

Joe Lombardo
Governor

Richard Whitley,
MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

**NEVADA DIVISION of PUBLIC
and BEHAVIORAL HEALTH**



Cody Phinney,
MPH
Administrator

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

MEMORANDUM

DATE: April 11, 2024

TO: Jon Pennell, DVM, Chairperson, State Board of Health

THROUGH: Cody Phinney, Secretary, State Board of Health

RE: Case #757, Ms. Vera Tilley

REGULATION

Nevada Administrative Code (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."

Nevada Administrative Code (NAC) 444.786 states:

"Except as otherwise provided in this subsection, an application for a permit for an individual sewage disposal system submitted to the health authority must be denied in writing and the reasons specified therefor if... A community sewerage system is available and passes through or is in physical contact with the property line or is located adjacent to the property in a street or right-of-way that abuts the property line;"

STAFF REVIEW

Variance applicant Vera Tilley ("Applicant") submitted a request for variance from the requirements of NAC 444.790 and NAC 444.786 on November 21, 2023. The Applicant is requesting approval to be removed from a community cluster system and install an Individual Sewage Disposal System (ISDS). Ms. Tilley's property is located at 4450 Hart Way, APN# 006-09H-054. The total lot size is 0.330 acres and has an individual well on the parcel. Ms. Tilly's has requested to place the ISDS on the abutting property to the east of Ms. Tilley's property at 1210 Ken Drive (APN 006-09H-053), lot size is 0.290 acres. This parcel is owned by her brother Kenneth Drennen and also has a well.

The two parcels to the north of Ms. Tilley's property and Mr. Drennen's property are 0.420 and 0.210 acres and the parcel to the east of the property is 0.16 acres. The property to the south is one (1) acre. The properties north of Midnight Way are assumed to be part of a cluster system that is under review by the Nevada Division of Environmental Protection (NDEP).

DEGREE OF RISK TO PUBLIC HEALTH

There is a significant risk to public health in allowing the applicant to be removed from the cluster sewage system, due to the size of the applicant's parcel and surround parcels. Removal from the cluster system would contribute to high density and could potentially lead to groundwater contamination. The Division finds that granting this variance would cause substantial detriment to the public welfare and impair substantially the purpose of the regulation.

EXCEPTIONAL AND UNDUE HARDSHIP

The Division has not established a case for undue hardship for Ms. Tilley. The applicant is part of a cluster system that is providing sufficient sanitary services. However, Ms. Tilley has stated that the financial agreement between Ms. Tilley and the owner of the system is unfair so she would like to install an individual system.

PUBLIC COMMENT RECEIVED

Notice of hearing is scheduled to be posted on the Division of Public and Behavioral Health website at <http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/> and at the 4150 Technology Way Office in Carson City, NV 89706 by May 8, 2024 by 9:00 AM. The Division of Public & Behavioral Health is not aware of any objections to this denial by any local authorities, and no public comments have been received to date.

STAFF RECOMMENDATION

The Division of Public and Behavioral (DPBH) recommend that the State Board of Health deny Case#757, Vera Tilley, request for variance to NAC 444.790(1) and NAC 444.786. It is recommended that the applicant pursue regulatory compliance of the cluster system with the NDEP.

PRESENTER

Teresa Hayes, Health Program Manager III, Environmental Health Section, DPBH

ATTACHMENTS

1. Proposed Plot Map
2. Elko County Assessor Map

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NOTICE OF PUBLIC HEARING

VERA TILLEY 180-3 WEST BULLION RD, ELKO NEVADA, 89801 IS REQUESTING A VARIANCE, #, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that VERA TILLEY 180-3 WEST BULLION RD, ELKO NEVADA, 89801 has requested a variance from Nevada Administrative Code (NAC) 444.790(1) "Lot Size" AND NAC 444.786(1) "Permits: Denials;"

A public hearing will be conducted on JUNE 7, 2024, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held in person and online.

Meeting Locations:

- Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard; Las Vegas, Nevada 89107
- Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way; Carson City, Nevada 89706

Join from a computer using the Microsoft Teams meeting link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2E0OWNkNzUtNGU2NC00NjJjLTk0NTEtODRmZDIyZjFhNjRI%40thread.v2/0?context=%7b%22Tid%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22Oid%22%3a%22faba961c-6d7e-488b-8c7c-60c19eff2cbd%22%7d

Join by Phone:

1-775-321-6111

Phone Conference ID Number:

VERA TILLEY 180-3 WEST BULLION RD, ELKO NEVADA, 89801, is requesting a variance from NAC 444.790(1) and NAC 444.786 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.

