



Ravalli County Planning Department

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OG-14-09-210

September 10, 2014

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

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Ravalli County Commissioners

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**Subject: Proposed Court-Ordered Partition of Land for Clatworthy Estate
Probate No. DP-90-08**

Dear Judge Langton:

Our office has been provided with a copy of the Petition to Partition Estate Real Property, with regard to the above-referenced case. The Petition includes an attached Certificate of Survey depicting a proposed Court-Ordered division of real property presently titled in the name of John and Susan Sandru, Personal Representatives for the Estate of Helen Clatworthy (Property Tax Identification #698600). The Ravalli County Subdivision Regulations apply to divisions of land in this area, 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.

Susan Sandru, as Personal Representative of the Estate, requests partition of the property through the Court-Order process, as part of the distribution of the Estate. Specifically, the 11.12-acre property is proposed to be divided into two parcels, one to measure approximately 9.69 acres in size, and the other, 1.50 acres. The revised Settlement Agreement, entered into by members of the Estate, stipulates that Becki Evans, one of the Estate's heirs, shall receive the 1.50-acre parcel, and Mrs. Sandru, another Estate heir, shall receive the remaining 9.69. Becki's parcel shall receive 1.5 inches of water, and Susan's parcel, the remaining water allocated to the pre-partitioned parcel. Following any Court-Ordered partition, the Sandrus will transfer Becki's

- CC: Commissioners -

1.50-acre parcel back to the Estate, to be held in the Estate, until the terms and conditions of the Agreement, and subsequent revision and amendment thereto, are complete.

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. The Ravalli County Board of County Commissioners (BCC) held a Public Meeting on September 8, 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 Petition, comment request letter, proposed Certificate of Survey, and other supporting documentation, in addition to the Ravalli County Environmental Health Department comment letter (all enclosed), the Planning Department offers the following comments:

Findings of Fact

1. In addition to the Court-Order procedure, the requested action can be considered through either the subdivision process, or the non-Court-Order subdivision exemption review process for a Family Transfer division.
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. One existing lot is proposed to become two potentially buildable lots.
5. One single family residence, with the address of 312 McCarthy Loop, currently exists on proposed Parcel A, in addition to four agricultural outbuildings.
6. Although proposed Parcel B is currently vacant, a new address of 318 McCarthy Loop has been assigned to this portion of the existing property.
7. It is recommended that proposed Parcel B either be developed with a new driveway that accesses directly from McCarthy Loop for any future residence, or, alternatively, that a driveway and utility easement be established across proposed Parcel A for any extension from the existing driveway on Parcel A that would serve a residence on Parcel B. The easement would need to be established and described either on the deeds of Parcels A and B, or on a stand-alone document, and shown on the Certificate of Survey. **An approach permit from the Ravalli County Road and Bridge Department would be required for any direct access from Parcel B onto McCarthy Loop. Alternatively, should the existing driveway on Parcel A be extended to serve Parcel B, a Common Driveway Maintenance Agreement would be required for the shared portion of the driveway, in addition to the easement discussed above.**
8. 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 partition, however, it would be possible for Parcels A and B to each be developed with up to 5 additional residential structures, for a 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).*

9. According to Ravalli County aerial imagery, wetlands associated with the nearby Bitterroot River may be located on the southwestern portion of proposed Parcel B. Accordingly, any future development in proximity to this area may be subject to review and/or permits through the Bitterroot Conservation District and/or U.S. Army Corps of Engineers.
10. According to Ravalli County GIS data, FEMA's proposed 100-year flood fringe boundary, associated with the Bitterroot River, overlaps the southwestern portion of proposed Parcel B. Any work within this area will require a Ravalli County Floodplain Permit, or a Letter of Map Amendment (LOMA) showing the area of work is above the Base Flood Elevation (BFE).
11. A September 4, 2014 comment letter on the proposal, from the Ravalli County Environmental Health Department's John Palacio, is enclosed with this packet. The letter provides septic information for proposed Parcels A and B.
12. The enclosed Petition states that the subject property contains water rights, and presents a plan for division of the water rights.

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).
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 streams, and covenants or deed restrictions are not recorded on the property. Wetlands may be located on the property, which may subject future development to review and/or permits from the agencies listed in Finding of Fact #9 above. The proposed FEMA 100-year floodplain boundary, located on the property's southwestern portion, will subject future development in that area to review and approval from the Ravalli County Floodplain Program, as indicated in Finding of Fact #10 above.
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 Certificate of Survey, 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 Certificate of Survey with a 20-foot easement, as measured from the ditch center, for maintenance purposes.

5. The Pale Sedge, a vascular plant, 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.

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

Sincerely,



Kevin Waller
Planner

Enc: Attorney Comment Request Letter, Petition Notice, Proposed Certificate of Survey, Other Attorney-submitted Documentation, Ravalli County Environmental Health Dept. Comment Letter dated 9/4/14

Cc: Jennifer B. Lint, Boatwright Law Office, P.C., SEA File 2014-34, Outgoing Correspondence File, Board of County Commissioners, Clerk and Recorder, County Attorney's Office, Ravalli County Environmental Health Department