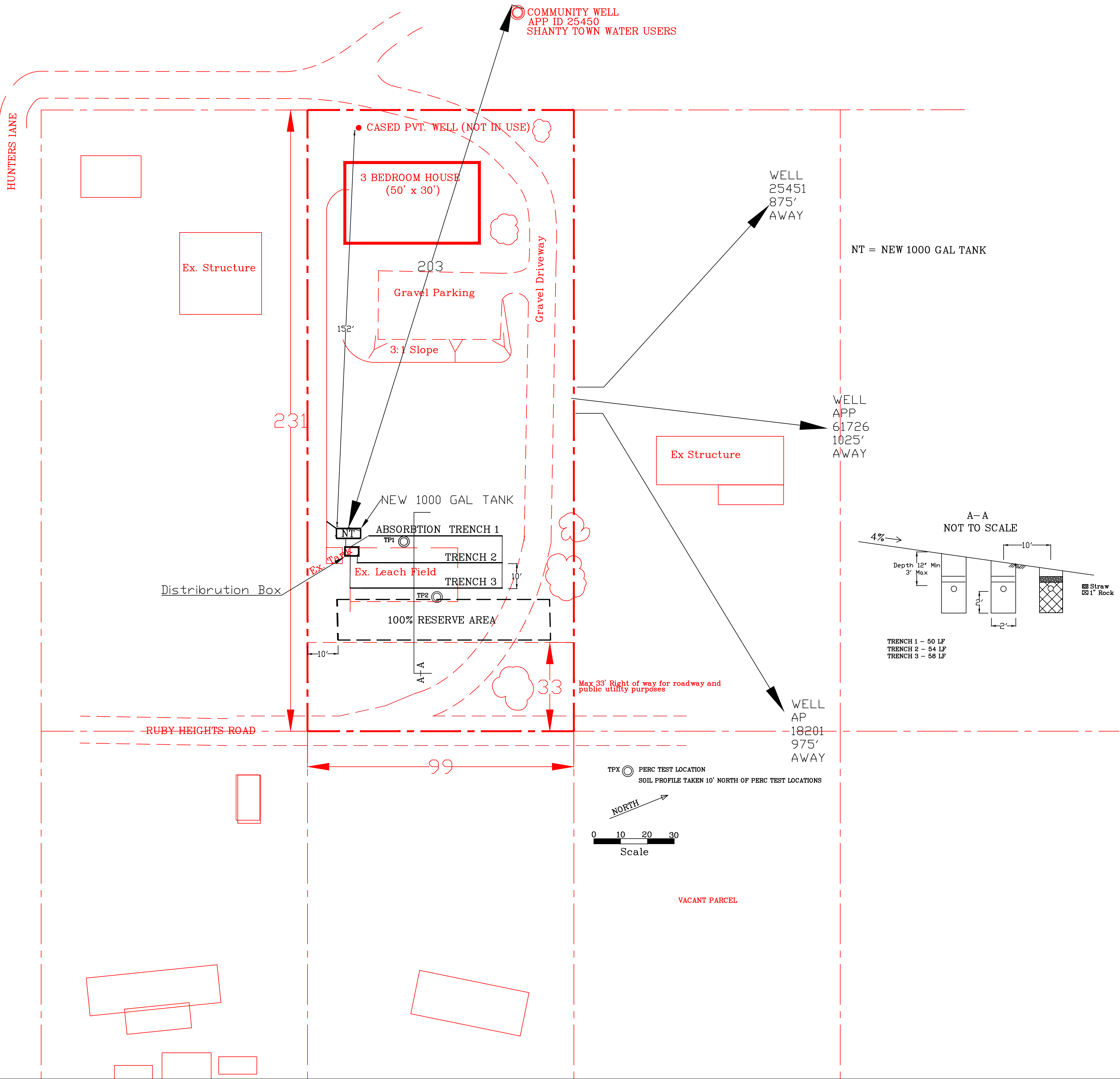
EDGE OF PAVEMENT
POWER POLE
FIRE HYDRANT
WATER METER
EXISTING
105

No development rights associated
with the approval of this TPM.

