



RECEIVED

AUG 14 2014

Ravalli County Commissioners

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Ravalli County Planning Department

215 South 4th Street, Suite F

Hamilton, Montana 59840

406.375.6530 Fax 406.375.6531 kwaller@rc.mt.gov

For BCC
renew
from 8/13
mtg

OG-14-08-187

August 13, 2014

Jennifer B. Lint
Boatwright Law Office, P.C.
1091 S. 1st St.
Hamilton, MT 59840

Subject: Prospective Court-Ordered Boundary Line Relocation for Metully Estate

Dear Ms. Lint:

Our office is in receipt of your July 14, 2014 request for Planning Department comments on the above-referenced matter. The request also includes a proposed Amended Subdivision Plat (enclosed) depicting a prospective Court-Ordered boundary relocation between two parcels presently titled in the name of Frank J. Metully (collectively referred to as Property Tax Identification #1296400). The Ravalli County Subdivision Regulations apply to divisions of land in this area (RCSR Section 11-4 identifies Boundary Line Relocations in the "divisions of land" category), unless a statutory exemption applies. An exemption to this proposal 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.

The Metully Estate's heirs request relocation of the common boundary line between Lots 3 and 4 of Block 19, Sunnyside Orchards #4, in order to satisfy the mortgage, and as part of providing equal distribution of the Estate, with the intent of selling the property sometime in the future. Specifically, the request is to relocate the boundary between Lots 3 and 4 from the existing east-west boundary line orientation to a proposed north-south orientation, with each adjusted lot measuring 9.39 acres in size.

The Planning Department appreciates the opportunity to present written comments on this proposed boundary relocation, on behalf of the governing body of Ravalli County. The Ravalli

County Board of County Commissioners (BCC) held a Public Meeting on August 13, 2014 to consider Planning's draft comment letter, and all BCC amendments are incorporated herein.

After review of information submitted by the Estate's attorney, including the comment request letter, proposed Amended Plat (both enclosed), and other supporting documentation, the Planning Department offers the following comments:

Findings of Fact

1. The requested action can be considered through the non-Court-Order subdivision exemption review process for Boundary Line Relocations.
2. The proposal is to relocate the common boundary line between two existing parcels of land, and no new parcels will be created as a result of the relocation.
3. Existing development on the existing Lot 4 (Sunnyside Orchards #4, Block 19) includes three residential structures, as well as agricultural outbuildings.
4. Existing development on the existing Lot 3 includes a calving shed and milking shed, which are soon to be demolished, according to the late Frank Metully's son, Dan Metully.
5. After the relocation, all development currently located on Lots 3 and 4 would be located on proposed Lot 4-A, with the exception of a single residential structure that would be located on Lot 3-A.
6. It is currently possible for Lots 3 and 4, in both existing and proposed configurations, to each 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). *Please Note: Additional structure provisions have been adopted, pursuant to recent changes in Montana State Legislature (M.C.A. 76-8).*

Should the Court order the Boundary Line Relocation:

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).
2. Current and future property owners should be made aware that further development of the properties may require, where appropriate, access permits from the Ravalli County Road and Bridge Department, 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 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.

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.

