



Missoula City-County Health Department

ENVIRONMENTAL HEALTH

301 West Alder Street | Missoula MT 59802-4123
www.missoulacounty.us/HealthDept

Phone | 406.258.4755
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MEMO

Date: November 14, 2019
To: Missoula City-County Health Board Members
From: Environmental Health Staff (Jim Erven, RS)
Re: Description of Documents, and Variance Information

CONTENTS

This packet includes:

- An application for variances from the Health Code Administrative Section and Reg 1, and the Alternative Systems Manual
- A staff report outlining the request and the variance evaluation criteria, and
- A proposed Board of Health decision

ADDITIONAL INFORMATION

Variance Regulations: The Administrative Section of the Missoula City-County Health Code allows the Board of Health to approve variance from any section of the Code, provided the applicant can show that certain criteria are met. The Administrative Section of the Code can be found on the Department website at missoulacounty.us/envhealthregs.

Proposed Decision Document: The included Proposed Decision is written by staff before the hearing and the intended to give the Board a starting point. It can be modified during or after the Hearing, based on Board discussion and ultimate decision.

Procedure: The hearing procedure has a specific order. First, Department staff will present information and findings, and summarize the included staff report. Second, the applicant may present relevant information to the Board. Third, the Board will hear from anyone else who supports or opposes the request, and can accept related letters, documents or materials into the record. The Board members may ask questions during any of these presentations. Finally, the Board discusses the proposal and decide if they have enough information to make a decision. The Board can, but does not always, make a decision the day of the variance hearing.

If you have questions about the Hearing procedure, please contact the Environmental Health Division at 258-4755.

I, Roger A. Garman, property owner at 25580 Highway 200 East, Bonner, Montana, respectfully request two variances from the Missoula City-County Health Code: 1) per Administrative Section 6, Part D – requesting that the application fee be waived. Please see supplemental financial information attached. And, 2) Missoula City-County Alternative Systems Manual – Section 8.2.4, so I can install an unsealed pit privy on my property. Thank you for your consideration.

Roger A Garman 9/26/2019

VARIANCE APPLICATION

ROGER A. GARMAN – 25580 HIGHWAY 200 EAST
BONNER, MONTANA 59823

Per Missoula City-County Health Code, Administrative Section 6, Part E:

- (1) I could not have reasonably prevented natural aging, the downward economy, and my income.
- (2) Compliance with health department rules (see compliance agreement) to install a drain field is not feasible on my limited income. See supplemental financial information attached.
- (3) I believe my only alternative is an approved composting toilet that cost from \$2,000.00 to \$3,000 dollars. I can not afford that.
- (4) The variance requested for a pit privy would meet the only feasible minimum requirement required by the health department.
- (5) Granting the variance will not:
 - (a) contaminate any actual or potential drinking water supply;
 - (b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
 - (c) cause a public health hazard by being accessible to persons or animals;
 - (d) violate any law or regulation governing water pollution or wastewater treatment and disposal except for the rule that the variance is requested from;
 - (e) pollute or contaminate state waters in violation of 75-5-605 MCA;
 - (f) degrade state waters unless authorized pursuant to 75-5-303 MCA; or
 - (g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

Per Missoula City-County Health Code, Administrative Section 6, Part H:

- (1) ROGER A. GARMAN – 25580 HIGHWAY 200 EAST – BONNER, MONTANA 59823
- (2) Missoula City-County Alternative Systems Manual – Section 8.2.4
- (3) S08, T13 N, R16 W, ACRES 11.658, IN NE1/4 NE1/4, E OF HWY
- (4) The proposed pit privy will be designed in compliance with Missoula City-County Alternative Systems Manual – Section 8.3.1 through 8.5.1, and all construction requirements of Circular DEQ 4, Section 8.3 dealing with unsealed pit privies. See attached map for proposed location of pit privy.
- (5) See section 6 E above.
- (6) North-Northwest: UNITED STATES BUREAU OF LAND MANAGEMENT, no physical address, mailing: 3255 FORT MISSOULA RD MISSOULA, MT 59804-7204. Northeast: same as North-Northwest property owner. East: WILLS CATTLE CO, no physical address, mailing: 26255 MT HIGHWAY 200 E BONNER, MT 59823-9524. South: WILSON JEFFERY P and WILSON SHONI L CARD, 25195 HWY 200 E POTOMAC, MT 59823-9713
- (7) See supplemental financial information sheet attached.