SHEET 1	STATE OF NEVADA DEPT OF HEALTH AND HUMAN SERVICES	1 SHEETS
INDIVIDUAL SEPTIC SYSTEM REPLACEMENT PO BOX 91, RUBY HEIGHTS ROAD SHANTYTOWN, RUBY VALLEY, NV, 89833		
APPROVED R.C.E. CITY ENGINEER		
ENGINEER OF WORK R.C.E.	Checked By: Approval Date:	PLAN NUMBER



NO.	REVISIONS:	DATE
1.		
2.		
3.		



PERCOLATION TESTING BY:

SITE LOCATION:

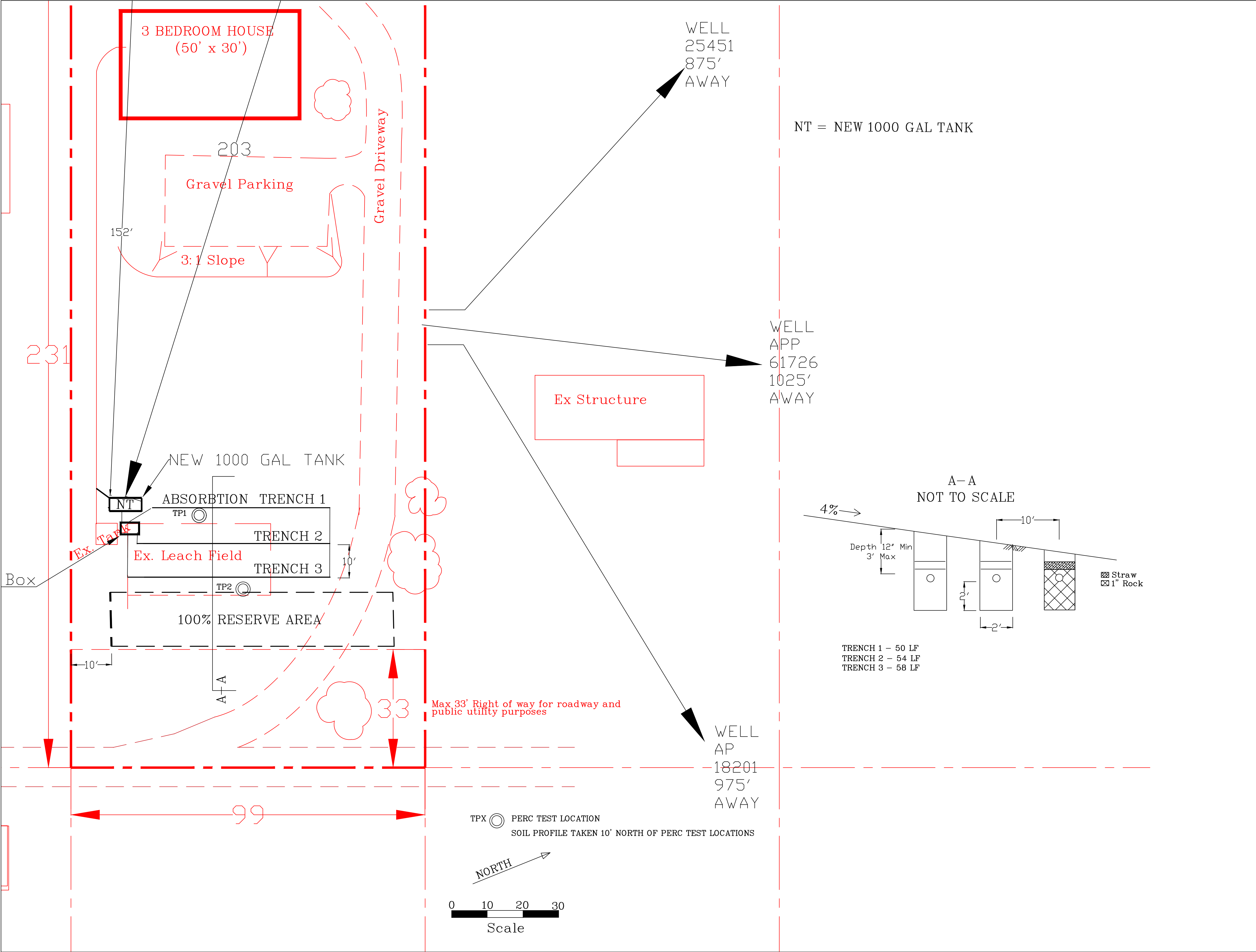
