

From: [Peter Adams](#)
To: [Paula Wilson](#)
Subject: FW: Negotiated Rulemaking - Individual/Subsurface Sewage Disposal: Docket No. 58-0103-2301
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Sent: Thursday, November 30, 2023 16:10
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Subject: Negotiated Rulemaking - Individual/Subsurface Sewage Disposal: Docket No. 58-0103-2301

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Idaho Board of Environmental Quality

via:

Peter Adams
Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706

I became aware today that the Board of Environmental Quality is conducting a Negotiated Rulemaking regarding IDAPA 58.01.03. Please consider the following comments regarding:

Negotiated Rule Draft No. 2, Docket No. 58-0103-2301
58.01.03 – INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES AND RULES FOR CLEANING OF SEPTIC TANKS

Comment 1:

"001. SCOPE, CONFLICT, AND RESPONSIBILITIES.

...

02. Conflict of Rules, Standards, and Ordinances. Where a provision of these rules conflicts with a provision of any state or local zoning, building, fire, safety, or health regulation, standard, or

ordinance, the provision that, in the Director's judgment, establishes the higher standard for promoting and protecting the health and safety of the people prevails."

This language in Draft #2 asserts that the Director's personal judgment shall prevail over the duly-enacted State and local zoning, building, fire, safety and health regulations, and, thereby, asserts the Director's sole jurisdiction over the respective enabling State and local statutes and ordinances enacted by State and local legislative entities.

This language is in direct conflict with the enabling Statute, Title 39 Health and Safety, Chapter 36 Water Quality, which states at 39-3601:

"The Director, in cooperation with such other agencies as may be appropriate, shall administer this chapter."

In addition, the proposed language, by giving the Director sole discretionary authority, based solely on the Director's personal judgement, to over-ride all other laws and regulations without any rules or procedures by which such judgements would be made, defeats the purpose of the Idaho Administrative Procedures Act itself.

The proposed language should be amended to reflect that the fact that the Director must *cooperate* with other agencies, including local zoning, building, fire, safety and health authorities. The language should also include a set of rules the Director must follow in making determinations regarding conflicts.

Comment 2:

"003. DEFINITIONS.

...

05. Bedroom. *A habitable room capable of double occupancy within a dwelling that meets state or local building code requirements applicable to bedrooms and includes methods of ingress and egress. The local building authority may designate any additional room as a bedroom (e.g., loft).*

..."

In Valley County, where groundwater is an issue in most accessible and economically-developable land, the cost of, and delay in, developing housing is heavily influenced by the septic approval process which currently requires groundwater monitoring prior to any consideration of construction. Much of the accessible and economically-developable land requires at least one year of groundwater monitoring before any decision is made as to whether housing can be developed. In quite a few areas where drainfield fill material must be brought to the site, this monitoring process is for a minimum of five (5) years before a decision can be made regarding the feasibility of developing housing. The septic approval and design

process is arguably the most restrictive bottleneck in developing housing in Valley County.

Adding complication, confusion and cost to the approval process is the apparent lack of any clear legal definition in the enabling statute, current rules, and Technical Guidance Manual of two crucial elements of the regulatory framework: the meanings of "bedroom" and "dwelling unit".

The current working definition of "bedroom" applied by septic regulators is essentially 'any room which provides privacy and has code-compliant egress'. This means that any room with a doorway that could be closed off with a door or perhaps a curtain that also has a window legally big enough to climb through is considered by septic regulators to be a bedroom. For example, offices, dens and pantries can all be classified as bedrooms. So can laundry rooms, craft rooms, and storage rooms. This is not a trivial issue.

