Exhibit 21

CLERK OF DISTRICT COURT
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KATHERINE R. CURTIS
District Judge, Department No. 2
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IN THE DISTRICT COURT OF THE NINETEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LINCOLN

* * * * * * * * * * *

FRIENDS OF BULL LAKE, INC., a Montana non-profit public benefit corporation,

Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, MONTANA,

Defendant,

JAMES BEASLEY,

Intervenor.

Cause No. DV-95-12

ORDER AND RATIONALE

DECISION THAT THE N. SHORE L.P. WETLANDS CANNOT BE LABELED "NOT PART OF" MUST GO THROUGH REVIEW. THE FEDERAL COURT DECISION APPLIES TO THIS BLES SUBDIVISION

THIS CAUSE is before the Court on Plaintiff's Application for Writ of Review and Writ of Mandate, and Motion for Summary Judgment; Defendant's Motion to Dismiss and Motion for Summary Judgment; and Intervenor's Motion for Summary Judgment. On the basis of said motions, and supporting and opposition memoranda, as well as the arguments of counsel; and the Court being fully advised in the premises; Now therefore

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment be and the same hereby is GRANTED. A Writ of Review shall be issued declaring the Board of Commissioners' approval of the preliminary plat applications of the Bull Lake Estates Subdivision void and a Writ of Mandate compelling the Board of Commissioners to conduct further proceedings in accordance with this decision, and the requirements of the Montana Subdivision and Platting Act and Lincoln County Subdivision Regulations.

IT IS FURTHER ORDERED that Defendant's and Intervenor's Motions for Summary Judgment be and the same hereby are DENIED.

RATIONALE

On February 8, 1995, the Plaintiff filed its Complaint and Application for Writ of Review and Writ of Mandate. On February 10, 1995, Judge Robert S. Keller issued an Alternative Writ of Mandate ordering the Defendant to revoke the preliminary plat approvals for the Bull Lake Estates Subdivision (hereafter "BLES"), to conduct further actions and deliberations related to Bull Lake Estates Subdivision in accord with the Montana Subdivision and Platting Act and Lincoln County Subdivision Regulations; or, in the alternative, appear before the Court on March 10, 1995, and show cause why the Board had not acted in conformity with the Court's Order. This Court subsequently assumed jurisdiction of this case.

On February 24, 1995, the developer, Beasley, moved to intervene, and the Motion was granted. Both the Intervenor and the Defendant have filed Motions for Summary Judgment. Plaintiff has responded to both Motions and made its own Motion for Summary Judgment.

Plaintiff seeks a Writ of Review and a Writ of Mandate on the grounds that the Board of County Commissioners (hereafter "Board"), in reviewing and approving preliminary plat applications for the Bull Lake Estates Subdivision, failed to follow the substantive standards and mandatory procedures set forth in the Montana Subdivision and Platting Act (MSPA) in a number of respects. First, Plaintiff argues that the exclusion of the North Shore Parcel from the subdivision by designating the parcel "not part of" the subdivision was in violation of the MSPA. Plaintiff also argues that environmental assessment submitted in connection with the proposed subdivision does not comply with the MSPA. Further, Plaintiff contends that the Board acted contrary to the public notice and hearing requirements of the MSPA. Plaintiff asserts that the Defendant's submittal of its amended preliminary plat was not in compliance with the MSPA, and that the Planning Board failed to submit its written recommendation within the time frame required by the MSPA.

With regard to the North Shore Parcel (hereafter "NSP"), Plaintiff argues that, pursuant to Sections 76-3-103(14) and 76-3-104, M.C.A., it has been "segregated from the original tract" and that this segregated parcel is necessarily part of the subdivision. Plaintiff contends that it is clear that the "original tract", as that term is used in Section 76-3-104(14), of this subdivision is the entire 169-acre tract of which the proposed Bull Lake Estates

Subdivision (BLES) is a part. Plaintiff also argues that a narrow construction of what constitutes a subdivision, in order to exempt the NSP from review, would be in direct conflict with principles of statutory construction.

Plaintiff also argues that the NSP may not be exempted from review by the "Remainder" doctrine. Plaintiff relies upon several Attorney General's Opinions that deal with the Montana Sanitation in Subdivision Act for the proposition that any remaining parcel of land less than 160 acres that is segregated from the original tract is required to be set forth on the plat and reviewed.

