

Glenda Wiles

From: Phil Taylor [chipthree@hotmail.com]
Sent: Wednesday, October 02, 2013 11:12 AM
To: Glenda Wiles
Subject: To the County Commissioners Individually
Attachments: Sb Evasion Fullbright new revised.doc

Glenda, please distribute this to each county commissioner.

Thank you,

Phil Taylor

**Philip R. Taylor
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August 27, 2013

William Fulbright
Ravalli County Attorney
205 Bedford St., Suite C
Hamilton, MT 59840

Subject: Family Transfer Evasion of Subdivision Review

Dear Mr. Fulbright:

I have compiled a very large file related to a subdivision review exemption filed in 2004 by Mr. Theron Nelson, more commonly known as Terry Nelson, application number SEA – 04 – 114. The application and a chronology of events are contained in this letter. At the time of the application George Corn was the Ravalli County attorney and you were working in his office at that time as one of his deputy attorneys. I don't know if you specifically discussed these issues with Mr. Corn at that time but in his responses to the County commissioners as well as Nedra Taylor, who was the clerk and recorder at that time, it was clear to me that he was convinced this application was contrary to the existing Subdivision Regulations and his support in part came from existing Attorney General opinions which as you are well aware, are treated as law. The commissioners ultimately approved this family transfer exemption (by ignoring it) for subdivision review and I believe your review of the attached chronology can lead to no other result than the exemption was an evasion of the subdivision regulations. Plain and simple it was a violation of the law!

You will find that there were many objections to this attempt to evade the subdivision review process starting at the time the request by Mr. Nelson was made, but those complaints were ignored! I don't know why that occurred but it seemed political and the resulting position that Mr. Nelson now holds could have been or may be part of a political reward –a so called sweetheart political deal. When you complete your review of this letter we shall see what conclusion you reach. The review of this case needs to take place immediately because of the involvement of Mr. Nelson in his position as Director of Planning and his involvement in the recent legacy ranch subdivision application, his editing of the final sufficiency letter to open the door for approval and its final approval by the Ravalli County Commissioners.

In the period between 2002 and 2007 land sales and development in Ravalli County reached an all-time high. Subdivision regulations were in place and the planning department was charged with all reviews under those regulations including the family transfer exemption. The planning department could not handle, in a timely fashion, all that was required of them and they asked for help from the then Ravalli County clerk and Recorder, Nedra Taylor.

They asked Nedra if she could take over the review of family transfer exemptions which she agreed to do. Nedra then asked County attorney George Corn for clarifications regarding the use of family transfers and the possible evasion of subdivision review. Mr. Corn responded to Nedra on September 13, 2005. It is important to note that Mr. Corn's letter was also sent to Patrick O'Herren, Director of Planning at the time, and to the board of County Commissioners. Mr. Corn cited an opinion from the Montana Attorney General emphasizing "that since subdivision laws are designed to promote public health and welfare, they are to be liberally construed to affect the object of the law and exemptions must be narrowly applied." Mr. Corn points out, **"local governments are to closely scrutinize family exemptions and clearly have the authority to deny them."** He goes on to say "you have asked if there is a specific time period that may be (restrain from selling the transferred lots) considered. In view of the broadness of the above factors, it follows that depending upon other circumstances; a transfer of land created by exemption within a period of 4 to 5 years **is presumptively invalid.**" He went on to cite a court case between Rocky Mountain timberlands vs Lund, 265 Mont, 463, 877P,2d 1018(1994), **stating "you should also note that when a County clerk and recorder has knowledge that a document substituted for recording cannot be legally recorded She then has an obligation to refuse to record"**.

I refer you to the language of the Ravalli County Subdivision Regulations (RCSR) in existence at that time, Chapter 4 –5 – 2, **A Gift or Sale to a Member of the Immediate Family 76 – 3 – 207 (1)(b), MCA** c. Restriction on Subsequent Transfer

"the transfer or potential sale of the gifted tract created by the family gift or sale exemption within **three years of creation of the tract will result in the presumption that the use of the exemption was adopted for the purposes of evading the MSPA and the recordation of the instrument of conveyance of a parcel created by family gift or sale within three years of creation may be subject to refusal of the clerk and recorder.**"

Mr. Nelson had purchased this property from C. S. Enterprises, Inc. and Cecil Schoonover of Hope, Kansas on the 12th day of August 2004. He submitted an application to the planning department for the exemption on July 7, 2004, prior to his actual purchase of the land. On July 9, 2004, two days later a letter was sent to Mr. Nelson authored by Susan Vieth, planning technician notifying Mr. Nelson that he can use the requested exemption. This suggests to me that a request of this kind, approved and responded to within two days and prior to the actual land purchase, was tainted.

