



Ravalli County Planning Department
215 South 4th Street, Suite F
Hamilton, Montana 59840
406.375.6530 Fax 406.375.6531 kwaller@rc.mt.gov

OG-14-03-43

March 12, 2014

Hon. Jeffrey H. Langton
District Judge, Dept. No. 1
Twenty-First Judicial District
205 Bedford St., Suite A
Hamilton, MT 59840

Subject: Court-Ordered Split, Cause No. DV-13-367

Dear Judge Langton:

Our office has been provided with a copy of the Notice of Amended Default Judgment, with regard to the above-referenced case. Attached is an Amended Subdivision Plat depicting a proposed Court-Ordered division of real property presently titled in the names of Debbie Thrall and Dean and Ramona Vance (Property Tax Identification #404810). The Ravalli County Subdivision Regulations apply to divisions of land in this area, unless a statutory exemption applies.

The Planning Department appreciates the opportunity to present written comments on this proposed division of land, on behalf of the governing body of Ravalli County. An exemption to this partition exists under §76-3-201(1)(a), MCA, which exempts divisions of land created by order of any court of record, provided that the method of disposition is not adopted for the purpose of evading subdivision review.

After expiration of an approved Subdivision Exemption for a Boundary Line Relocation (SEA-2009-15), the Plaintiff, Debbie Thrall, has been unsuccessful in negotiating a means to obtain sole ownership of the southern portion of the property jointly owned by Thrall and Defendants Dean and Ramona Vance. A Default Judgment was issued, following review of the Planning Department's November 5, 2013 comment letter, that ordered the property be partitioned such that the Plaintiff would receive sole ownership of what is shown as Lot 1B on the proposed

Amended Subdivision Plat, and the Vances would receive the remainder of the property, which would be incorporated into their larger, adjoining property to the north and west.

Recent discussions with project surveyor Terry Nelson and Thrall's attorney David Markette revealed that the Vance's adjoining property has been annexed into the Town of Stevensville. The original partition order may present issues with adding unincorporated land into a property within Town limits, and might not conform to annexation procedures. As a result, an Amended Default Judgment has been submitted to the Planning Department for review, which orders that the subject property be partitioned according to the proposed Amended Subdivision Plat, with the exception that the Vance's portion become a separate parcel, and not incorporated into their adjoining property to the north and west. The Vances would be granted sole ownership and clear title to this portion, while Thrall would receive sole ownership and clear title to the southern portion of the property, identified as Lot 1B of the proposed Amended Plat.

After review of the Amended Default Judgment and proposed Amended Plat (both enclosed), the Planning Department offers the following comments:

Findings of Fact

1. The requested action can be considered through the subdivision process.
2. Utilizing the Court-Order process limits the Ravalli County Board of County Commissioners' ability to consider data and mitigation measures typically found in subdivision review.
3. The Court-Order procedure limits citizens' opportunity to participate in the decision.
4. It is proposed that one existing lot be split into two lots, which, due to the resulting lot sizes, may limit usability.
5. A single family residence already exists on proposed Lot 1B, and various outbuildings exist on Lot 1B and the remainder lot.
6. It is recommended that a road/utility easement be established for the existing driveway improvement on proposed Lot 1B to benefit the remainder lot.
7. It is currently possible for the existing lot to be developed with up to 5 additional residential structures, subject only to review through the Montana Department of Environmental Quality (MDEQ) and/or Ravalli County Environmental Health Department (RCEHD). With the proposed two-lot subdivision, however, it would be possible for both proposed lots to each be developed with up to 5 additional residential structures, for a grand total of 10 additional structures, subject only to review through the above agency(ies). *Please Note: Additional structure provisions have been adopted, pursuant to recent changes in Montana State Legislature (M.C.A. 76-8).*
8. Both proposed lots will maintain less than 1 acre in size. At the BCC's March 6, 2014 Public Meeting, project surveyor Terry Nelson stated that the residence on proposed Lot 1B is currently connected to the Town of Stevensville municipal sewer system, and the remainder lot contains a barn without sanitation facilities. Nelson further explained that the barn could only connect to Town sewer through the annexation procedure.

