




Late Backup

MEMORANDUM

TO: Mayor and Council
FROM: Rudy Garza, Assistant City Manager 
DATE: July 27, 2011
SUBJECT: On-site Sewage Facility Permit/License for 2700 Edgewater Drive
(July 28, 2011 Council Agenda Item 137)

This memo is to provide information regarding the current status of the permit/license for the on-site sewage facility (OSSF) at 2700 Edgewater Drive, as well as the appeal rights of the applicant or affected party of the stated permit/license. The Austin Water Utility (AWU) is the designated representative to administer and enforce Chapter 366 (*On-Site Sewage Disposal Systems*) of the Texas Health and Safety Code and Chapter 285 (*On-Site Sewage Facilities*) of Title 30 of the Texas Administrative Code, as adopted under Chapter 15-5 (Private Sewage Facilities) of the City of Austin Code.

Current Status of the Permit/License of the OSSF

Construction of the OSSF finally began in April of this year under the current Permit to Construct an OSSF. Several construction inspections of the OSSF have since been performed by the AWU in accordance with 30 TAC §285.3(d). Prior to any final OSSF construction inspection being scheduled and a License to Operate the OSSF issued, the AWU requires that the designer of the OSSF submit written assurance (in the form of a certification letter and an as-built drawing) that they inspected and approve the installation of the OSSF. The designer of the OSSF at 2700 Edgewater Drive submitted a certification letter on July 7, 2011 and an as-built drawing on July 15, 2011. The final OSSF construction inspection was performed and passed by AWU staff members on July 25, 2011.

In accordance with 30 TAC §285.3(e), the AWU must issue a written License to Operate an OSSF within seven calendar days after passing final inspection. AWU issued the License to Operate the OSSF at 2700 Edgewater Drive on July 26, 2011.

Appeal Rights of an Applicant or Affected Party of an OSSF Permit/License

In City Code Chapter 15-5, Article 1, relating to the regulation of On-Site Sewage Facilities, Section 15-5-7 of the City of Austin Code states, "[a] person aggrieved by an action or decision of the designated representative may appeal the action or decision to the city council." The applicable appeal process is set forth in City Code Chapter 2-5, Article 3, Division 2. Section 2-5-65 outlines the procedure for the public hearing as follows:

§ 2-5-65 CONDUCT OF PUBLIC HEARING ON AN APPEAL.

(A) Before opening a hearing on an appeal, the council shall decide preliminary issues raised by the parties, including whether to postpone or continue the hearing and whether the appellant has standing to appeal.

(B) A public hearing on an appeal shall proceed in the following order:

- (1) a report from City staff;
- (2) a presentation by the appellant, limited to five minutes;
- (3) comment by persons supporting the appeal subject to the time limitations prescribed in Section 2-5-29 (*Speaker Registration and Speaking Time*);
- (4) comment by persons opposing the appeal subject to the time limitations prescribed in Section 2-5-29 (*Speaker Registration and Speaking Time*); and
- (5) a rebuttal by the appellant, limited to three minutes.

As a preliminary matter, Council may address whether to postpone or continue the hearing or issues of appellant's standing to appeal. The appellant in this instance is the next-door neighbor to 2700 Edgewater Drive. As the appellant's property abuts 2700 Edgewater Drive, staff has not challenged the appellant's status as "[a] person aggrieved by an action or decision of the designated representative."

AWU staff determined that the property owner at 2700 Edgewater Drive met all applicable requirements for both the current Permit to Construct an OSSF and the License to Operate an OSSF. To file their appeal, Section 2-5-64 (6) required the appellant to provide "the reasons the appellant believes the decision does not comply with the requirements of the Code." This information from the appellant has been included in the agenda back-up for this Council Item 137. Council can either uphold AWU staff's determination that the applicable requirements have been met or can reverse staff's decision, with Council determining that certain requirements have not been met. In the instance of a reversal of staff's decision the Permit to Construct and License to Operate would be revoked and the facilities already in place could not be used. Because of constraints of the lot, corrective actions for the existing system may not be feasible. If no corrective action is feasible, then the existing facilities would have to be either properly abandoned or removed. Without an OSSF the property owner cannot get a certificate of occupancy for the house built at 2700 Edgewater Drive. Any other OSSF system may not be economically feasible for the property.

Should you have any questions or comments, please do not hesitate to contact me.

Cc: Marc A. Ott, City Manager
Greg Meszaros, Director, Austin Water Utility
David Juarez, Assistant Director, Austin Water Utility
Sayed Miri, Division Manager, Austin Water Utility
Clark Cornwell, Law Department
Ross Crow, Law Department