Roger Garman – Proposed Location of Pit Privy

Legend

Trailer



Proposed Pit Privy



Distance to nearest water source – approximately 125 feet



<p>FLOOD</p> <p>Tax ID: 5812603</p> <p>PLSS: T13MP16W-08</p> <p>Geocode: 04-2202-08-1-01-01-0000</p> <p>Legal:</p> <p>S08, T13 N, R16 W, ACRES 11.658, IN 1/4 1/4, E OF HWY</p> <p>Owner(s):</p> <p>GARMAN, ROGER A</p> <p>Mail: PO BOX 668 MELLTOWN, VT 5871-0668</p> <p>Prop: 25580 HWY 200 E BONNER, VT 59023</p> <p>Physical Address(es): (Click address to zoom)</p> <p>25580 HIGHWAY 200 E 59023</p>	<p>SEPTA</p> <p>Tax Year: 2014</p> <p>Levy: 04-0589071-20</p> <p>CAMA</p>	<p>APR</p>
<p>Survey Info: (Based on Legal)</p> <p>SUB:</p> <p>COs:</p> <p>Property Type: Imp R : Improved Property : Rural</p> <p>00R AC/Sqft : 12.25 / -533610.00</p> <p>01S AC/Sqft : 11.34 / -493995.96</p> <p>Res/Com/Obv: 0/0/1</p> <p>Living Units:</p>	<p>636.1+1</p> <p>Search</p> <p>View</p> <p>Deeds</p>	

Supplemental Financial Information – Roger A. Garman

I request the variance fee be waived because of my limited income. I have been self-employed since moving to Missoula County in 1969. I do not qualify for Social Security or have any other form of retirement income. My greatest source of income is from my temporary position with the Missoula Irrigation District which pays about \$9.00 per hour or \$3,000.00 to \$4,000.00 annually, depending on weather and other circumstances. My regular recycling business paid about \$900.00 dollars in 2018 and about \$700.00 so far this year (See attached statement from Pacific Recycling.). This income is expected to decrease with scrap steel prices which have been on a downward trend for years. I have been receiving and qualify for low income energy assistance since 1980. I also qualify and rely on the SNAP food program for necessities and is supplemented with visits to the Missoula Food Bank and other religious organizations. I get most of my clothing and footwear from the Bethel Church free clothing program. I am 71 years old now and feel too old to be working at all but have no choice. I did not choose to be in this financial situation. I struggle with daily needs and annual property taxes.

Thank You Kindly Roger A Garman 9/26/2019



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Garman Variance Request
Staff Report and Recommendation
November 14, 2019

1. INTRODUCTION

Roger A. Garman (Applicant) has applied for variances from certain provisions in Regulation 1 and the Administrative Section of the Missoula City-County Health Code (Health Code) as well as the Alternative Systems Manual (Alt Manual) pertaining to unsealed pit privy location requirements. The Applicant's variance request is comprised of two main parts- 1) that the Missoula City-County Health Board (Board) approve the permitting of an unsealed pit privy in a location that does not meet the location requirements currently required by state and local rules, and 2) that the Board waive the variance application fee (currently \$725) in its entirety.

2. HISTORY

The subject property, owned by the Applicant, is located at 25580 Highway 200 East, Bonner, MT 59823, T13N, R16W, S08, Geocode 04-2203-08-1-01-01-0000, legally described in COS 1505. The property is 12.258 acres.

This tract of land was created as a remainder parcel when Hwy 200 was declared. When created, this tract was not subject to the sanitation in subdivision review requirements of Title 76-4, MCA.

In 1985, the Health Department (Department) issued a septic permit (permit #85-065) authorizing the installation of a septic system to serve a 3-bedroom structure. The structure that was served by this septic system is no longer on the property and the septic system is no longer in use. There is currently a well on the property that is non-functional. Reconnecting to this septic system is unfeasible for several reasons: its condition is unknown, it likely does not meet current code requirements for

reconnection, it is located on an elevated portion of the property that is not accessible during winter months, and there is not a functional water supply on the property. The Applicant has owned and lived on this property for well over a decade without approved toilet facilities which constitutes a violation of Regulation 1 of the Health Code. He currently resides on the property in an unplumbed pull-behind camper.