PO BOX 91- RUBY HEIGHTS ROAD
SHANTYTOWN, RUBY VALLEY, NV
PARCEL # XXXXX

ENGINEER NAME/ADDRESS

JOHN MAASHOFF
P.O. BOX 846
CARDIFF, CA 92007
760-802-7807

OWNER/DEVELOPER NAME/ADDRESS

MR. TONY LILLAK
1739 WORTELL DRIVE
LINCOLN, CA 95648
510-909-9205



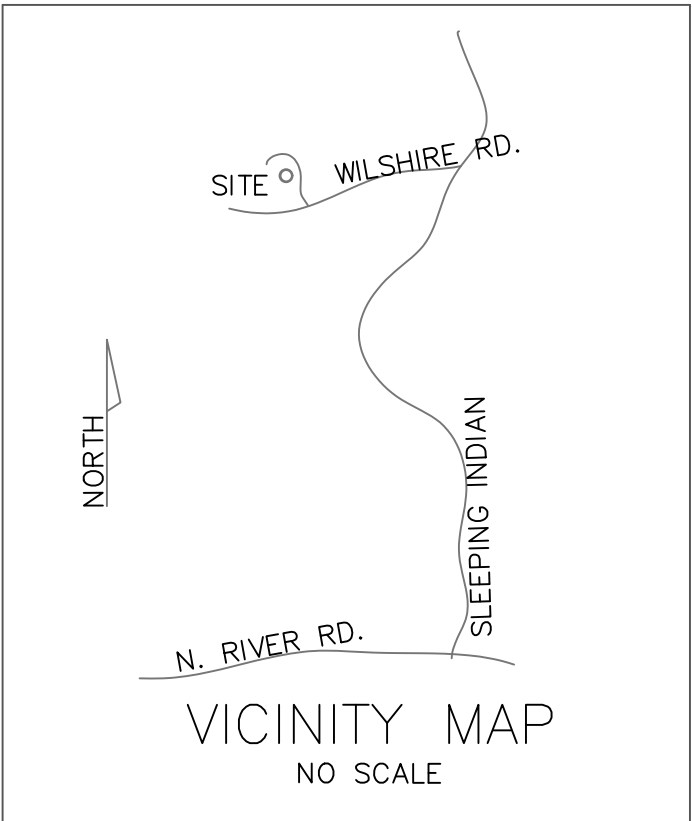
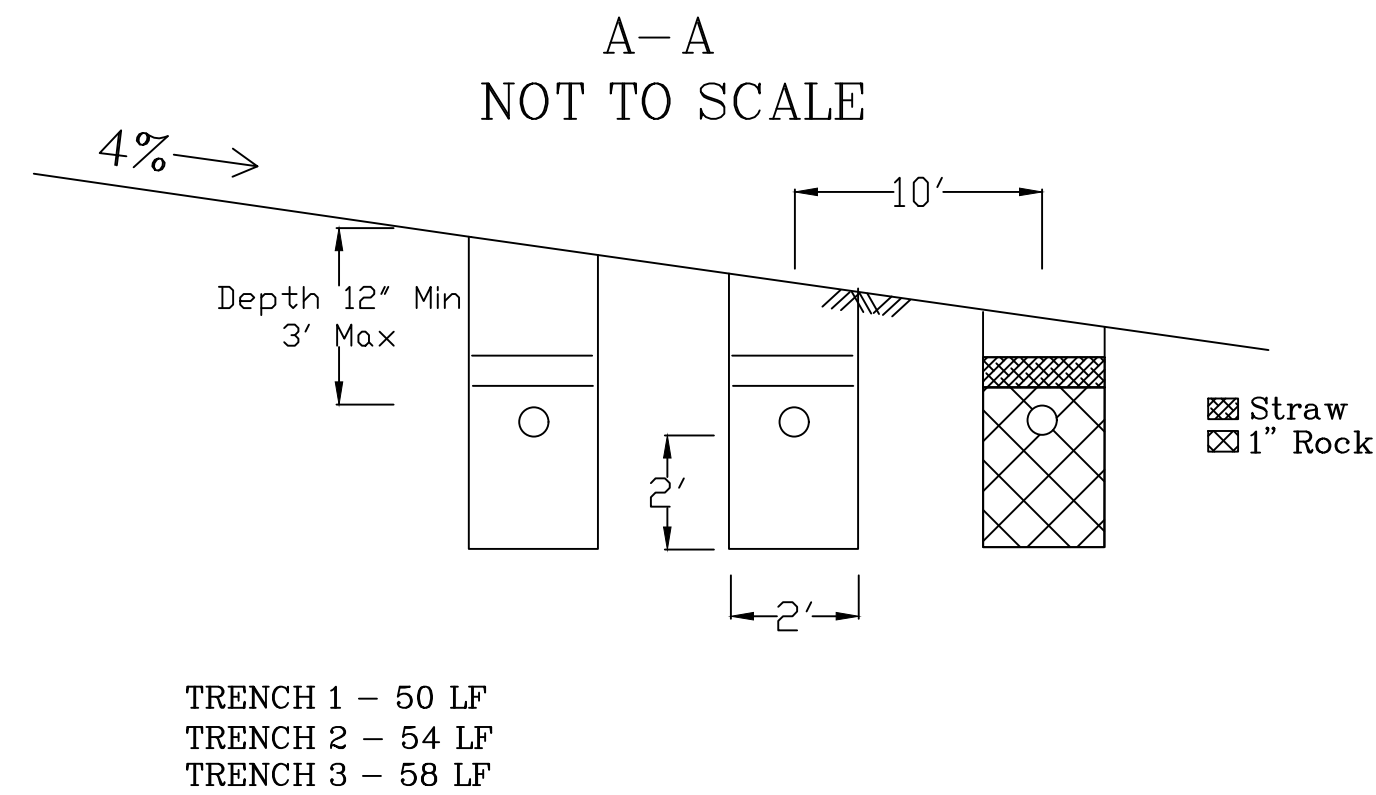
INDIVIDUAL SEWAGE
DISPOSAL SYSTEM
REPLACEMENT SITE
PLAN