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

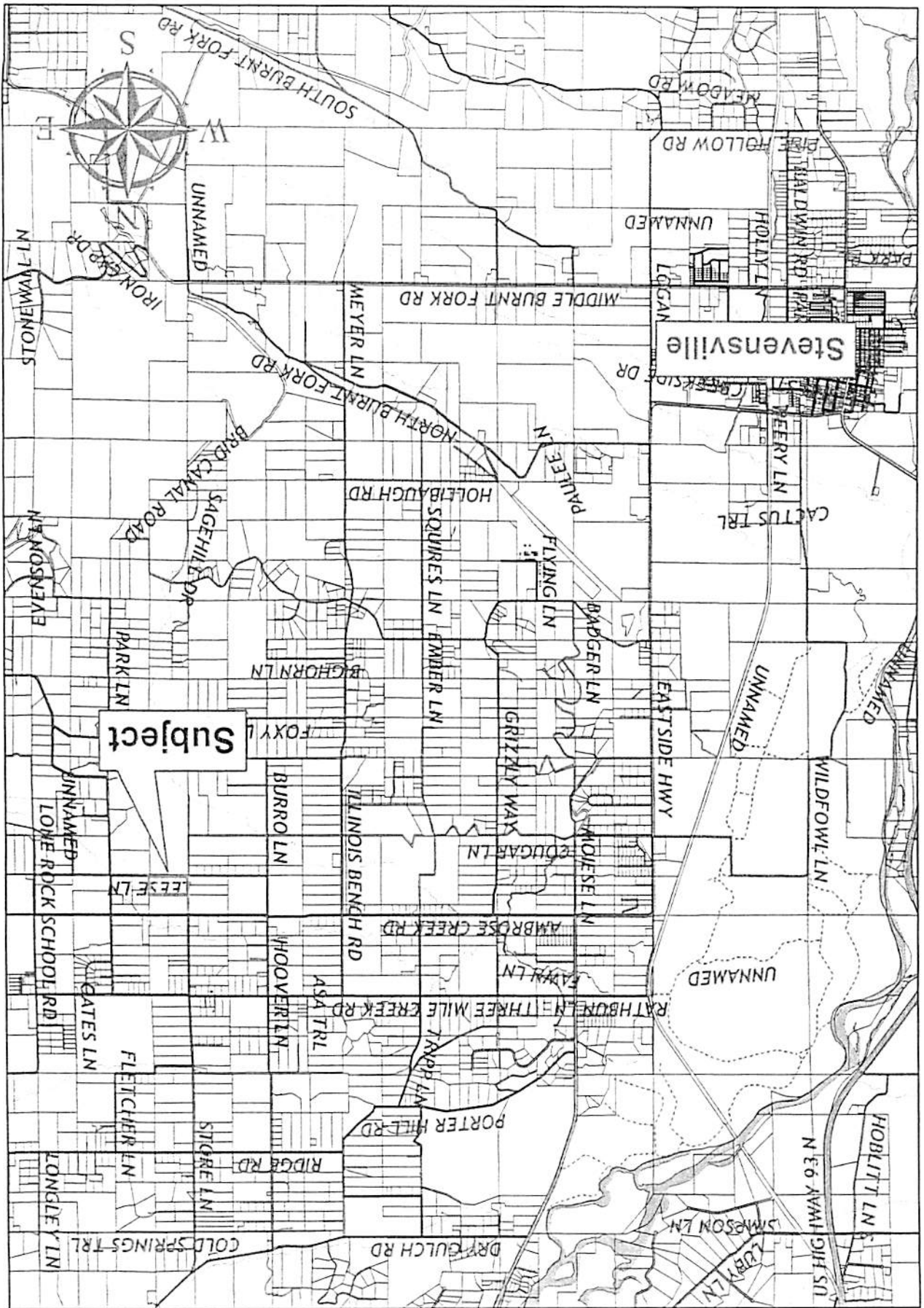
Sincerely,



Kevin Waller
Planner

Enc: Attorney Comment Request Letter, Proposed Amended Subdivision Plat, Ravalli County Environmental Health Dept. Comment Letter dated 8/12/14

Cc: Dan Metully, SEA File 2014-30, Outgoing Correspondence File, Board of County Commissioners, Clerk and Recorder, County Attorney's Office



BOATWRIGHT LAW OFFICE, P.C.

JENNIFER B. LINT

RECEIVED

SEA 2014-310

July 14, 2014

JUL 16 2014
10-14-07-263
Ravalli County Planning Dept.
-via USPS Mail

-KW

Terry Nelson, Administrator
Ravalli County Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840

Re: Estate of Frank Metully – Leese Lane Boundary Line Adjustment

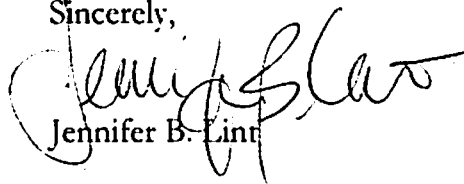
Dear Terry:

Per your telephone conversation with my assistant, Lynne, today, attached are the plat map and Certificate of Survey of property owned by the Estate of Frank J. Metully indicated the existing and proposed boundary lines. The Amended Subdivision Plat shows Lots 3 and 4 with their existing boundary lines. The Certificate of Survey shows the proposed boundary line adjustment of Lots 3 and 4. In order to satisfy the mortgage and as part of providing an equal distribution of the Estate with agreement of the heirs, we are going to petition the Court for an order approving the boundary line adjustment in order that the property can be sold.

Please review the enclosed and provide us with a letter stating whether or not this boundary line adjustment is exempt from the Subdivision Application process.

