



### Decision on Appeal of Courtney Johnson from Notice and Order of Abatement

The Petersburg Borough Assembly conducted a hearing on October 20, 2020, during which it heard testimony and argument, and received and reviewed documents, relating to the Appeal of Courtney Johnson from an August 3, 2020 *Notice and Order of Abatement* issued by Utility Director Karl Hagerman. The *Notice and Order of Abatement* related to the failure of the residence located at 410 Mitkof Highway to be connected to the borough sewer system and the presence of raw sewage at the property, constituting a nuisance.

Testimony and argument was received from Appellant, Courtney Johnson and from Borough Employees Karl Hagerman (Utility Director), Justin Haley (Wastewater Operations Supervisor), Joe Bertagnoli (Building Official), and Petersburg Police Department Officer Louis Waechter. The written Record on Appeal ("ROA") before the Assembly consists of 40 pages.

In accordance with Petersburg Municipal Code (PMC) 9.16.080G, the Assembly hereby adopts the following Written Decision.

#### FINDINGS OF FACT

1. Courtney Johnson ("Owner") is the owner of the residence located at 410 Mitkof Highway ("the residence" or "the property"). (ROA page 32<sup>1</sup>)
2. The residence is located on a hillside above and adjacent to a body of water referred to as the Wrangell Narrows. (Testimony of Karl Hagerman)
3. The residence is located within 150' of the borough sewer system, but is not connected to the system. (Testimony of Karl Hagerman; ROA page 22)
4. The prior owners of the property received notification requiring connection of the residence to the borough sewer system. (Testimony of Karl Hagerman)
5. On July 24, 2020, Officers Waechter and Popp of the Petersburg Police Department went to the residence in search of a third party on an active felony warrant. Owner gave the Officers permission to search the residence. (Testimony of Officer Waechter)
6. While at the property, Officer Waechter saw raw sewage and toilet paper on the ground, next to what appeared to be a broken sewer pipe, directly off the back deck of the residence. (Testimony

---

<sup>1</sup> Some pages of the Record on Appeal have two page numbers. The references herein are to the typed numbers located at the bottom right of each page.

13. The *Notice and Order of Abatement* directed the nuisance to be abated by no later than 5:00 p.m. on August 18, 2020. (ROA page 5)
14. On August 18, 2020, Owner filed with the Borough Clerk a Notice of Appeal from the provisions of the *Notice and Order of Abatement*. (ROA pages 31-32)
15. Following the filing of the Notice of Appeal, an inspection of the site was scheduled with the Owner. (Testimony of Karl Hagerman)
16. On August 24, 2020, an inspection of the property was conducted by Joe Bertagnoli, Borough Building Official, Justin Haley, Borough Wastewater Operations Supervisor, and other Borough Officials. (Testimony of Justin Haley and Joe Bertagnoli) Both Joe Bertagnoli and Justin Haley prepared reports of the inspection. (ROA pages 25-26) Photographs were taken by Joe Bertagnoli during the inspection. (ROA pages 27-29)
17. The inspection disclosed that Owner and another individual had reconnected the residence to the septic tank, via a corrugated plastic pipe laying on the ground, and had run a new outfall line from the septic tank to a nearby stream which ran directly into the ocean, the original outfall line being unusable. The top of the septic tank was covered with earth and vegetation, making the inspection hatches inaccessible. (Testimony of Justin Haley and Joe Bertagnoli; ROA pages 25-29)
18. The Owner was advised at that time that the work performed was not acceptable in that the materials used were not in accordance with Borough Code, the outfall into the stream was a code and regulatory violation, and the residence needed to be connected to the borough sewer system. (Testimony of Justin Haley and Joe Bertagnoli; ROA pages 25-26)
19. The Alaska Department of Environmental Conservation (ADEC) recommends that septic tanks be pumped every two years at a minimum. (ROA page 25). The septic tank at the property has not been pumped for many years. Since 2008, neither the Borough nor the private septic pumping company has serviced this septic tank. (Testimony of Justin Haley; ROA page 25)
20. On August 25, 2020, Justin Haley spoke with ADEC official Raymond Zimmer. Mr. Zimmer advised that while marine discharges from septic systems were previously acceptable, secondary treatment and disinfection is now required, and that compliance with the current regulations is required when an owner performs repair or component replacement on an existing system. (ROA page 30)
21. It is probable that the septic system at the property is not functioning properly. The septic tank had earth and vegetation growth on it, and did not appear to have been accessed in many years. (Testimony of Justin Haley; ROA pages 25, 28)
22. On October 9, 2020, the Notice of Hearing on Appeal was served on the Owner by hand delivery. (ROA pages 33-39) Documents to be utilized by the Borough officials at the hearing were provided to Owner. (ROA pages 3-30, 40)
23. On October 20, 2020, the hearing on Owner's appeal was held before the Assembly. Witnesses were sworn in by the Borough Clerk prior to giving testimony. The Owner and the Utility Director were provided the opportunity to testify, and to call and question witnesses and present documents.

states that the connection shall be at the expense of the owner. Further, the Borough does not issue a "Certificate of Occupancy", or undertake to verify code compliance, when a house is sold within the Borough.

10. Under PMC 14.08.080C, following the official notice, the property owner is charged for borough sewer service even if the owner has failed to complete the required connection.
11. Whether the Owner was aware, or should have been aware, of the lack of connection from the residence to the borough sewer system at the time she purchased the residence is not relevant for purposes of this appeal. The Owner is the party responsible under PMC 14.08.080A to comply with the connection requirements, and lack of knowledge of the applicable state of facts does not excuse compliance.
12. The Notice of the Hearing on Appeal was served upon the Owner in accordance with PMC 9.16.080B.
13. The Appeal Hearing was timely held under PMC 9.16.080B, which requires that a hearing be held no less than ten days, nor more than sixty days, from the date the appeal was filed with the Borough Clerk. The sixtieth day fell on a weekend (October 17, 2020), and the hearing was held on the next following business day (October 20, 2020).

Accordingly, the appeal filed by the Owner from the Utility Director's August 3, 2020 *Notice and Order of Abatement* is hereby DENIED, and the existence of a nuisance is AFFIRMED. The Owner is ordered to abate the nuisance by bringing the property into full compliance with the requirements set out in the *Notice and Order of Abatement*, no later than thirty (30) days from the date of the Borough Clerk's distribution of this Decision. If the required corrective action is not taken, and timely and proper abatement does not occur, the Utility Director is authorized to take action on behalf of the Borough as set out in the *Notice and Order of Abatement*, including without limitation (1) disconnecting water service to the residence under PMC 14.04.130, (2) undertaking abatement under PMC 9.16.070A(2), the cost and expense of which is to be charged to the Owner, and/or (3) imposing civil penalties and/or seeking criminal fines.

In accordance with PMC section 9.16.090, this Decision may be appealed to the Superior Court, First Judicial District, for the State of Alaska within 30 days of the date of the Clerk's distribution.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Jensen, Mayor

Certificate of Service:

This Decision was distributed by Debra K. Thompson, Borough Clerk, on November \_\_\_\_, 2020, by [personal delivery or US Mail] to the following: Courtney Johnson [Insert mailing address, if applicable]