Should the Court order the division of land without requiring review through the Montana Subdivision and Platting Act:

1. Written confirmation should be obtained from RCEHD that each lot meets or exceeds local and MDEQ standards for wastewater treatment and potable water (wells). Due to lot sizes, the lots will not meet certain County requirements, as proposed.
2. Current and future property owners should be made aware that further development of the properties may require, where appropriate, access permits from the Montana Department of Transportation, water and wastewater permits from RCEHD and/or MDEQ, or the following potential applications from the Planning Department: Buildings for Lease/Rent, Subdivision Exemption Application, or Subdivision Review. The Planning Department's research has confirmed that the property is not located within a Voluntary Zoning District, is not intersected by floodplain boundaries, and covenants or deed restrictions are not recorded on the property.
3. Current and future property owners should also be made aware that this letter does not constitute a substantive review of the proposal, such as when evaluating a subdivision application. Despite the provisions addressed in Item #2 above, the lots altered or created through any Court Order process might not:
 - possess legal or physical access;
 - be eligible for a State/County road access permit;
 - be able to utilize previous private access easements;
 - be eligible for County well or wastewater treatment (septic system) permits;
 - have access to utilities;
 - contain a usable building site; or
 - have beneficial economic use or value whatsoever.
4. Water rights, if any, should be transferred and used on the parcels in order to help protect area water users while guaranteeing access to water on each tract of land. A master irrigation plan addressing water distribution among the lots should be filed with the Amended Plat, if needed. Allocation of water should be a part of this master irrigation agreement. Any irrigation ditches located on or near the property should be shown on the Amended Plat with a 20-foot easement, as measured from the ditch center, for maintenance purposes.
5. The Townsend's Big-eared Bat has been identified as a species of concern within the same PLSS Section as the proposed property division, according to Ravalli County GIS data. The property owner should contact Martin Miller of the Montana Natural Heritage Program at (406) 444-3290 for additional information related to species of concern which may be located on or near the property.

Prior to the Court's review of the proposal:

It is requested that a development plan for the proposed lots be provided to the Court for consideration.

Conflict of Interest Statement: Terry Nelson is the Ravalli County Planning Department Administrator, a position he has held since 2011, and is also the surveyor of record for this project since the submission of the Boundary Line Relocation application to Planning in March 2009. As a County employee and Department Head, Mr. Nelson has made no attempt to

influence Planning Staff's review of the proposed court action, nor Staff's comment letter set forth above.

Should you have questions, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Waller", written over a horizontal line.

Kevin Waller
Planner

Enc: Notice of Amended Default Judgment, Proposed Amended Subdivision Plat

Cc: David Markette, Markette and Chouinard, PC, 601 S. 1st St., Hamilton, MT 59840
Board of County Commissioners
Clerk and Recorder
County Attorney's Office
SEA File 2009-15
Outgoing Correspondence File

RECEIVED

JAN 23 2014
10-14-01-12
Ravalli County Planning Dept.

HON. Jeffrey H. Langton
District Judge - Dept. No. 1
Twenty-First Judicial District Court
Ravalli County Courthouse
205 Bedford- Suite A
Hamilton, MT 59840
(406) 375-6780
Fax: (406) 375-6785

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

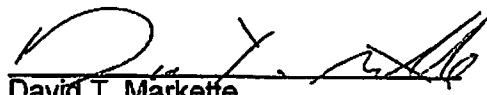
<p>DEBBIE THRALL,</p> <p>Plaintiff,</p> <p>vs.</p> <p>DEAN VANCE and RAMONA VANCE,</p> <p>Defendants.</p>	<p>CAUSE NO. DV-13-367</p> <p>Dept. No. 1 (Jeffrey H. Langton)</p> <p>NOTICE OF SERVICE AMENDED DEFAULT JUDGEMENT</p>
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TO: RAVALLI COUNTY PLANNING DEPARTMENT

Pursuant to Section 76-3-201(4) MCA, notice is hereby given that the Plaintiff in the above-captioned action obtained an Amended Default Judgement, and according to the Order this Amended Default Judgement shall be submitted to Ravalli county Planning Office for review. A copy of said petition is attached hereto as Exhibit "A".

DATED this 22nd day of January, 2014.

MARKETTE & CHOUINARD, P.C.


David T. Markette
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Rene Smith, legal assistant for David T. Markette, do hereby certify that on the 2nd day of January, 2014, I did serve a copy of **NOTICE OF AMENDED DEFAULT JUDGEMENT** by depositing copies thereof in the U.S. Mail at Hamilton, Montana with first class postage thereon and addressed to:


Dean Vance
PO Box 452
Stevensville, MT 59870

Ravalli County Planning Dept.
215 S. Fourth Street, Suite F
Hamilton, MT 59840

Ramona Vance
PO Box 452
Stevensville, MT 59870

Ravalli County Commissioner's Office
215 S. Fourth Street, Suite A
Hamilton, MT 59840

Ravalli County Attorney's Office
205 Bedford Street, Suite C
Hamilton, MT 59840




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1 Hon. Judge Jeffrey H. Langton
2 District Court Judge - Department No. 1
3 Montana Twenty-First Judicial Court, Ravalli County
4 205 Bedford Suites A & B
5 Hamilton, MT 59840

FILED
PAIGE TRAUTWEIN, CLERK

JAN 15 2014


DEPUTY

8
9 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

10 DEBBIE THRALL, 11 Plaintiff, 12 vs. 13 DEAN VANCE and RAMONA VANCE, 14 Defendants.	10 CAUSE No. DV-13-367 / 12 11 Dept. No. 1 12 13 AMENDED DEFAULT 14 JUDGEMENT
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17 **FINDINGS OF FACT**

18 WHEREAS the Plaintiff (hereinafter Thrall) petitioned this Court for a partition of real
19 property and stated as follows:

20 1. That the Plaintiff and the Defendants (hereinafter Vances) purchased a parcel
21 of land described as:

22 Lot 1 Schiller Subdivision, Ravalli County Montana, according to the official plat
23 recorded August 5, 1997 as Instrument No. 423287.