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SEWER: INDIVIDUAL SEPTIC SYSTEM
NO CITY SEWER AVAILABLE
GAS/ELECTRIC: INDIVIDUAL PROPANE/.....

GENERAL NOTES:
NO. LOTS: 1 EXISTING,
NO. OF DWELLING UNITS: 1 EXISTING
NO EXISTING WATER COURSES WITHIN 500' OF PL

CONTOUR INTERVALS:



LEGEND

- SUBDIVISION BOUNDARY
- PROPOSED LOT LINE
- BUILDING SET BACK LINE
- EP
- PP
- FH
- WM
- EX
- TOP AND TOE OF PROPOSED 2:1 SLOPE
- EX. CONTOUR LINE
- BEARING/DIST PER PM 9225
- NT = NEW 1000 GAL TANK
- EDGE OF PAVEMENT
- POWER POLE
- FIRE HYDRANT
- WATER METER
- EXISTING
- 105

No development rights associated with the approval of this TPM.

SHEET 1	STATE OF NEVADA DEPT OF HEALTH AND HUMAN SERVICES	1 SHEETS
INDIVIDUAL SEPTIC SYSTEM REPLACEMENT PO BOX 91, RUBY HEIGHTS ROAD SHANTYTOWN, RUBY VALLEY, NV, 89833		
APPROVED		
R.C.E.		CITY ENGINEER
ENGINEER OF WORK	Checked By:	PLAN NUMBER
R.C.E.	Approval Date:	



NO.	REVISIONS:	DATE
1.		
2.		
3.		

PERCOLATION TESTING BY:

SITE LOCATION:	ENGINEER NAME/ADDRESS	OWNER/DEVELOPER NAME/ADDRESS
PO BOX 91- RUBY HEIGHTS ROAD SHANTYTOWN, RUBY VALLEY, NV PARCEL # XXXXX	JOHN MAASHOFF P.O. BOX 846 CARDIFF, CA 92007 760-802-7807	MR. TONY LILLAK 1739 WORTLELL DRIVE LINCOLN, CA 95648 510-909-9205

Steve Sisolak
Governor

Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

NOTICE OF PUBLIC HEARING

TONY LILLAK IS REQUESTING A VARIANCE, #715, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that TONY LILLAK has requested a variance from Nevada Administrative Code (NAC) 444.790.

A public hearing will be conducted on June 4, 2021 at 9:00 am, by the Nevada State Board of Health to consider this request. This meeting will be held via teleconference only. Pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, the requirement contained in NRS 241.023(1)(b) that there be a physical location is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). Accordingly, all members of the public must participate by using the teleconference number provided in this notice.