Over the years, the Applicant has accumulated large amounts of solid waste, community decay, and junk vehicles on the property. The Department had received many complaints from the public concerning the condition of the property.

The Applicant has worked closely with the Health Department over the last two years to clean up the property. Pacific Recycling, Republic Services, and private foundations teamed up with the Health Department to remove over 150 tons of solid waste and nearly 20 tons of recyclable metal from the property in 2018. As part of that process, the Applicant has entered into a formal compliance agreement with Missoula County to ensure that the property, once cleaned, is kept free of solid waste, junk vehicle, and/or community decay violations in the future. An additional requirement of the compliance agreement is that the Applicant apply for a septic permit to install approved toilet facilities on the property if there are any occupied structures on-site.

Because the cleanup on this property is on-going, the Department feels it is important that the Applicant find a way to legally reside on the property so that he can continue his progress towards remedying the solid waste and community decay violations that remain on the property.

3. BACKGROUND OF REGULATION AND PROPOSED VARIANCE

The Applicant seeks variances as follows:

- **Health Code, Regulation 1, Section 13(A)**, which states, in part, “Alternative treatment systems must meet the requirements prescribed in the Missoula City-County Alternative Systems Manual”.
- **Alt Manual, Section 8.2.4**, which states, “Unsealed pit privies may be approved only for use in remote locations that are not accessible to septic tank pumps”.
- **Health Code, Administrative Section, Section 6(D)**, which states, in part, “the application fee must be paid in full before a variance will be considered”.

Currently, local regulations do not allow the use of unsealed pit privies for new or increased use in locations that are not remote or inaccessible to septic tank pumps. This is based on requirements set out in A.R.M. 17.36.916. Local regulations are required to be at least as stringent as the State minimum wastewater standards found in

ARM Title 17, Chapter 36, Subchapter 9. However, the Board does have the authority to grant variances to these minimum standards in order to address unique situations. This rule is important to ensure that unsealed privies are not located in places that are more densely developed and better suited for conventional, more effective, wastewater treatment solutions. However, the subject property, while not technically remote or inaccessible to septic pumpers, is not in a densely developed area, the neighboring land is owned by the U.S. Bureau of Land Management and unlikely to be developed in the future, and a pit privy in this location will not present a nuisance to neighbors or the general public.

5. VARIANCE AND PUBLIC NOTICE

On July 13, 2018, as required by the compliance agreement, the Applicant submitted a septic permit application (#2018-161), requesting to install a full septic system on the property. He has since modified the application to request a permit for a composting toilet upon realizing the costs associated with installing a full septic system and new water supply on the property. However, the code-compliant composting toilets available are also fairly expensive (\$2000-\$4000) and the Applicant states he cannot afford to purchase one of these.

The applicant is now requesting a permit for an unsealed pit privy because it is a wastewater treatment and disposal system that is within his financial means to construct.

On August 30, 2019, the Department informed the Applicant that a septic permit for an unsealed pit privy could not be issued for this property because state and local regulations limit unsealed pit privies to properties that are remote and inaccessible to septic tank pumpers. The subject property abuts a state highway and is not inaccessible to septic tank pumpers.

The Health Code requires that a variance application be submitted within the 30 days following the denial of a proposed action. On September 26, 2019, the Applicant applied for a variance, within the required timeframes.

On October 4, 2019, the Department notified the Applicant that the application was complete, and that the variance hearing was scheduled for November 21, 2019.

On November 8, 2019, the adjacent property owners were notified of the variance request. Information has also been made available on the Department's website at www.missoulacounty.us/septic.

The *Missoulian* published legal notice of the variance request on November 10 & 17, 2019.