If you have any questions or need additional information, please call our office at 375-1385 or email at office@boatwrightlaw.com

Sincerely,



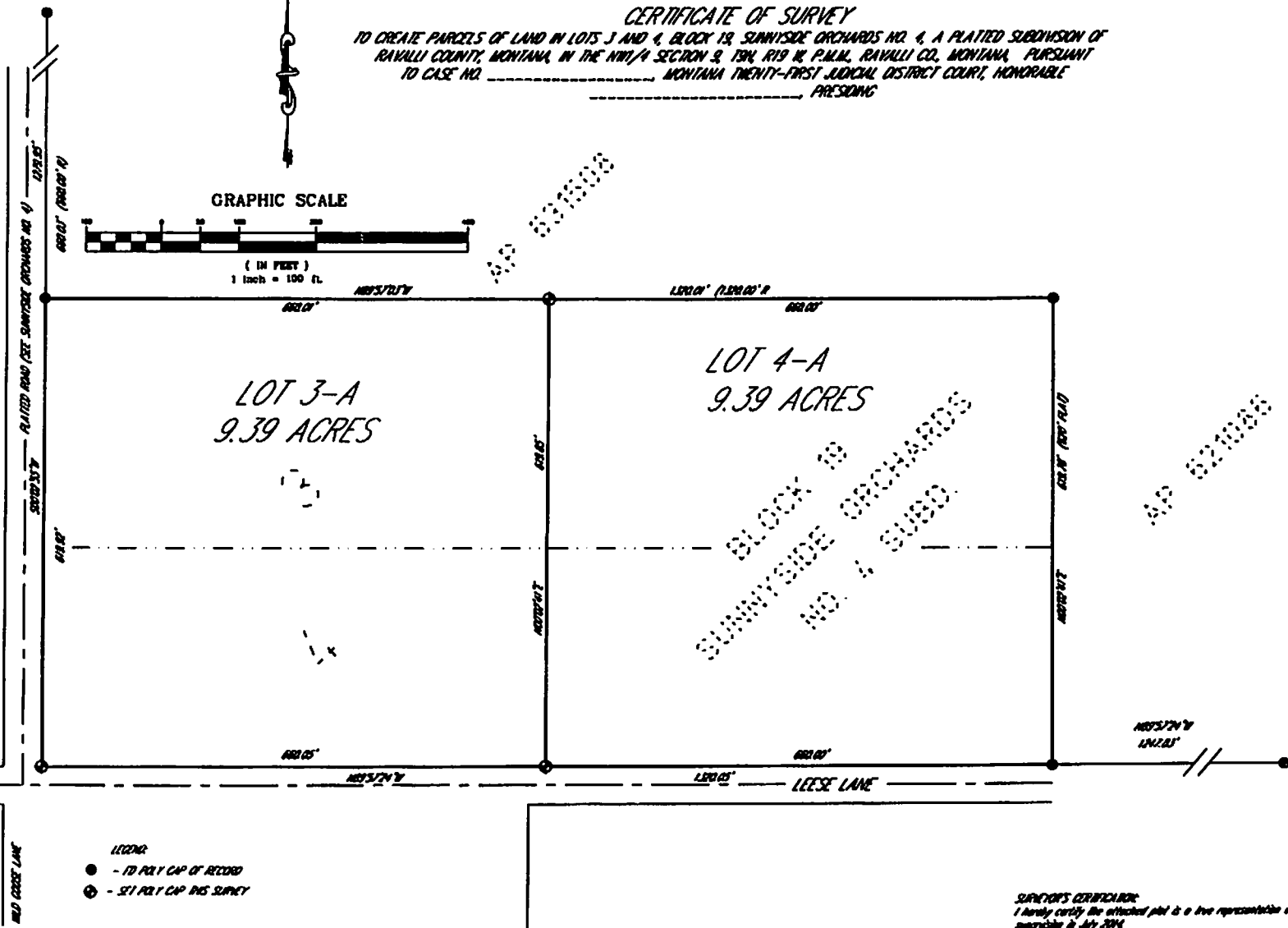
Jennifer B. Lint

Enc.