An excerpt of the Subdivision Regulations at the time states:

"The transfer or potential sale of the gifted tract created by the family gift or sale exemption within three years of creation of the tract will result in the presumption that the use of the exemption was adopted for the purpose of evading the MSPS and the recording of the instrument of conveyance of a parcel created by family gift or sale within three years of creation may be subject to

refusal of the clerk and recorder." *There is no ambiguity here, simply a straight forward explanation of what will happen if a person uses tactics to evade the regulations.*

I have scrutinized all of the files related to this family transfer exemption, that scrutiny led me to other questionable practices which I will discuss later, perhaps in a different letter, and to expediently handle the rest of this letter I will continue in a narrative fashion to point out all the things that went on, their inconsistencies, their inaccuracies, the denials of the obvious, the fictitious answers to many questions and finally the evasive tactics used by many involved to avoid compliance with the law. Each of the supporting documents for this narrative is on file in various offices of the county. In the event you cannot find them I will be glad to furnish them to you.

I've already informed you that the County Commissioners, the planning department, and Alex Beal, Deputy County Attorney and liaison to the board of commissioners, were all informed of the status of this request for a family transfer exemption by Mr. Nelson.

There was a public uproar over this transfer which started with complaints from a number of residents in and around that subdivision. Arnott, Potton and others were quick to write to the county commissioners, the planning department and the county attorney about the attempt by Terry Nelson to avoid subdivision review. Those complaints were generated in the fall of 2004 and continued until 2008. They included the governor in several complaints. Nothing was done.....not one letter or attempted explanation was sent to the complainants. Finally on July 19, 2007 a meeting was held to review this Family Transfer Exemption request in the offices of the county commissioners. The minutes of that meeting are quite revealing.

At this meeting Commissioner Chilcott stated "the situation is clear, however unfortunate. What they have here is someone who has taken advantage of the loophole who understood the practices. *(I don't know what Mr. Chilcott was referring to because there was and is NO LOOPHOLE! The loop hole is a figment of his imagination. Mr. Chilcott was ignoring the law and his responsibility to enforce it. The other commissioners are/were also guilty of avoiding the law.)* He noted Terry was aware of the elasticity of the regulations and it did make a profound impact on this body. *(Now just what was this "profound impact? Nothing has changed!)* He went on "The exemption process has been used statewide as an evasion process and no one can abuse it is better than someone who works in that profession. He stated that he does feel it was a subdivision but the litmus test was whether it met the law. The previous counsel (James McCubbin) stated he was never confident it was a winner to go after this invasion by Terry". *(And what is this all about? Were there questions raised with the former deputy*

attorney about this evasion? None that were recorded! What was meant by go after this evasion?) He felt it was marginal to spend the money and go after him, and the previous board chose not to do anything". He did not mention that this invasion was also in conflict with the growth policy which was in effect at the time. Granted, the growth policy is simply a policy and not law however it speaks of the desire of all citizens of this County to be protected as future developments occur. Mr. Chilcott was on the previous board, the board which first received complaints about this incident. *He ignored those complaints and instead made mention of his position in the above quoted minutes. Why he or others present at that meeting did not refer to the subdivision regulations and its requirements is beyond me. Why they didn't discuss the letter from George Corn to them explaining the law I don't know either.*

Terry Nelson commented at this meeting that he did a family transfer (to his kids and wife) but there were some people at his church who needed a lot so they bought that lot. He stated that he was helping them out! Then he sold the rest of the lots in order to feel better and get his life back in order. *Now I ask how does one differentiate between a person wanting a lot and anyone else when the point was it was not legal nor permissible to sell the lots, any lot, for at least three years and probably four years.*