Meeting Locations:

Join from computer using the meeting link:

<https://nvhealth.webex.com/nvhealth/j.php?MTID=ma2f389786827d3f157e2b016794639c6>

Join by Meeting Number:

Meeting Number (Access Code): 187 171 9645

Meeting Password: JruWeMY3z49

Join by Phone:

1-415-655-0001 Access Code: 187 171 9645## US Toll

Tony Lillak is requesting a variance from NAC 444.790, which states:

NAC 444.790 Lot size. ([NRS 439.200](#), [444.650](#))

1. A minimum area of 1 acre (43,560 square feet), including public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a well.

2. For a lot that is a part of a tentative map that is approved before January 1, 2000, a minimum area of 1/4 acre (10,890 square feet), including public streets or alleys or other public rights-of-way, lands or any portions thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a community water supply.

3. For a lot that is part of a tentative map that is approved on or after January 1, 2000, a minimum area of 1/2 acre (21,780 square feet), including public streets or alleys or other public rights-of-way, lands or any portions thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a community water supply.

[Bd. of Health, Indiv. Sewage Disposal Systems Reg. Note, eff. 1962; A and numbered as §§ 7.1-7.3, 11-23-72] — (NAC A 10-22-93; R129-98, 3-25-99; R100-07, 10-31-2007)

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, 4150 TECHNOLOGY WAY, CARSON CITY, NV

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:

<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>

BEFORE THE STATE BOARD OF HEALTH

IN THE MATTER OF)
Mr. Tony Lillak)
VARIANCE REQUEST: CASE #715)

The Nevada State Board of Health ("Board"), having considered the application for a variance and all other related documents submitted in support of the application in the above-referenced matter, makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. On March 27, 2021, the Division of Public & Behavioral Health ("Division") received a request for a variance from NAC 444.790(1).
2. NAC 444.790(1) states: "A minimum area of 1 acre (43,560 square feet), including public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a well."
3. Mr. Lillak is requesting approval to remodel his Individual Sewage Disposal System (ISDS) by abandoning an old ISDS and replacing it with a new ISDS. Mr. Lillak's property (APN 006-45A-051) is in Shanty Town and has 0.495 acres. Shanty Town is a rural community in Elko County, approximately 60 miles South of the city of Elko. All other lots within the immediate area are served by private wells and individual sewage disposal systems.
4. NAC 444.790(1) requires a minimum of 1 acre for a septic system on a lot that is served by a well. The intent is to limit the concentration of septic systems in any given basin. Environmental Health staff of the Division of Public & Behavioral Health used data provided by the Nevada Division of Water Resources to calculate that there are currently 0.85 septic systems per acre. The circular area with a perimeter of 0.99 miles (total area:

49.60 acres) around the referenced property has 42 single-family dwellings that are served by private wells and septic systems. DPBH staff have taken a conservative approach by using 1 septic system per acre. The calculated density of septic systems for the area (0.85) is still below the conservative requirement of 1 septic system per acre.

5. Mr. Lillak's property and 11 others obtain their water from Flyn Spring, located approximately 900 feet west. There are not expected to be any negative impacts to public health based on the location of the well relative to the property.

CONCLUSIONS OF LAW

1. This matter is properly before the Board pursuant to NRS 439.200 and determination of the matter on the merits is properly within the subject matter jurisdiction of the Board.
2. NRS 439.200(3) provides:

The State Board of Health may grant a variance from the requirements of a regulation if it finds that:

- (a) A strict application of that regulation would result in exceptional and undue hardship to the person requesting the variance; and
 - (b) The variance, if granted would not:
 - (1) Cause substantial detriment to the public welfare; or
 - (2) Impair substantially the purpose of the regulation.
3. The Board finds that strict application of the regulation would cause an undue hardship. Strict application of NAC 444.790(1) would require the Lillak's to leave the septic tank under the house in an insanitary location, perform renovation work without Division review, or abandon their property.
 4. The Board finds that granting this variance would not cause substantial detriment to the public welfare, or impair the purpose of the regulation substantially.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Variance Request: Case #715, waiving the strict application of NAC 444.8301(5), be GRANTED.

DATED this _____ day of _____, 2021.

Lisa Sherych, Executive Officer
Nevada State Board of Health

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Department of Health & Human Services, Division of Public & Behavioral Health, and that on the _____ day of _____, 2021, I served the foregoing FINDINGS OF FACTS AND DECISION by mailing a copy thereof to:

Mr. Tony Lillak

PO Box 91

Shanty Town, NV 89833