cc: client

CERTIFICATE OF SURVEY

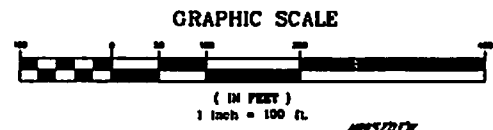
TO CREATE PARCELS OF LAND IN LOTS 3 AND 4, BLOCK 18, SUNNYSIDE ORCHARDS NO. 1, A PLATTED SUBDIVISION OF RAVALLI COUNTY, MONTANA, IN THE NW1/4 SECTION 9, T9N, R19 W, P.M.M., RAVALLI CO., MONTANA, PURSUANT TO CASE NO. _____ MONTANA THIRTY-FIRST JUDICIAL DISTRICT COURT, HONORABLE _____, PRESIDING



LOT 3-A
9.39 ACRES

LOT 4-A
9.39 ACRES

BLOCK 18
SUNNYSIDE ORCHARDS
NO. 1 SUBD.



- LEGEND
- - TO POLY CAP OF RECORD
 - ⊙ - SET POLY CAP THIS SURVEY

SURVEYOR'S CERTIFICATION:
I hereby certify the attached plat is a true representation of survey done under my supervision in July 2004.

Leonard R. Shepherd, M.S. Date

CLERK AND RECORDER SIGNATURE BLOCK

Filed this _____ day of _____ 20____

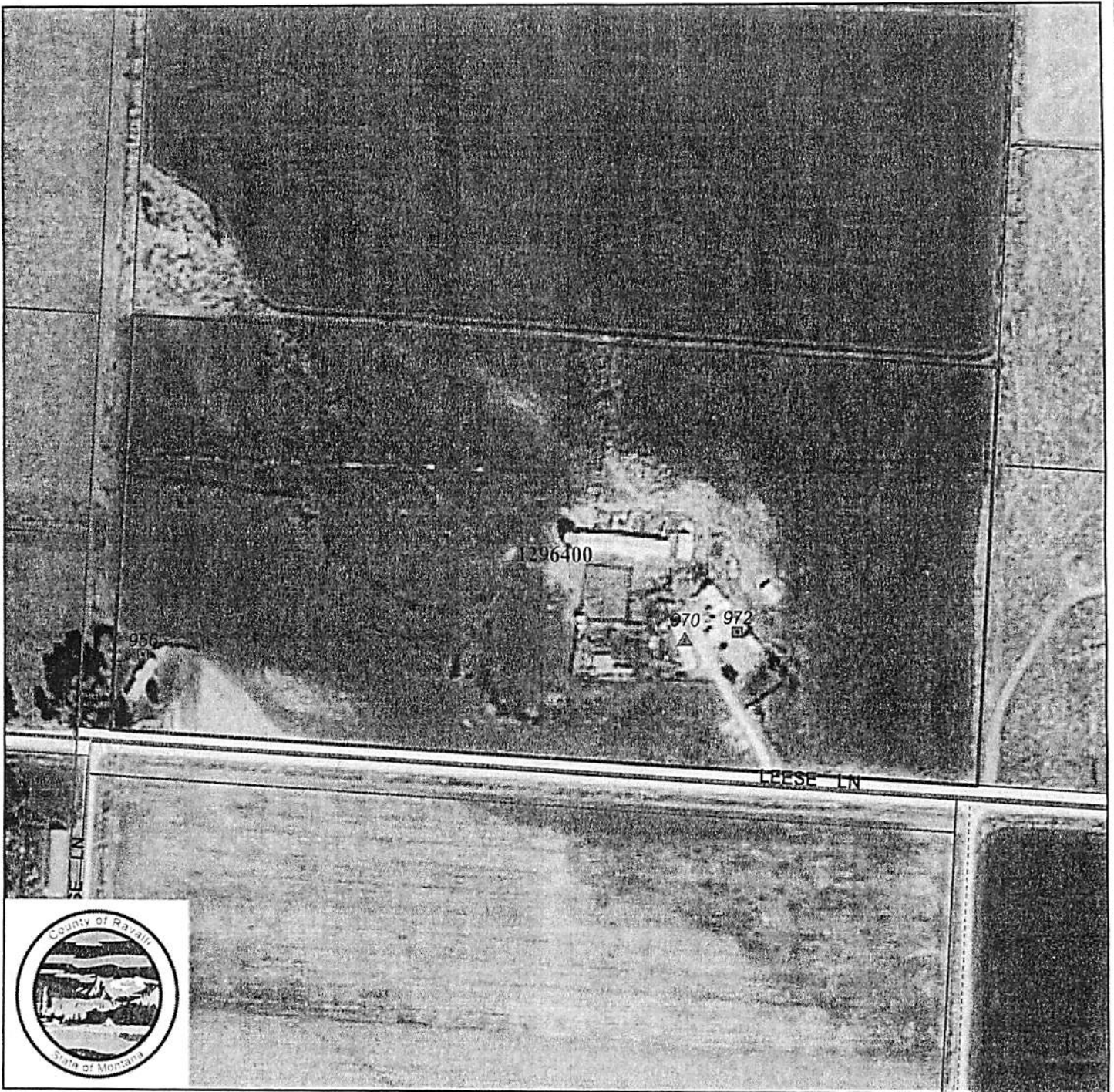
Regina Plettenberg, Clerk and Recorder

14	SEC	1	R
	S	SW	ENP

This survey is exempt from review as a subdivision pursuant to 76-3-210 (1)(a).
" is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 76, chapter 32."

STEWART SURVEYING
307 W. 10TH ST. #118
MILES, MT 59101
409-321-1000

proposed



METULLY FRANK J

955 AMBROSE CREEK RD

STEVENSVILLE, MT 59870-6210

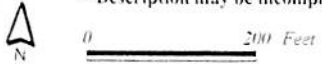
Physical Address:
 956 LEESE LN
 STEVENSVILLE, MT 59870

Levy Dist: 13-3 (Lone Rock, including Rural Fire)
 School: LONE ROCK ELEMENTARY
 Fire: THREE MILE

Geocode	T-R-S	Legal Description
1765-09-2-01-01-0000		SUNNYSIDE ORCH #4 LOTS 3 & 4 BLK 19 ALSO PT CLOSED ROAD CJ6-78 & CJ6-86 19.143 AC

Legal Description for Tax-ID: 1296400 »—»

* Description may be incomplete. Consult the official record.



Jul 16, 2014

1296400

956

970
▲

972
■

LEESE LN

LEESE LN



METULLY FRANK J

955 AMBROSE CREEK RD

STEVENSVILLE, MT 59870-6210

Physical Address:

956 LEESE LN
STEVENSVILLE, MT 59870

Levy Dist: 13-3 (Lone Rock, including Rural Fire)

School: LONE ROCK ELEMENTARY

Fire: THREE MILE

Geocode
1765-09-2-01-01-0000

T-R-S

Legal Description

SUNNYSIDE ORCH #4
LOTS 3 & 4 BLK 19
ALSO PT CLOSED ROAD CJ6-78 &
CJ6-86 19.143 AC

Legal Description for Tax-ID: 1296400 »—»