Plaintiff argues that if the environmental assessment is compared to the statutory requirements, it is apparent that Mr. Beasley provided an inadequate environmental assessment in connection with his first submission for subdivision review, and that, in essence, he provided no environmental assessment with his second application, other than the one that accompanied the first application. Plaintiff also argues that Mr. Beasley's signature on the environmental assessment was inadequate, because he was not the owner of the property, but only had an option to purchase it. Plaintiff questions whether or not the Planning Board, in making its recommendations to the Board of Commissioners, fulfilled its obligation under Lincoln County Subdivision Regulations, p. 6, section II-B-3(a)(2), and Section 76-3-608(1), M.C.A., to consider the environmental assessment, given that some of the information in the environmental assessment is in direct conflict with the information contained in the Planning Department Staff Report.

Plaintiff contends that the public hearing on the BLES was held in violation of the notice requirements of the MSPA, in that the published notice gave the wrong date, and both the publication and the mailed notice stated an incorrect legal description for the land. The published notice stated the hearing was to be held on November 24, 1994, and the meeting was actually held on November 23, 1994. The legal description indicated that the subject property was located in Range 34 West, when the proper description is Range 33 West. Plaintiffs also contend that the notice was defective in that it was published only 14 days prior to the hearing, rather than the 15 days required by Section 76-3-605(3), M.C.A. Plaintiff argues that case law supports voiding a zoning resolution which had been passed without compliance with the notice requirements of Section 76-2-202, M.C.A. Bryant Development Association v. Dagel, 166 Mont. 252, 531 P.2d 1320 (1975). Plaintiff argues that the failure of the Board to abide by the notice requirements renders the approval of the preliminary plat void.

Under the MSPA, the Planning Board (PB) was required to submit its written recommendation regarding the BLES not later than ten (10) days after the public hearing. Section 76-3-605(4), M.C.A.,

and Lincoln County Subdivision Regulations. Plaintiff argues that since the PB's recommendation was submitted to the Board 54 days after the public hearing, the Board's approval should be voided.

Plaintiff argues that neither the MSPA nor the Lincoln County Subdivision regulations make any provision for the reconsideration of a prior decision by the governing body relative to a preliminary plat application. Plaintiff argues that Mr. Beasley was not satisfied with the selection by the Board of the NSP for parkland dedication as specified in the Board's letter of approval dated October 26, 1994. Plaintiff contends that Beasley's purported oral withdrawal of the approved preliminary plat of BLES, and later submission of another preliminary plat which designated the NSP as "not part of" the subdivision, was without authority in the law, as was the Board's reconsideration of its earlier decision.

Plaintiff asserts that in approving the preliminary plats, the Board violated a number of clear legal duties and that under similar circumstances, the Montana Supreme Court has declared such decisions under the MSPA void. State ex rel. Florence-Carlton School District v. Board of County Commissioners of Ravalli County, 180 Mont. 285, 590 P.2d 602 (1978); State ex rel. Leach v. Visser, 234 Mont. 438, 767 P.2d 858 (1989).

Plaintiff argues that it is entitled to judicial review of the Board's decisions regarding BLES. Plaintiff concedes that there is no statutory appeal provision in the MSPA, but argues that there are other methods of review such as the remedial writs. Plaintiff relies upon City of Kalispell v. Flathead County, 260 Mont. 258, 859 P.2d 458 (1993), and Melugin v. Board of County Commissioners of Lewis and Clark County, Montana First Judicial District, Case No CDV-93-1009, for the proposition that a writ of review might lie in such circumstances. Plaintiff also argues that the district courts and the Montana Supreme Court have long recognized the appropriateness of the use of extraordinary writs, including the writ of mandate, to compel Boards of County Commissioners to perform clear legal duties under the MSPA.

Defendant argues that the Plaintiff has seized upon a number of fairly trivial deficiencies in the entire procedure and blown them up. Defendant also argues that the environmental assessment was not deficient, and that it does conform to the requirements of the MSPA. Defendant argues that Plaintiff failed to make any statement as to what was inadequate about the environmental assessment.

Defendant asserts that Mr. Beasley's signature on the environmental assessment complies with the statutory requirements. Defendant concedes that Mr. Beasley was not the owner of the land, but contends that his option to purchase made him the putative owner of the property. Defendant also argues that Section 76-3-

602, M.C.A. (sic), does not require that the assessment be signed by the owner.