24 2. A Warranty Deed was executed and filed with the Ravalli County Clerk and
25 Records Office on March 13, 2006 as document number 568628.

26 3. The Vances' own property adjacent to Lot 1 Schiller Subdivision to the north
27 and west. Certificate of Surveys # 423287 and #638459-R show the location of Lot 1
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1 Schiller Subdivision and the surrounding parcels.

2 4. Thrall and Vances purchased Lot 1, Schiller Subdivision with the mutual
3 agreement and understanding that a boundary line relocation would subsequently be
4 requested whereby Vances would acquire the northern portion of Lot 1, Schiller
5 Subdivision and Thrall would acquire the southern portion. Once the relocation was
6 approved, Thrall would become sole owner of the southern portion and Vances the
7 northern portion.

8 5. In early 2009, a Subdivision Exemption Application was filed in Ravalli County to
9 relocate the boundary lines for Lot 1, Schiller Subdivision. Applebury Survey
10 generated a proposed Amended Subdivision Plat.

11 6. The Subdivision Exemption Application (SEA-09-15) was approved and an
12 extension to file the final plat and associated documents was granted. The deadline to
13 file the plat was April 2, 2011.

14 7. A disagreement between Thrall and Vances prevented the filing of the
15 appropriate documents by the deadline and the Subdivision Exemption has expired.

16 8. Vances, subsequent to the Subdivision Exemption for Lot 1, Schiller Addition,
17 filed another Subdivision Exemption for their adjacent parcels. This subsequent
18 Exemption resulted in Certificate of Survey # 638459.

19 9. The new Certificate of Survey # 638459-R altered the configuration of the
20 proposed Amended Subdivision Plat for the Schiller Subdivision.

21 10. Thrall desired to sell her portion of the property which required the property to
22 be partitioned. Vances resisted the partition and did not honor the verbal agreement
23 and understanding of the parties at the time the property was purchased.

24 11. Vances did not respond, nor appear, in this Court and a Default Judgment was
25 granted to the Plaintiff.

26 12. This Court ordered the property be partitioned according to the 2009 Proposed
27 Amended Subdivision plat in relation to Lot 1, Schiller Subdivision and that Thrall
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1 would receive sole ownership of what is shown as Lot 1B on the proposed Amended
2 Subdivision Plat, and Vancas portion of Lot 1, Schiller Subdivision would be
3 incorporated into Parcel B of their subsequent boundary relocation recorded as
4 Certificate of Survey #638459-R.

5 13. The Ravalli County Planning Office received notification of the judgment and
6 reviewed the proposal to ensure compliance with various statutes.

7 14. Subsequent to this letter David T. Markette received information from Mr. Terry
8 Nelson the original surveyor indicating that there may be an issue with regards to the
9 proposed partition, as the Vance property has since the original proposed boundary
10 relocation, been annexed into the Town of Stevensville. Original partition order could
11 create an issue with adding property into an incorporated town and may not conform to
12 annexation.

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14 THEREFOR good cause shown:

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16 IT IS HEREBY ORDERED:

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18 A. That the real property at issue in this matter shall be partitioned as to the
19 size, dimensions and configuration shown on the proposed Amended Subdivision Plat
20 created in 2009, but that the portion shown as the remainder of Shiller Subdivision be
21 made into a separate parcel and not incorporated into Parcel B Certificate of Survey
22 #638459-R as previously proposed.

23 B. That Plaintiff, Debbie Thrall be granted sole ownership and clear title to
24 that property shown on the proposed Amended Subdivision Plat as Lot 1B.

25 C. That Defendants, Dean and Ramona Vance, be granted sole ownership
26 and clear title to that property shown as the remainder of the original Shiller
27 Subdivision parcel.

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Order for Revised Default Judgment for Partition of Real Property

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D. That Plaintiffs and Defendants shall execute any and all necessary documents to execute and accomplish the revised partition of the property at issue.

E. That this Amended Default Judgment be submitted to the Ravalli County Planning Office for review.

DATED this 5th day of January, 2014.


Jeffrey H. Langton District Court Judge

I certify that I forwarded copies of this instrument, to counsel of record *Council to a Jollette's via regular mail*
James H. Franke 1/14/2014
Paul Franke, Clerk
Paul Franke
Clerk