* Description may be incomplete. Consult the official record.



0 200 Feet

Jul 16, 2014



Ravalli County Environmental Health
215 South 4th Street – Suite D
Hamilton, MT 59840
(406) 375-6565
FAX (406) 375-6566

August 12, 2014

Jennifer B. Lint, Attorney
Boatwright Law Office, P.C.
1091 S 1st St.
Hamilton, MT 59840

RE: Estate of Frank Metully – Leese Lane Boundary Line Adjustment

Dear Ms. Lint:

Our office was asked to comment on issues related to sanitation review for the proposed court-ordered split for the Estate of Frank J. Metully. My comments reflect information obtained from Subdivision and Wastewater Treatment Permit records from our office dating back to 1990.

The proposed action is a boundary line adjustment of Lots 3 and 4 (Tax ID # 1296400) currently owned by the Estate of Frank Metully and totaling 19.143 acres. The proposal is to relocate common boundary lines for Lots 3 and 4 to yield Lot 3-A (9.39 acres) and Lot 4-A (9.39 acres) (see Attachment 1 and 2).

I have not personally visited the property to inspect the structures and septic systems, but I believe the following to be true:

Proposed Lot 4-A purportedly has two single family dwellings. A septic search inquiry was conducted on 9/20/2012 for the second dwelling. The search yielded a permit issued on May 5, 1990, for a 2 bedroom septic system and nothing else. The system was installed and inspected on June 5, 1990. Montana Cadastral shows a single 2-bedroom dwelling from 1923. The realtor who inquired about the septic confirmed that there were 2 dwellings.

Proposed Lot 3-A purportedly has one single family dwelling. There is no record of a septic permit issued for this dwelling.

Assuming the structures are accurately depicted, I've concluded:

1. The dwelling on **Proposed Lot 3-A** has an unpermitted septic system. If Lot 3-A were to go through subdivision review, the dwelling will be required to have its own septic system. Approval of a septic system would be subject to a site evaluation, the issuance of a septic permit, and compliance with the current rules and regulations.