NAC 444.786(1) Permits: Denials; procedure for review of actions taken by health authority; appeals; validity and extension. (NRS 439.200, 444.650)

1. Except as otherwise provided in this subsection, an application for a permit for an individual sewage disposal system submitted to the health authority must be denied in writing and the reasons specified therefor if:

(a) The health authority determines that the proposed installation will not comply with NAC 444.750 to 444.8396, inclusive;

(b) A community sewerage system is available and passes through or is in physical contact with the property line or is located adjacent to the property in a street or right-of-way that abuts the property line; or

(c) The proposed individual sewage disposal system is within the service area of a sewer company which provides sewage services that are subject to the jurisdiction of the Public Utilities Commission of Nevada or any local governmental entity, including, without limitation, a general improvement district, that has jurisdiction over the sewer services in that geographical area. A permit may be granted by the health authority if the sewer company approves in writing the construction of the individual sewage disposal system within its service area or jurisdiction.

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 (DPBH), 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)

Ms. Vera Tilley)

VARIANCE REQUEST: CASE # 757)

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 November 21, 2023, The Division of Public & Behavioral Health (“Division”) received a request for a variance from NAC 444.790 and NAC 444.786.
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. NAC 444.786 states: “Except as otherwise provided in this subsection, an application for a permit for an individual sewage disposal system submitted to the health authority must be denied in writing and the reasons specified therefor if... A community sewerage system is available and passes through or is in physical contact with the property line or is located adjacent to the property in a street or right-of-way that abuts the property line;”
4. Ms. Tilley is requesting approval to be removed from a residential cluster system and install an Individual Sewage Disposal System (ISDS). Ms. Tilley’s property is located at 4450 Hart Way, APN# 006-09H-054 the total lot size is .330 acres and has an individual

well on the parcel. Ms. Tilly's has requested to install the ISDS on the abutting property to the east of the applicant's property at 1210 Ken Drive (APN 006-09H-053), lot size is .290 acres. This parcel is owned by her brother Kenneth Drennen and has a well.

5. The two parcels to the north of Ms. Tilley's property and Mr. Drennen's property are .420 and .210 acres and the parcel to the east of the property is .16 acres. The property to the south is one acre.
6. Ms. Tilley and Mr. Drennan are part of a community cluster system that was submitted for review sometime before 1992 and is currently a "lost" system as per the Nevada Division of Environmental Protection (NDEP). Due to Ms. Tilley's request for a variance, it has been found that under NAC 445A.9544(4) this system is under the regulatory authority of the NDEP as a Cluster System (NAC 445A.952).
7. Ms. Tilley has reported that the cluster system may serve 7 rental properties along with her own for a total of 8 properties and the system is currently in working condition. All properties surrounding Ms. Tilley are occupied, developed and the location of the wells on these lots is unknown.
8. Ms. Tilley's property and Mr. Drennan's property do not meet the minimum lot size requirements for properties with wells independently or when combined. They are currently significantly undersized for the installation of an individual sewage disposal system and cannot meet the setbacks from either well location. Even including the surrounding easement areas, Ms. Tilley could not reach 1 acre.
9. There is a significant risk to public health in allowing the applicant to be removed from the cluster system. Removal from the cluster system would contribute to high density sewage loads in the area and has the potential to allow the contamination surrounding groundwater sources. The Division finds that granting this variance would cause substantial detriment to the public welfare and impair substantially the purpose of the regulation.
10. It has been found that the cluster system is under the regulatory authority of the NDEP under NAC 445A.9544(4) and is under their purview for enforcement and compliance

actions. The NDEP is investigating Ms. Tilley's allegations regarding the residential cluster system.

11. Compliance with the regulation in this case has not been found to be unduly burdensome. Ms. Tilley is on a working system which has not failed. Ms. Tilley's concern is that the system is not being maintained appropriately and may be being overloaded by the additional residences nearby. Due to the fact that this system is regulated by NDEP a variance from the Health Authority would be inappropriate.

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. While strict application of NAC 444.790(1) and NAC 444.786 would require Ms. Tilley to continue to use the residential cluster system and cost associated to the proper maintenance of the system, the Board finds that granting this variance would cause substantial detriment to the public welfare and impair substantially the purpose of the regulation.

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 to NAC 444.790(1) and NAC 444.786 be DENIED.

DATED this _____ day of _____, 2024.

Cody Phinney, Secretary

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 _____, 2024, I served the foregoing FINDINGS OF FACTS AND DECISION by mailing a copy thereof to:

Ms. Vera Tilley

180-3 West Bullion Rd.