6. CRITERIA FOR VARIANCE

The Missoula City-County Health Code, Administrative Section, Section 6 provides that the Board may only approve a variance if it finds that the Applicants' proposal will cause no adverse effects on the health, safety, or welfare of any individual or cause adverse environmental effect greater than those effects caused by uses commonly permitted by the Health Code. It also requires that the Applicants meet all of the following criteria:

1. The variance is necessary to address extraordinary conditions that the applicant could not have reasonably prevented;
2. Compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;
3. No alternatives that comply with the requirements are reasonably feasible; and
4. The variance requested is not more than the minimum needed to address the extraordinary conditions.
5. Additional criteria are required for a variance from Regulation 1. The Board may approve a variance from Regulation 1 only if it finds, in addition to all the elements in 6(E)(1)-(4) above, that granting the variance will not:
 - a. Contaminate any actual or potential drinking water supply;
 - b. Cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
 - c. Cause a public health hazard by being accessible to persons or animals;
 - d. Violate any law or regulation governing water pollution or wastewater treatment and disposal except for the rule that the variance is requested from;
 - e. Pollute or contaminate state waters in violation of 75-5-605 MCA;
 - f. Degrade state water unless authorized pursuant to 75-5-303 MCA; or
 - g. Cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

7. ANALYSIS OF VARIANCE CRITERIA

Criterion 1: The variance is necessary to address extraordinary conditions that the applicant could not have reasonably prevented.

The Applicant states that his limited financial means make it impossible for him to afford to fund the construction of a conventional septic system or composting toilet and water supply for the property. He states that his income is less than \$5,000 per year and his age (71) makes it difficult for him to work more.

The enforcement history and scope of solid waste, clean up, and resources put toward this property create extraordinary conditions. Missoula County contracted with Republic Services and Pacific Recycling to remove over 150 tons of solid waste and nearly 20 tons of recyclable metal from the property in 2018. As part of that process, the Applicant has entered into a formal compliance agreement with Missoula County to ensure that the property, once cleaned, is kept free of solid waste, junk vehicle, and/or community decay violations in the future. An additional requirement of the compliance agreement is that the Applicant apply for a septic permit to install approved toilet facilities on the property if there are any occupied structures on-site.

The Department determines that this criterion is met when considering the Applicant's resources and age. It is true that the Applicant could seek alternate living arrangements, but apart from that, the Department does not feel that the Applicant could have reasonably prevented the conditions necessitating this variance. Further, the Department feels that the Applicant will be more able to continue his cleanup of the property if living on-site. Without this variance, the Applicant will not be able to legally reside on the property. It is likely that the remaining solid waste and community decay violations will continue to exist if the Applicant no longer lives on-site.

Criterion 2: Compliance with the requirement from which the variance is requested would result in undue hardship to the applicant.

The Applicant states that installing a conventional septic system and water supply would be financially impossible for him to achieve.

The Department determines that this criterion is met both due to the Applicant's inability to afford a conventional septic system or composting toilet as well as other personal limitations that render the Applicant unable to proceed with a conventional septic system. Not granting this variance would result in the Applicant being unable to reside on his property in compliance with the Health Code and would likely result in undue hardship because the Applicant would have to seek alternate living arrangements.

Criterion 3: No alternatives that comply with the requirements are reasonably feasible.

The Applicant states that there is no reasonably feasible alternative which would comply with the requirements because he cannot afford a conventional septic system or composting toilet.

The Department determines that this criterion is met due to the Applicant's limited financial means. The Department has reviewed the Applicant's financial records and agrees that installing a conventional septic system or composting toilet is not reasonably feasible for the Applicant.

Criterion 4: The variance requested is not more than the minimum needed to address the extraordinary condition.

The Department determines that the Applicant's request for a variance to allow permit issuance for an unsealed pit privy and relief from the fee requirements of the variance process is not more than the minimum needed to address the extraordinary conditions.

Criterion 5: Additional criteria for wastewater variances.

The proposed variance will not:

- *Contaminate any actual or potential drinking water supply;*
- *Cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;*
- *Cause a public health hazard by being accessible to persons or animals;*
- *Violate any law or regulation governing water pollution or wastewater treatment and disposal except for the rule that the variance is requested from;*
- *Pollute or contaminate state waters in violation of 75-5-605 MCA;*
- *Degrade state water unless authorized pursuant to 75-5-303 MCA; or*
- *Cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.*

The Department determines that installation and use of an unsealed pit privy on this property does not present risk of violating the above criteria. The Department has assessed the site conditions and has determined that the proposed privy location will be protective of public and environmental health.