2. The 2-bedroom dwelling on Proposed Lot 4-A has a legally permitted septic system.
3. The second dwelling on Proposed Lot 4-A has an unpermitted septic system or it has been illegally connected to the existing system. If the lot were to go through subdivision review, the dwelling will be required to have its own septic system. Approval of a septic system would be subject to a site evaluation, the issuance of a septic permit, and compliance with the current rules and regulations.

Ravalli County Subsurface Wastewater Treatment and Disposal Regulations:

Section 1.2 states,

All Occupied Buildings, including Dwellings and Residences, must have an approved means of Wastewater treatment in accordance with these regulations regardless of whether they currently have a piped water system.

Section 5.1(A) states,

Existing Systems installed before January 1, 1972 may be used unless public health and safety are directly endangered. The applicant shall provide sufficient evidence for the Department to determine when the Existing system was installed.

If the applicant is unable to provide sufficient evidence for the Department to determine that the Existing System was installed before January 1, 1972, or if sufficient evidence indicates that the Existing System was installed on or after January 1, 1972 and no permit was issued for installation, the owner of the Existing System must obtain a new Installation Permit or the system must be abandoned. A new Installation Permit for an unpermitted Existing System will either

1. *allow the system's continued use;*
2. *allow the system's continued use provided that specified modifications or upgrading are completed; or*
3. *require a new Wastewater System to be installed. If the Department's evidence indicates that the system was installed without a permit for the purpose of avoiding Ravalli County's rules and regulations, the Board of Health will determine whether the Existing System may be used.*

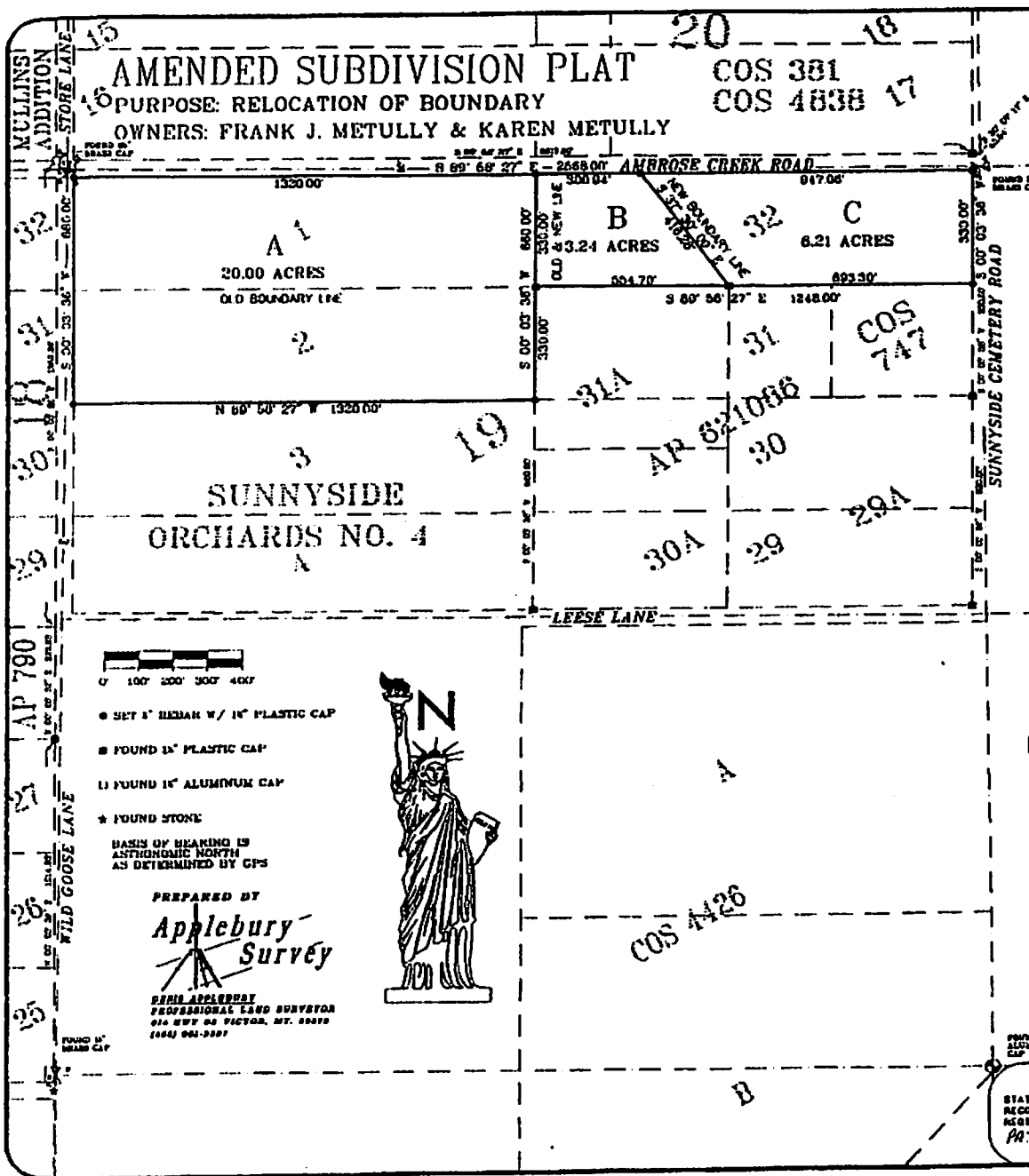
If you have questions, please contact me at 375-6568 or jpalacio@rc.mt.gov.