Commissioner Chilcott then stated "Terry's family transfer came into focus when there was no provision and the state was so vague the evasion issue was un-enforceable. After Terry's application, the commissioners recognized it was a problem. In September 2005 the memo from George Corn came down and in 2006 the commissioners did re-write the regulations. Commissioner Chilcott stated corrective action was taken with the regulations in 2006, as that is when they established the evasion criteria." *However there was in fact evasion criteria that was not followed by the commissioners.*

Mr. Beal stated "The memo (From George Corn) was an attempt to provide a safe number of years between the application and the sale of any lots (4-5 years). Almost no other counties have done a time limit on these evasions. This is a state law problem and there is only so much the commissioners can do." *No this was not an attempt by George Corn to provide a safe number of years, it was a directive enforced by law (Attorney General's opinion) that if followed would give the county the lawful backing to deny the Family Transfer. And the Commissioners were the only body that could have denied the transfer.....*

Commissioner Thompson stated they tried to correct this during the 2005 legislation, but it did not pass. He stated while he does not like it, they have to follow the law.

Well the law is in the commissioners laps, they make the regulations that govern how the law is applied. Contrary to what Mr. Thompson said ,there was nothing introduced in the 2005 legislature that addressed Family transfers!

The remarkable thing about these minutes is the fact that there was an avoidance of a solution to the problem of this family transfer exemption request, the only legitimate solution available, a denial of this family transfer. Time and time again Mr. Nelson was taken to task by the commissioners and the complainants present, for illegally submitting his request for a family transfer exemption. Mr. Beale as legal counsel for the commissioners suggested only that the statute of limitations would probably prevent any correction in the whole matter. This exemption request was an avoidance of the subdivision regulations for Ravalli County. It would have been very simple for the commissioners to deny the request and remove the recorded documents which in effect gave legitimacy to this application. In fact the commissioners, the planning board, the clerk and recorder and the County attorney's office should have responded to the complaints submitted in the fall of 2004 and spring of 2005. However none of these entities or individuals did respond to the complaints, frustrating the complainants and in effect setting in motion what Mr. Beale claimed the running of the time for the statute of limitations. Whatever the case, it was not the fault of citizens that their complaints were ignored, and it proved to be another of those situations that occur in Ravalli County, where illogical decisions are made based on politics and political influence, not the law. The board of County commissioners at the time of these minutes, and the previous board were aware of what was happening with the family transfer exemption process. They knew full well what was going on with this case as well as with other family transfer exemptions. But heads were turned, ignoring the law and the oath's of office of the respective representatives. One would have to classify their actions as either incompetence or malfeasance in office.

So, in 2008 a mitigation agreement was prepared to mitigate the damages suffered by those individuals living in and around the subdivision. The date of that document is March 9, 2008. David T. Markette was the author of that agreement which in part stated" WHEREAS, the commissioners, in response to landowners claims have requested that the County attorney investigate land owner claims;". *I can find nothing in the record that supports this statement.* It was Mr. Nelson and his attorney Mr. Markette who decided to prepare such an agreement which would hopefully mitigate the damages experienced by those in and around the subdivision in question. *I cannot find anything documented that provides for the*

mitigation of such a problem by avoidance of the law and paying a fee for improvements that might satisfy the complaints filed. However, one must consider that a violation such as this, affects all taxpayers in the County and should be dealt with accordingly, specifically the transfer should have been denied originally, or should have been denied after this meeting took place.

Was there a conspiracy of sorts? Was Mr. Nelson already helping the Legacy Ranch owner/developer in their quest to get Legacy approved? I believe there was.

Since that time, on October 13, 2009, Mr. Nelson was elected to the office of the chairman of the Republican Central committee. He applied for the position of office manager for the planning department on February 7, 2011 when the requests for such a position clearly listed, Planning Director. The request was prepared by John Lavey, former Planning Department Director. This application and the entire selection process were tainted. There were a number of individuals who had the proper educational credentials and job experience, to fulfill this position. However the application process was circumvented by changing the name of the job solicitation. The minutes of those discussions were another in the incoherent ramblings of the County commissioners, justifying their vote for Mr. Nelson to the position.

In his role as Republican Central Committee chairman Mr. Nelson endorsed Alexandra Morton (Legacy Ranch co/owner,) in her application to run for public office.