More rooms being classified inaccurately by septic regulators as bedrooms cause a cascade of effects. None of these are favorable for the homeowner, the environment, the economy or society

Allowing rooms that are not actually bedrooms to be classified as bedrooms by septic regulators puts the home designer, builder and owner in a position where only undesirable options are available. These options are:

1. Several smaller rooms which would otherwise be a home office, pantry, library, laundry room, craft room, or store room, could be combined into one big room which would be classified, though not used as, a bedroom, thus reducing the total bedroom count. This reduces energy efficiency by reducing the ability to manage heating by zone. It also reduces utility by combining incompatible uses into a single space.

2. The office, library, pantry, laundry room, craft room, store room could be designed with no windows or with windows too small to legally climb through and thus could not be considered as bedrooms by septic regulators. This decreases home comfort and personal health and increases energy use by decreasing use of natural light and natural ventilation. It also increases the risk of injury or death due to fire by replacing what could have been egress windows with no windows or windows too small to climb through.

3. Construct fewer bedrooms than could otherwise be designed into a house of the same size. This reduces the value of the house on a cost per square foot basis which decreases property tax revenues. It also increases the cost of the house on per-bedroom basis, which pushes the price of housing further out of reach of working families with children. For example, a 1500 square foot house can easily accommodate three bedrooms and a home office. But with the office classified by septic regulators as a bedroom, the home is designed with two bedrooms and an office. Or, the office gets pushed into the living room without any separating walls or doors, which, for anyone working at home with children in the house knows won't function well.

4. Install a larger and more expensive septic system.

5. Lie. Design the house in a way that it is compliant with septic regulators' definition of bedrooms, then when the Certificate of Occupancy is issued, move the interior walls and add doors. This is the worst option because it puts designers, builders and families at moral and legal hazard and undermines the relationship between the government and the citizens.

The "double occupancy" referenced in the draft language does not appear to be a concept defined in the International Residential Code for residential bedrooms, nor is it defined in the draft language. Reference to double occupancy should be defined or removed.

The draft language also allows any room big enough to be a bedroom that affords privacy and has a window legally large enough to climb through to be classified as a bedroom. The draft language merely codifies the undesirable working definition described above.

The best solution is to develop a legal definition of "bedroom" that is clear, enforceable and, above all, accurate. Designating a room as a bedroom just because it could potentially be used as one, and thereby causing greater difficulty and expense for homeowners, is unjust and immoral. Defining bedrooms in such a broad way as the draft language provides in order to prevent scofflaws unfairly penalizes every honest involved party. It's like setting the speed limit on the freeway to 30 mph when it should be 65 mph so it's easier to catch drivers doing 80 mph.

Local and state building code officials are best trained and authorized to review and approve plans and to determine which rooms are bedrooms. They are also best positioned to monitor compliance since they are part of the construction process. Building permit application processes typically already include penalties for applicants providing false information on plans to building permit agencies (i.e. falsely labelling a bedroom as an office in a building permit application). The existing septic rules already provide legal remedies for septic failures and septic regulators already have the ability to inspect septic systems at all reasonable times. Septic regulators should evaluate septic permit applications based on the plans provided by and with rooms identified by the applicant. Septic regulators should not be functioning as a second building code and zoning enforcement agency.

The definition of a "bedroom" should read:

"05. Bedroom. *A room in a dwelling that is so designated on the building plans for said dwelling as approved or approvable by the state or local building code official."*

Comment 3:

"003. DEFINITIONS.

...

09. Dwelling Unit. A single unit with complete independent living facilities for one or more persons, including permanent improvements for living, sleeping, eating, cooking, and sanitation."

A definition of dwelling unit is needed. Currently, the working definition appears to be a single structure with at least one bedroom. Traditional and efficient housing design includes the use of separate structures on the same lot owned and utilized together by one family. The dwelling unit definition should read:

"09. Dwelling Unit. *A dwelling, whether comprised of one structure, or more than one separate buildings together on the same legal lot and owned by the same person, that provides complete independent living facilities for one or more persons living together, and which includes permanent improvements for living, sleeping, eating, cooking, and sanitation."*

Thank you very much.

Sincerely,

Marc Hodges

bcc:



Marc Hodges

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