Sincerely,



John Palacio, RS

CC: Ravalli County Planning Department



A PORTION OF BLOCK 19,
SUNNYSIDE ORCHARDS NO. 4,
A PLATTED SUBDIVISION OF
RAVALLI COUNTY, MONTANA

CERTIFICATION OF LANDOWNER

I (we), the undersigned property owners do hereby certify that we have agreed to be surveyed, subdivided and platted into lots, streets, and roads the following tract of land in Ravalli County:

A tract of land located in and being a portion of Block 19, Sunnyside Orchards No. 4, a platted subdivision of Ravalli County, Montana and being more particularly described as Lots 1, 2 & 3 of said Block 19, containing 29.45 acres, gross and net, and all according to Amended Subdivision Plat No. _____

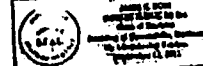
Excepting and reserving any comments shown, also subject to all easements of record and as apparent upon the ground.

The above tract of land is to be known as Amended Subdivision Plat No. _____ a platted subdivision. No land is being dedicated to the public AND lot 4 is greater than 20 acres (exclusive of public roadways) and is therefore exempt from certification review by the Department of Environmental Quality pursuant to M.C.A. 78-4-103 (10) (Note: Parcels less than 100 acres and greater than 20 acres may be subject to local certification review as per Montana Subdivision and Platting Act, Title 78, Chapter 4 M.C.A.) AND lot C is exempt from certification review by the Department of Environmental Quality pursuant to M.C.A. 78-4-103 (2)(c) as the division is made for a purpose other than construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule. AND lot C is exempt from certification review by the Department of Environmental Quality pursuant to ARM 17.26.000 (2) (a) as a parcel that has no existing facilities for water supply, wastewater disposal, or solid waste disposal, if no new facilities will be constructed on the parcel.

Frank J. Metully *Karen Metully*
Frank J. Metully Karen Metully

Subscribed and sworn before me this 19 day of April, 2010 personally appeared Frank J. Metully & Karen Metully known to me to be the persons whose names are subscribed to this instrument.

Janice K. Nelson
Janice K. Nelson NOTARY PUBLIC FOR THE STATE OF MONTANA
residing at Stevensville, MT
my commission expires September 12, 2013



CERTIFICATE OF SURVEYOR

I hereby certify that this is a true and accurate description of a survey made by me or under my supervision during the month of March, 2010.

Theresa Nelson Date: 4-30-2010
Theresa Nelson, Professional Land Surveyor, Montana Registration No. 42073L3