The property is isolated from any neighboring development, wells, or surface waters and meets all regulatory setbacks for locating a privy. The proposed location of the privy is not likely to cause a nuisance to neighboring landowners or present a risk to any actual or potential drinking water supply. The neighboring land is owned by the U.S. Bureau of Land Management and unlikely to be developed in the future.

The pit privy will only be approved to accept toilet waste, and the structure served will have no running water. The soils on site are clay, which will provide for effective treatment of the toilet waste before reaching groundwater. The permit will require that the Department inspect the privy before it is put to use and during that inspection we will ensure that there is no evidence of shallow groundwater or springs at the proposed privy location. We will also inspect the privy structure to ensure that it is constructed properly to provide adequate ventilation and prevent access to insects and pests.

Further, the Department is proposing conditions be incorporated into this variance approval which will ensure that approving this pit privy will not present a future risk to environmental or public health or result in a nuisance to the public.

8. RESTRICTIONS ON A VARIANCE

The Missoula City-County Health Code, Administrative Section, Section 6(F) provides that the Board shall not approve a variance if the applicant's proposal may adversely affect the health, safety, or welfare of any individual or cause adverse environmental effects greater than those effects caused by uses commonly permitted by the Code.

Based on the analysis in Criterion 5, the Department determines that granting this variance will not adversely affect the health, safety, or welfare of any individual or cause adverse environmental effects greater than those effects caused by uses commonly permitted by the Code.

9. CONCLUSION

Staff recommends **approval** of the variance request to allow the issuance of a permit for an unsealed pit privy and to waive the fees associated with this variance request, **with the following conditions:**

1. By March 31, 2020, the Applicant will secure a septic permit for construction of the unsealed pit privy;
2. By June 30, 2020, the Applicant will complete construction of the unsealed pit privy and contact the Department for inspection before use;
3. The property may only have one occupied structure unless the pit privy is replaced with an approved wastewater treatment and disposal system;
4. The existing septic tank on the property must be properly abandoned in accordance with Regulation 1 of the Health Code;
5. No occupied structure on the property may have a running water supply of any kind plumbed into or out of the structure;
6. The pit privy must be constructed in such a location that it is not visible from MT Highway 200;
7. The runoff from the on-site spring must be permanently re-routed so that it meets the minimum 100' setback to the privy;
8. Except as allowed by this variance, the privy must meet the construction and location requirements of MT DEQ Circular-4 and the Missoula City-County Health Code & Alternative Systems Manual;

9. This variance approval is non-transferrable and is only valid while the property is owned and occupied by the Applicant. If the Applicant transfers ownership of the property or no longer resides on the property, the variance approval and septic permit will be void in their entirety;
10. Failure to comply with the conditions of the variance and any permit issued under the variance will void the variance and the resulting septic permit in their entirety;
11. This variance does not relieve the Applicant of any obligations under other local, state and federal laws or regulations; and,
12. Approval of this variance request does not constitute approval of any new or increased use.

BEFORE THE MISSOULA CITY-COUNTY BOARD OF HEALTH

November 21, 2019

In the Matter of the Variance	}	PROPOSED Findings of Fact
Request of Roger A. Garman	}	Conclusions of Law
	}	And Decision

INTRODUCTION

1. Roger A. Garman (Applicant) has applied for variances from certain provisions in Regulation 1 and the Administrative Section of the Missoula City-County Health Code (Health Code) as well as the Alternative Systems Manual (Alt Manual) pertaining to unsealed pit privy location requirements. The Applicant’s variance request is comprised of two main parts- 1)that the Missoula City-County Health Board (Board) approve the permitting of an unsealed pit privy in a location that does not meet the location requirements currently required by state and local rules, and 2) that the Board waive the variance application fee (currently \$725) in its entirety.
2. The applicant requested variances from the following regulations:
 - Health Code, Regulation 1, Section 13(A), which states, in part, “Alternative treatment systems must meet the requirements prescribed in the Missoula City-County Alternative Systems Manual” (Alt Manual).
 - Alt Manual, Section 8.2.4, which states, “Unsealed pit privies may be approved only for use in remote locations that are not accessible to septic tank pumpers”.
 - Health Code, Administrative Section, Section 6(D), which states, in part, “the application fee must be paid in full before a variance will be considered”.
3. The Applicant submitted a variance application to the Missoula City-County Health Department (Department) on September 26, 2019. The Department determined that the variance application was complete on October 4, 2019. A hearing was scheduled before the Health Board for November 21, 2109 at 12:15 p.m. or shortly thereafter.
4. After public notice was given, a hearing on the variance request was held by the Board on November 21, 2019. At the hearing, information was presented by Department staff and the Applicants. An opportunity for public comment was provided at the hearing.
5. Based on the information presented at the hearing, including written materials and maps, the Board makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