In his role as planning administrator he opened the door for the Legacy Ranch subdivision approval by gutting the sufficiency letter sent to the developer by planning department staff.

October 10, 2012 "Insufficiency" letter from Planning Department to Applicant detailing 6 issues including water rights, environmental assessment issues, Refuge issues, etc.

November 16, 2012 Correspondence from Planning Department administrator, Terry Nelson, modifying previous the previous "insufficiency" letter. All environmental deficiencies were removed except for a list of identified plant species.

Earlier on November 16, 2001 Mr. Nelson sent a letter to the developer:

November 16, 2011 "Insufficiency" letter from Terry Nelson to applicant. Deficiencies remained on Porter Hill variance, the EA, water rights, etc. He then goes on to suggest the applicant hold off on additional sufficiency until the new subdivision regulations are passed. He attached some examples of chances he thought would be beneficial to the developer. These are not in the records provided by the Planning Department.

Mr. Nelson, is opposed to any control over developments occurring in Ravalli County. He said so during the meetings in 2006 related to the 1 per 2 zoning issues. I have video of those testimonies if you need confirmation of this. And now he has controlled the requirements of the development of the legacy ranch by modifying a sufficiency letter sent to the developer by the planning department. The following is a partial chronology of the events surrounding Mr. Nelson's response on the question of sufficiency.

- November 16, 2011 "Insufficiency" letter from Terry Nelson to applicant. Deficiencies remained on Porter Hill variance, the EA, water rights, etc. He then goes on to suggest the applicant hold off on additional sufficiency until the new subdivision regulations are passed. He attached some examples of changes he thought would be beneficial to the developer. These are not in the records provided by the Planning Department.
- May 10, 2012 Letter from Applicant requesting sufficiency review by RC Planning Department under the new regulations expected to go into effect in June, 2012.
- May 15, 2012 "Insufficiency" letter from Planning department to applicant. Same deficiencies as before.
- June 4, 2012 New subdivision regulation adopted in Ravalli County
- September 14, 2012 Response from Applicant to Planning Department. Note the applicant now states that water right, water use permits, impacts on Refuge, etc do not need to be addresses prior to Commissioners approval of preliminary plat. First time they seem to be "kicking things down the road".
- October 10, 2012 "Insufficiency" letter from Planning Department to Applicant detailing 6 issues including water rights, environmental assessment issues, Refuge issues, etc.
- November 16, 2012 Correspondence from Planning Department Director, Terry Nelson to Land Works about modifying previous "insufficiency" letter. Terry Nelson did in fact remove all 5 of the environmental and Refuge leaving 1 sufficiency issue for identifying the plant species. Issues in tact The correspondence references the discussion between applicant and Planning Department Administrator, Terry Nelson. All environmental deficiencies were removed except for a list of identified plant species.

November 27, 2012 Applicant supplies an updated plant list in response to Nov 16th "insufficiency" letter.

December 3, 2012 Planning Department sends letter stating sufficiency is granted and laying out the hearing schedule.

So where does this leave us? Mr. Nelson appears to be an opportunist who continues to use the system to further his best interest and enriching his acquaintances by his actions above. He hides behind a false prophecy of "What would God do" which was printed on one of his checks written to the planning Department, and his so called leanings toward his faith as justification for his actions, remember he sold the first family transfer lot to a church member because they needed it and sold it one month after the transfer was approved.. His actions have been and continue to be self serving, not in the interest of the citizens of this county but serving only to cause great expense to the taxpayer in the long term. The commissioners, either on purpose or because of their incompetence and/or malfeasance, have allowed this to get out of hand and his actions undeniably have led to the approval of the Legacy Ranch subdivision approval.

On another issue, when I reviewed the campaign finance reports I saw employees of the engineering firm that is handling the Legacy Ranch for the Morton's, Jason Rice and Raymond Dipasquale of Land Works, time and time again, donating to campaigns of political aspirants in Ravalli County, yourself included. I would think, though it's not illegal to accept such donations, that each commissioner and elected office holder would have returned those contributions because of the obvious, the possible conflict of interest and the appearance of impropriety.

I would appreciate your response to the above document and what you intend to do, if anything about these matters.

Phillip Taylor

Cc: Ravalli County Commissioners
Betsy Brandborg, Montana Bar Association