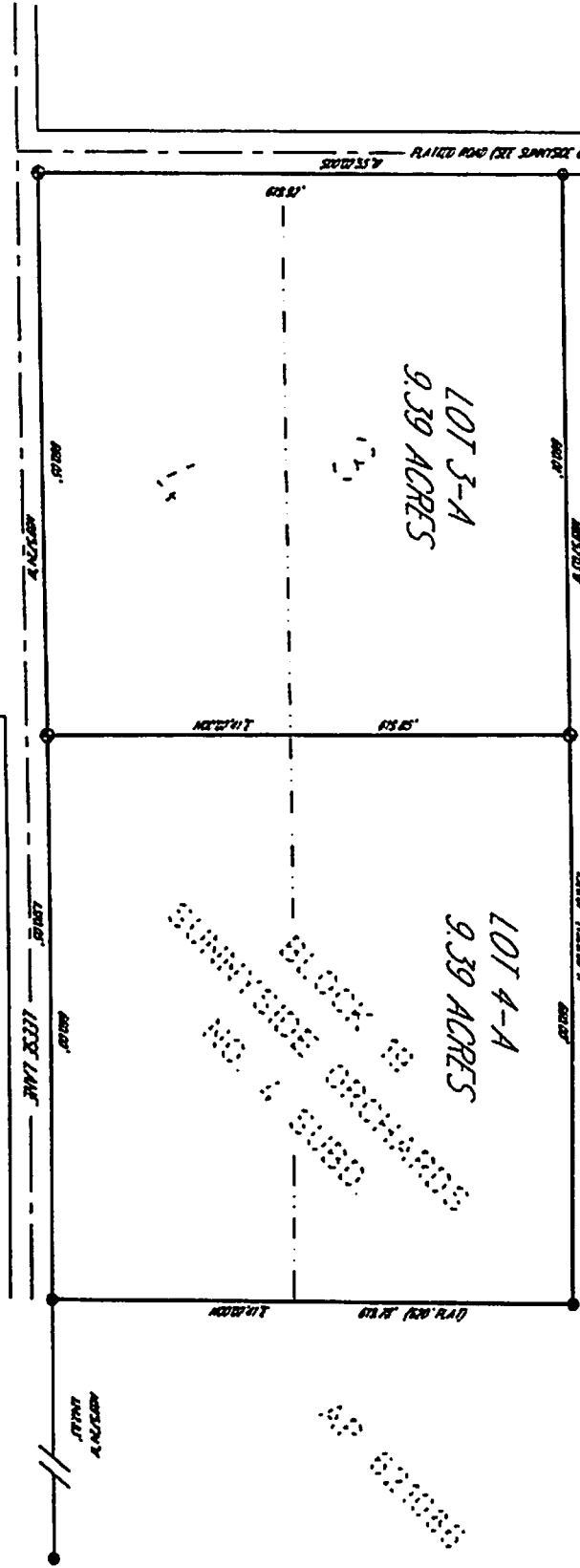
1/4	SE	T	R
9	9N	19W	

AMENDED SUBDIVISION
PLAT NO. _____
RAVALLI COUNTY, MONTANA
SHEET 1 OF 1

STATE OF MONTANA RAVALLI COUNTY 031308 Page 1 of 1
RECORDED: 06/02/2010 1:44 PM
REGINA PLETTEWELER CLERK AND RECORDER BY: *Regina Pletteweler* FEE: \$6.50
PR: 651509

Attachment 1 - Existing

CERTIFICATE OF SUPPLY
 TO CERTAIN PARCELS OF LAND IN LOTS 3 AND 4, BLOCK 12, SUNDAY SIDE ORCHARDS NO. 4, A PLATTED SUBDIVISION OF
 RAINIER COUNTY, WASHINGTON, IN THE NW 1/4 SECTION 9, T16N R10E, RAINIER CO., WASHINGTON, PURSUANT
 TO CASE NO. _____
 WASHINGTON TENTH-FIRST JUDICIAL DISTRICT COURT, HONORABLE
 PRESIDING



- LEGEND
- - 1/2 INCH LAP OF RECORD
 - - 5/8 INCH LAP OF RECORD

This plat is compiled from records of a subdivision prepared by the S. J. 1914
 and is hereby certified to be correct in accordance with the provisions of law and the
 provisions of the act of the Legislature of the State of Washington, approved
 and filed pursuant to the act of the Legislature, approved April 22, 1914.

APPROVED AND
 FILED BY THE
 COUNTY CLERK OF
 RAINIER COUNTY,
 WASHINGTON

1	2	3	4
5	6	7	8
9	10	11	12

CLERK AND RECORDER SCHWABER BLOCK

Prepared by _____ day of _____ 1914

By _____
 Deputy Recorder, Clerk and Recorder

SUNDAY SIDE ORCHARD
 (formerly owned by the applicant) and is a true representation of survey and under my
 approval of July 21st 1914

Witness my hand and seal of office
 at _____

Attachment 2 — Proposed