6. The subject property, owned by the Applicant, is located at 25580 Highway 200 East, Bonner, MT 59823, T13N, R16W, S08, Geocode 04-2203-08-1-01-01-0000, legally described in COS 1505. The property is 12.258 acres.
7. The tract of land was created as a remainder parcel when Hwy 200 was declared. When created, this tract was not subject to the sanitation in subdivision review requirements of Title 76-4, MCA.
8. In 1985, the Department issued a septic permit (permit #85-065) authorizing the installation of a septic system to serve a 3-bedroom structure. The structure that was served by this septic system is no longer on the property and the septic system is no longer in use. There is currently a well on the property that is non-functional. Reconnecting to this septic system is unfeasible for several reasons: its condition is unknown, it likely does not meet current code requirements for reconnection, it is located on an elevated portion of the property that is not accessible during winter months, and there is not a functional water supply on the property.
9. The Applicant has owned and lived on this property for well over a decade without approved toilet facilities which constitutes a violation of Regulation 1 of the Health Code. He currently resides on the property in an unplumbed pull-behind camper.
10. Over the years, the Applicant has accumulated large amounts of solid waste, community decay, and junk vehicles on the property. Pacific Recycling, Republic Services, and private foundations teamed up with the Health Department to remove over 150 tons of solid waste and nearly 20 tons of recyclable metal from the property in 2018. As part of that process, the Applicant has entered into a formal compliance agreement with Missoula County to ensure that the property, once cleaned, is kept free of solid waste, junk vehicle, and/or community decay violations in the future. An additional requirement of the compliance agreement is that the Applicant apply for a septic permit to install approved toilet facilities on the property if there are any occupied structures on-site.
11. Because the cleanup on this property is on-going, the Department feels it is important that the Applicant find a way to legally reside on the property so that he can continue his progress towards remedying the solid waste and community decay violations that remain on the property.
12. On July 13, 2018, as required by the compliance agreement, the Applicant submitted a septic permit application (#2018-161), requesting to install a full septic system on the property. He has since modified the application to request a permit for a composting toilet upon realizing the costs associated with installing a full septic system and new water supply on the property. However, the code-compliant

composting toilets available are also fairly expensive (\$2000-\$4000) and the Applicant states he cannot afford to purchase one of these.

13. The applicant is now requesting a permit for an unsealed pit privy because it is a wastewater treatment and disposal system that is within his financial means to construct.
14. On August 30, 2019, the Department informed the Applicant that a septic permit for an unsealed pit privy could not be issued for this property because state and local regulations limit unsealed pit privies to properties that are remote and inaccessible to septic tank pumps. The subject property abuts a state highway and is not inaccessible to septic tank pumps.
15. The Health Code requires that a variance application be submitted within the 30 days following the denial of a proposed action. On September 26, 2019, the Applicant applied for a variance, within the required timeframes.
16. On October 4, 2019, the Department notified the Applicant that the application was complete, and that the variance hearing was scheduled for November 21, 2019.
17. On November 8, 2019, the Department notified adjacent property owners of the variance request. Information has also been made available on the Department's website at www.missoulacounty.us/septic.
18. The Missoulian published legal notice of the variance request on November 10 & 17, 2019.
19. The Applicant has stated that his limited financial means make it impossible for him to afford to fund the construction of a conventional septic system or composting toilet and water supply for the property. He stated that his income is less than \$5,000 per year and his age (71) makes it difficult for him to work more.
20. The Department has determined that the variance is necessary to address extraordinary conditions that the applicant could not have reasonably prevented when considering the Applicant's resources and age. The enforcement history and scope of solid waste, clean up, and resources put toward this property create extraordinary conditions. Missoula County contracted with Republic Services and Pacific Recycling to remove over 150 tons of solid waste and nearly 20 tons of recyclable metal from the property in 2018. As part of that process, the Applicant has entered into a formal compliance agreement with Missoula County to ensure that the property, once cleaned, is kept free of solid waste, junk vehicle, and/or community decay violations in the future. An additional requirement of the compliance agreement is that the Applicant apply for a septic permit to install approved toilet facilities on the property if there are any occupied structures on-site. The