Defendant concedes that the 15-day notice requirement of Section 76-3-605(3) was shortened by one day. However, Defendant argues that any errors in the published legal description were minor in nature and did not affect the substantial rights of any parties, and that the one day error in the published notice does not void the Board's approval of the subdivision. Defendant argues that the public hearing on the BLES was in substantial compliance with Section 76-3-605(3), M.C.A., because the notice was in substantial compliance with the statutory requirements. Defendant argues that everyone was aware of the hearing and that any objections to the notice were waived.

Defendant argues that any alleged prejudice as a result of the 44 day delay in the Planning Board submitting its written recommendation concerning the preliminary plat was remedied by the fact that the Planning Board made its written recommendation for approval on the second subdivision review within seven (7) days of the second public hearing. Defendant also argues that Plaintiff has alleged no prejudice.

Defendant also argues that there is no statutory prohibition on the withdrawal of a preliminary plat. Defendant argues that the submission of the amended plat simply constituted a submission of a second plat.

Defendant argues that the preliminary plat which designates the NSP "not part of" is not in violation of the MSPA. Defendant contends that Plaintiff's analysis of the appropriate statutes is incorrect. Defendant argues that what the statutes say is: "Take your piece of property and segregate it from an original tract. If it is less than 160 acres and cannot be described as a quarter aliquot part of a United States government section, then it is a subdivision." Defendant argues that the AG opinion relied upon by the Plaintiff (Exhibit C) is not on point, and that the other opinion supports Defendant's position.

Defendant argues that Plaintiffs have no right to resort to the courts because there is no statutory provision providing relief through the courts, relying upon Sourdough Protective Associations, Inc. v. Board of County Commissioners of Gallatin County, 253 Mont. 325, 327, 833 P. 2d 207 (1992). Defendant argues that the Board should be granted summary judgment and its actions approving the preliminary subdivision should be declared valid.

Intervenor, James Beasley, opposes the application for Writ of Mandamus and requests the Court to grant summary judgment on behalf of the Defendant. Intervenor contends that all material facts in this action are agreed to and undisputed and that summary judgment

is appropriate.

Intervenor argues that the Court has no authority to review a decision of the County Commissioners. Intervenor argues that based upon the case law, the Court may review the actions of the Board of County Commissioners only if the Commissioners act outside statutory authority and without "sound" discretion. Intervenor argues that there are no facts that show the Board acted outside statutory authority and without sound discretion.

Intervenor argues that Plaintiff did not properly challenge the claimed defects in the notice requirements of the public hearing on the BLES. He contends that improper notice renders decisions of government entities voidable, not void, and that a person claiming his rights were violated by improper notice must bring an action in District Court to void the decision within 30 days of the decision. Section 2-3-114, M.C.A. Intervenor concedes that the requisite 15 days notice of the hearing on the preliminary plat was not given, but argues that since this deficit was not challenged within 30 days of the decision, it cannot serve as the basis of Plaintiff's present challenge. Intervenor argues that the case relied upon by Plaintiff, Bryant Development Association v. Dagel, 166 Mont. 252, 531 P.2d 1320 (1975), is not valid because the case dealt with no notice being given and it was decided prior to the enactment of Sections 2-3-114 and 2-3-213, M.C.A. (Public Participation Act), which make decisions voidable, not void.

Beasley argues that none of the other claimed defects render the conditional preliminary plat approval defective. He contends that he had the right to modify his subdivision proposal, and that 43 A.G. Op. 33 (1989), cited by the Plaintiff, does not apply because it held that the Board could not reconsider a final decision and this is an interim decision; a final decision will be made when final plat approval is given. Intervenor also argues that the AG opinion is not applicable because it dealt with an agency which was governed by MAPA, and County government is not governed by MAPA. Section 2-4-102(2)(b), M.C.A.

Intervenor also argues that the environmental assessment is legally sufficient. He states that he submitted as part of his original proposal an environmental assessment on the form specified by Lincoln County Regulations and that the form was completely filled out and covers all of the issues that the statute requires to be addressed. Intervenor argues that the Board acted within its sound discretion in making the decision to approve the preliminary plat.

Intervenor contends that the remainder, including NSP, is not part of the subdivision review process. He argues that subdivision law requires local review of only the parcels that are to be conveyed and that remainders are specifically not part of a

subdivision. Section 76-3-103(3) and (14), M.C.A. Intervenor argues that the AG opinions cited by Plaintiff actually support the position of Defendant and Intervenor.