Elko, NV 89801



2.1 Acre

00609H051

HART LOOP

00609H054

4.2 A
00609H088

KEN DR

00609H053

2.4 Acre

MIDNIGHT WAY

1.6 Acre

00609H052

CORBEN ALY

CORBEN ALY

00609H103

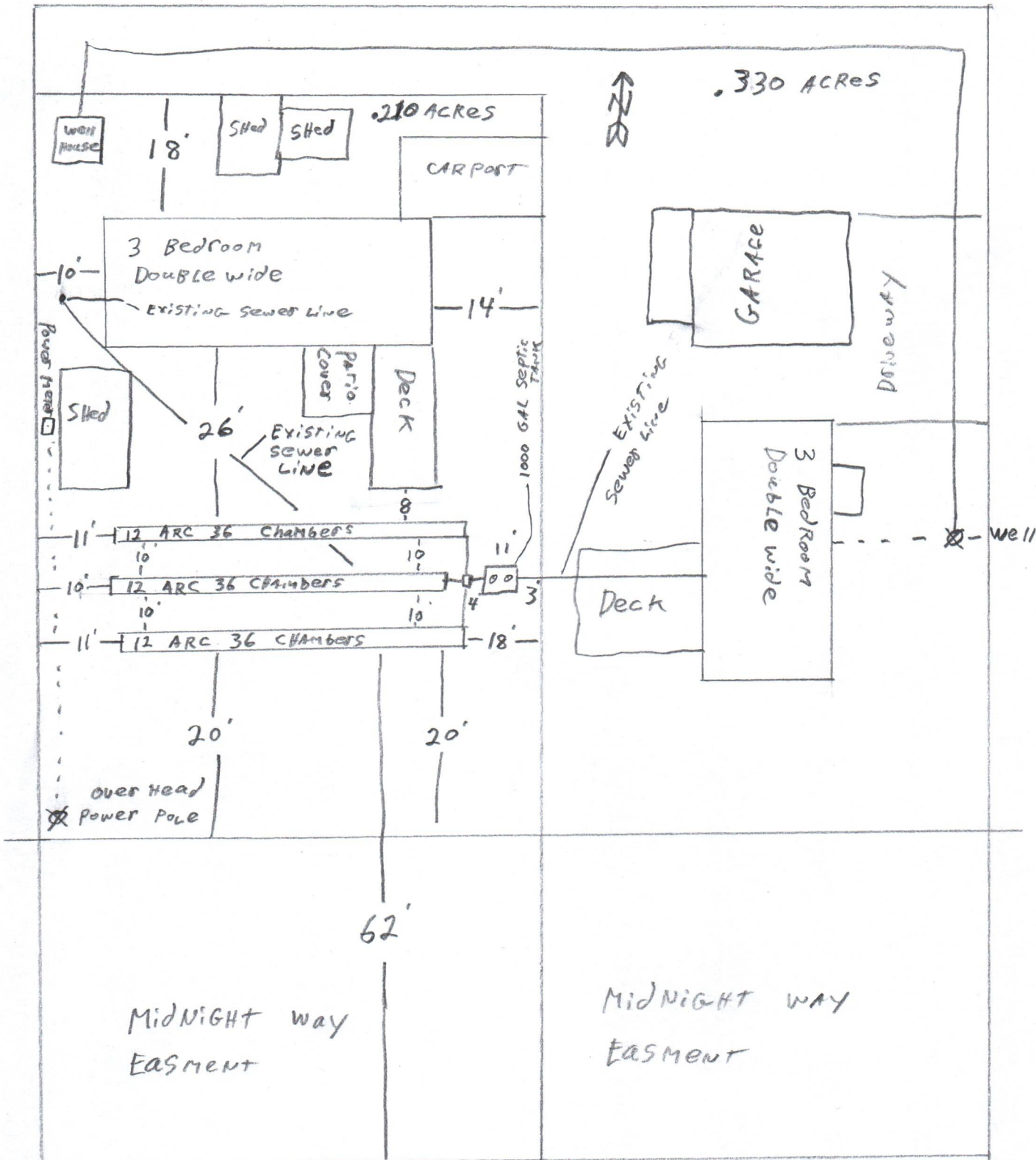
00609H071

MIDNIGHT WAY

00609H085

00609H068

00609



OWNER
 KENNETH Drennan
 1210 Ken Drive
 ELKO, NV 89801-4185
 APN 006-09H-053

OWNER
 VERA LYNN Drennan
 4550 HART way
 ELKO, NV 89801-4185
 APN 006-09H-054
 775-340-5936



OWNER

Vera Lynn Drehnan
4550 HART way
ELKO, NV 89801-4185
775-340-5936
APN 006-09H-054

owner

Kenneth Drehnan
1210 Ken Drive
ELKO, NV 89801-4185
APN 006-09H-053