Department does not feel that the Applicant could have reasonably prevented the conditions necessitating this variance. Further, the Department feels that the Applicant will be more able to continue his cleanup of the property if living on-site. Without this variance, the Applicant will not be able to legally reside on the property. It is likely that the remaining solid waste and community decay violations will continue to exist if the Applicant no longer lives on-site.

21. The Applicant has stated that installing a conventional septic system and water supply would be financially impossible for him to achieve.
22. The Department has determined that that not granting this variance would result in undue hardship due to the Applicant's inability to afford a conventional septic system or composting toilet as well as other personal limitations that render the Applicant unable to proceed with a conventional septic system. Further, not granting this variance would result in the Applicant being unable to reside on his property in compliance with the Health Code and would likely result in undue hardship because the Applicant would have to then seek alternate living arrangements.
23. The Applicant has stated that there is no reasonably feasible alternative which would comply with the requirements because he cannot afford a conventional septic system or composting toilet.
24. The Department has determined that there is no reasonably feasible alternative which would comply with the requirements due to the Applicant's limited financial means. The Department has reviewed the Applicant's financial records and agrees that installing a conventional septic system or composting toilet is not reasonably feasible for the Applicant.
25. The Department has determined that the Applicant's request for a variance to allow permit issuance for an unsealed pit privy and relief from the fee requirements of the variance process is not more than the minimum needed to address the extraordinary conditions.
26. The Department has assessed the site conditions and has determined that the proposed privy location will be protective of public and environmental health. The property is isolated from any neighboring development, wells, or surface waters and meets all regulatory setbacks for locating a privy. The proposed location of the privy is not likely to cause a nuisance to neighboring landowners or present a risk to any actual or potential drinking water supply. The neighboring land is owned by the U.S. Bureau of Land Management and unlikely to be developed in the future.
27. The pit privy will only be approved to accept toilet waste, and the structure served will have no running water. The soils on site are clay, which will provide for effective treatment of the toilet waste before reaching groundwater. The permit will require that the Department inspect the privy before it is put to use and during that inspection the Department will ensure that there is no evidence of shallow

groundwater or springs at the proposed privy location. The Department will also inspect the privy structure to ensure that it is constructed properly to provide adequate ventilation and prevent access to insects and pests.

28. The Department has proposed conditions be incorporated into the variance approval to ensure that the pit privy will not present a future risk to environmental or public health or result in a nuisance to the public.
29. The Department has determined that the proposed variance will not contaminate any potential or actual drinking water supply, pollute or contaminate state waters, in violation of §75-5-605 MCA, or degrade state waters unless authorized pursuant to §75-5-303 MCA.
30. The Department has determined that the proposed variance will not cause a public health hazard as a result of access to persons, animals, insects, rodents, or other possible carriers of disease to humans.
31. The Department has determined that the proposed variance will not violate any law or regulation governing water pollution or wastewater treatment and disposal except for the rule that the variance is requested from.
32. The Department has determined that the proposed variance will not cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.
33. The Department has determined that granting this variance will not adversely affect the health, safety, or welfare of any individual or cause adverse environmental effects greater than those effects caused by uses commonly permitted by the Code.
34. Staff recommends approval of the variance request to allow the issuance of a permit for an unsealed pit privy and to waive the fees associated with this variance, with the following conditions:
 1. By March 31, 2020, the Applicant will secure a septic permit for construction of the unsealed pit privy;
 2. By June 30, 2020, the Applicant will complete construction of the unsealed pit privy and contact the Department for inspection before use;
 3. The property may only have one occupied structure unless the pit privy is replaced with an approved wastewater treatment and disposal system;
 4. The existing septic tank on the property must be properly abandoned in accordance with Regulation 1 of the Health Code;
 5. No occupied structure on the property may have a running water supply of any kind plumbed into or out of the structure;
 6. The pit privy must be constructed in such a location that it is not visible from MT Highway 200;