Intervenor contends that the delay of the Planning Board has no legal significance. He argues that although the Planning Board took more than 10 days to submit its written recommendation on the first plat, it only took seven days after the second public hearing to submit its findings and proposal on the amended subdivision proposal. Intervenor also argues that Plaintiff failed to show how it is entitled to relief for the delay.

Plaintiff responds to the arguments of Defendant and Intervenor by relying upon the majority opinion in City of Kalispell v. Flathead County, 260 Mont. 258, 859 P.2d 458 (1993), for the proposition that judicial review, in the form of a Writ of Review, is appropriate in these circumstances.

Plaintiff argues that the interpretation of Sections 76-3-104 and 76-3-103(14), M.C.A., by the Defendant and Intervenor is tortured. Plaintiff argues that 76-3-103(14) does not require local review of only the parcels to be conveyed. The statute does not specifically contain that limitation, and review is required of any division of land where parcels "may be sold, rented, leased or otherwise conveyed. . . ." Plaintiff also contends that it is unarguable that the NSP designated "not part of" has been "segregated from the original tract," and that, pursuant to 76-3-104, a segregated parcel is part of the "subdivision." Plaintiff cites the legislative history as support for this interpretation of these statutes.

Plaintiff also responds that the interpretation by Defendant and Intervenor of the term "remainder," and its exclusion from the subdivision, is incorrect. Plaintiff argues that the AG opinion and Section 76-3-104 are in harmony. Plaintiff points out that in the AG opinions the "remainder" is the same as the original tract and the subdivision is comprised of the segregated parcels. There is a remainder, the original tract, and not remainders, which are excluded from the subdivision. Based upon this reasoning, the NSP was segregated from the original parcel and is part of the subdivision.

Plaintiff argues that the fact that the 15-day notice requirement was shortened by one day did result in prejudice, since at the first public hearing 44 people attended, and at the public hearing for which there was inadequate notice, four people attended. Plaintiff reiterates that the 15 day notice requirement is mandatory according to the statute, and that the Public Participation Act relied upon by Defendant and Intervenor does not prohibit enforcement of the specific notice requirements of the MSPA. Plaintiff points out that since it is not seeking relief

under the provisions of the Montana Public Participation Act (MPPA), rather it is asking the Court to require the Board to comply with the mandatory requirements of Section 76-3-605(3), there is no 30 day limit to challenge deficiencies.

Plaintiff argues that the statutory provisions for the environmental assessment are entitled to liberal construction, which precludes attempted exemptions or exceptions from the statutory requirements. Plaintiff argues that the Court must determine the adequacy of the environmental assessment based upon the application of an objective test. Coalition for Canyon Preservation v. Bowers, 632 F. 2d 774, 784 (9th Cir. 1980).

Plaintiff argues that in approving the preliminary plats for the BLES, the Board violated a number of statutory duties imposed by the MSPA, thus the Commissioners have acted outside of their statutory authority. Plaintiff argues that under such circumstances the Montana Supreme Court has not hesitated to declare decisions under the MSPA void. State ex rel. Florence-Carlton School District v. Board of County Commissioners of Ravalli County, supra, 180 Mont. 285 (1978), and other cites.

The Supreme Court of Montana seems to suggest in Bridger Canyon Property Owners' Association, Inc. v. The Planning and Zoning Commission for the Bridger Canyon Zoning District, 270 Mont. 160, 166, 890 P. 2d 1268 (1995) and City of Kalispell v. Flathead County, supra, that when there is no right of direct appeal, the writs may be appropriate remedies. The Sourdough case cited by the Defendant is not dispositive, since the Court, in City of Kalispell, supra, 260 Mont. at 262, specifically noted that the availability of a writ of review was not at issue in Sourdough. This Court agrees with the reasoning in Melugin v. Bd. of County Commissioners, Montana First Judicial District, Case No. CDV-93-1009:

> A district court may issue a writ of review 'when a lower tribunal, board or officer exercising judicial functions has exceeded the jurisdiction of the tribunal, board or officer and there is no plain, speedy and adequate remedy.' Section 27-25-102, M.C.A. Because the Montana Supreme Court has held that neither the Montana Subdivision and Platting Act nor the Montana Administrative Procedure Act provides for appeals of the decisions of County Commissioners regarding subdivision applications, City of Kalispell v. Flathead County, 260 Mont. 258, 859 P.2d 458 (1993), the Court granted the Melugins' application for a writ of review.
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> The scope of a Writ of Review is narrow, and a reviewing court's jurisdiction is limited to the question of whether the lower tribunal, board, or officer has 'regularly pursued its authority.' Section 27-25-303, MCA.