7. The runoff from the on-site spring must be permanently re-routed so that it meets the minimum 100' setback to the privy;
8. Except as allowed by this variance, the privy must meet the construction and location requirements of MT DEQ Circular-4 and the Missoula City-County Health Code & Alternative Systems Manual;
9. This variance approval is non-transferrable and is only valid while the property is owned and occupied by the Applicant. If the Applicant transfers ownership of the property or no longer resides on the property, the variance approval and septic permit will be void in their entirety;
10. Failure to comply with the conditions of the variance and any permit issued under the variance will void the variance and the resulting septic permit in their entirety;
11. This variance does not relieve the Applicant of any obligations under other local, state and federal laws or regulations; and,
12. Approval of this variance request does not constitute approval of any new or increased use.

Based on the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

Regarding the Applicant's request for variances allowing the Department to grant final approval for the existing septic system:

35. This Applicant's request to install an unsealed pit privy at 25580 Highway 200 E, Bonner, MT 59823 is prohibited by the Health Code, Regulation 1, Section 13(A) and Alt Manual, Section 8.2.4.
36. Notice requirements for the variance have been provided as required in the Health Code, Administrative Section 6(G).
37. The Applicant has demonstrated that this variance request meets all the criteria for issuing a variance subject to conditions in accordance with Section 6(E) of the Health Code, Administrative Section.
38. This variance request is necessary to address extraordinary conditions that the Applicants could not have reasonably prevented based on Findings of Fact 19 and 20.
39. Compliance with the requirements from which this portion of the variance is requested would result in undue hardship to the Applicants based on Findings of Fact 21 and 22.

40. No alternatives that comply with the Health Code drainfield location requirements are reasonably feasible based on Findings of Fact 23 and 24.
41. This variance request is not more than the minimum needed to address the extraordinary conditions based on Findings of Fact 25.
42. This variance request meets the additional criteria required for a variance from Regulation 1 based on Findings of Fact 26, 27, 28, 29, 30, 31, and 32.
43. The variance will not adversely affect the health, safety, or welfare of any individual or cause adverse environmental effects greater than those effects caused by uses commonly permitted by the Code based on Findings of Fact 33.

VARIANCE DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board makes the following decision:

The Board grants **approval** of the variance request to allow the issuance of a permit for an unsealed pit privy and to waive the fees associated with this variance request, **with the following conditions:**

1. By March 31, 2020, the Applicant will secure a septic permit for construction of the unsealed pit privy;
2. By June 30, 2020, the Applicant will complete construction of the unsealed pit privy and contact the Department for inspection before use;
3. The property may only have one occupied structure unless the pit privy is replaced with an approved wastewater treatment and disposal system;
4. The existing septic tank on the property must be properly abandoned in accordance with Regulation 1 of the Health Code;
5. No occupied structure on the property may have a running water supply of any kind plumbed into or out of the structure;
6. The pit privy must be constructed in such a location that it is not visible from MT Highway 200;
7. The runoff from the on-site spring must be permanently re-routed so that it meets the minimum 100' setback to the privy;
8. Except as allowed by this variance, the privy must meet the construction and location requirements of MT DEQ Circular-4 and the Missoula City-County Health Code & Alternative Systems Manual;
9. This variance approval is non-transferrable and is only valid while the property is owned and occupied by the Applicant. If the Applicant transfers

ownership of the property or no longer resides on the property, the variance approval and septic permit will be void in their entirety;

10. Failure to comply with the conditions of the variance and any permit issued under the variance will void the variance and the resulting septic permit in their entirety;
11. This variance does not relieve the Applicant of any obligations under other local, state and federal laws or regulations; and,
12. Approval of this variance request does not constitute approval of any new or increased use.

DATED this 21st day of November, 2019.

Ross Miller
Chairman, Missoula City-County Board of Health