Melugin, supra, Memorandum and Order, 10/24/94, at 2. As in Melugin, the Plaintiff here is alleging that the Board of Commissioners has exceeded its jurisdiction and has not "regularly pursued its authority" by its failure to comply with the Subdivision and Platting Act. This Court has jurisdiction over this matter in the form of a writ of review.

Section 76-3-104, M.C.A., states: "A subdivision comprises only those parcels containing less than 60 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not." "Segregated" is defined as "set apart or separated from others of the same kind or group." Webster's New Collegiate Dictionary (1975). "Separate" means "to set or keep apart, disconnect, sever . . . to block off . . . to isolate . . . to become divided or detached . . . to become or cause to become disunited or disjoined." Id. The North Shore Parcel has clearly been separated or set apart from the rest of the original, 169-acre parcel. The Court cannot imagine and the Defendant and Intervenor do not suggest any possible meaning for the word "segregated" in Section 76-3-104, M.C.A., other than "separated from, disconnected, severed, blocked off, detached, disunited, etc." The argument of Defendant and Intervenor that only parcels "that are to be conveyed" and that are not "remainders" are part of the subdivision is an invitation to the Court to legislate into the statute exceptions that are not there. Section 76-3-103(14) refers to parcels which "may be sold, rented, leased or otherwise conveyed . . ." (emphasis supplied). This does not mean that review is contingent upon the developer's assertion as to whether or not he intends to convey a specific parcel.

Under the clear wording of the statute, all parcels separated from the original tract that are less than 160 acres and are not a one-quarter part of an aliquot part are the "subdivision." Defendant's argument concerning the phrase "when the parcels have been segregated from the original tract" in Section 76-3-104, M.C.A., is not well-founded. It is clear that "the parcels" referred to in this phrase are the same "parcels" referred to in the introductory phrase: "A subdivision comprises only those parcels . . ." (emphasis supplied). The NSP is just such a parcel, and it is contained in the subdivision and subject to review.

To follow the argument of the Defendant and Intervenor to its logical conclusion, any number of parcels less than 160 acres in size could be created from an original tract, and so long as the developer said he did not intend to convey them, they could be successfully labeled "not a part of" the subdivision and escape review. The Court cannot imagine that this was the scheme contemplated by the Legislature. As stated by Attorney General

Mike Greely: "The argument that a six-lot subdivision can be transformed into a five-lot subdivision by labeling one of the lots 'not part of the subdivision' is ludicrous." Letter of July 31, 1981.

The provisions of the Public Participation Act do not apply to this situation because there is a specific notice statute in the MSPA setting forth the notice requirements. Plaintiff is correct that the 15-day requirement is mandatory, and there are serious problems with the notice for the public hearing in this case. There is no authority supporting the substantial compliance argument of the Defendant, and under similar circumstances, courts have rendered actions void on the basis of inadequate notice. Bryant Development Association v. Dagel, 166 Mont. 252, 258, 531 P.2d 1320 (1975). On this basis, the Board's approval of the preliminary plat is void.

The Board also violated other statutory duties imposed by the MSPA. There are significant deficiencies with the environmental assessment. It states that there are no major species of fish and wildlife that use the area which would be affected by the subdivision, and that there is no wildlife habitat or waterfowl nesting in the area. However, the staff report lists the west side of Bull Lake as winter range for deer, elk and moose. The report also notes that there is a critical mountain goat winter range less than a mile away and that water based raptors use the shoreline for roosting, perching and nesting. The report concludes: "From a wildlife perspective, the proposed Bull Lake Estates project is not a desirable location for a residential subdivision." Defendant's argument that the form was "filled out" does not mean that meaningful information was provided. Under MSPA, the environmental assessment is required to accompany the preliminary plat and contain very specific information in accordance with Section 76-3-603, M.C.A. The submission of the second plat should have been treated as a brand new submission and it was not, since the old environmental assessment was resubmitted with the second plat. Plaintiff argues that under similar circumstances, the California Supreme Court determined approval of a subdivision was void for failure to follow proper procedures under the subdivision laws, specifically the environmental impact report. Woodland Hills Residents Association, Inc. v. City Council of the City of Los Angeles, 609 P.2d 1029 (1980). The environmental assessment for the preliminary plat is inadequate.

Because of these findings of the Court, various of the other alleged deficiencies, such as the submission of the amended plat, Intervenor's right to sign the environmental assessment, and the