RESOLUTION NO. 2009 - 138

A RESOLUTION OF THE GALLATIN COUNTY COMMISSION AMENDING SECTION 14 OF THE GALLATIN COUNTY SUBDIVISION REGULATIONS

This resolution was introduced by the Gallatin County Attorney's Office. Moved by Commissioner Skinner, and seconded by Commissioner Murdock . The resolution was adopted unanimously .

WHEREAS, Gallatin County has adopted subdivision regulations in accordance with Title 76, Chapter 3, MCA; and

WHEREAS, the Gallatin County Subdivision Regulations were adopted on February 26, 1975, and amended thereafter; and

WHEREAS, on August 5, 2009 Judge W. Nels Swandal, sitting by designation for the Eighteenth Judicial District in the case, *Big Blue River, LLC v. Gallatin County Commission*, DV-08-731C, declared Section 14.I.3.b of the Gallatin County Subdivision Regulations void and ordered Gallatin County to "enact a substitute section to replace the void section" which complies with certain legal guidelines; and

WHEREAS, Section 13.B.(1), Amendments to Subdivision Regulations, of the Gallatin County Subdivision Regulations, provides that for the purpose of providing for the public health, safety, and general welfare, the Commission may amend the provisions of the Subdivision Regulations; and

WHEREAS, the Gallatin County Attorney's Office has prepared the attached amendments to Section 14.I.3., Relocation of Common Boundary Lines, of the Gallatin County Subdivision Regulations, deletions to the text being shown as ~~strikeout~~, and additions to the text shown as <u>underline</u>; and

WHEREAS, Section 13.B, Amendments to Subdivision Regulations, of the Gallatin County Subdivision Regulations, provides that all amendments shall not become effective until after a public hearing has been held before the Commission, legal notice of which shall have been given in a newspaper of general circulation in the County not less than 15 days nor more than 30 days prior to the hearing date; and

WHEREAS, notice of the Gallatin County Commission public hearing for consideration of the amendments to the Gallatin County Subdivision Regulations was published in the *Bozeman Daily Chronicle* on September 20, 2009; and

WHEREAS, the Gallatin County Commission held a public hearing on October 6, 2009, and found a necessity to amend Section 14 of the Gallatin County Subdivision

Regulations and that such amendment is in accordance with the procedures provided by law and the Gallatin County Subdivision Regulations.

NOW THEREFORE BE IT RESOLVED:

1. The Gallatin County Commission adopts the attached amendments to the Gallatin County Subdivision Regulations on an interim basis until the conclusion of *Big Blue River, LLC v. Gallatin County Commission*, DV-08-731C, Eighteenth Judicial District, or any appeal.

2. The attached amendments shall be effective immediately.

Dated this 6th day of October, 2009.

BOARD OF COUNTY COMMISSIONERS OF GALLATIN COUNTY

R. Stephen White, Chairman

ATTEST:

Charlotte Mills, Clerk & Recorder

SECTION 14: DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

I. Relocation of Common Boundary Lines.

Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties, and divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision.

1. The proper use of the exemption for relocating common boundary lines is to:

    a. Establish a new boundary between adjoining parcels of land, without creating an additional parcel; or

    b. Establish a new common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

2. Certificates of Survey showing the relocation of common boundary lines must be accompanied by:

    a. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and

    b. Documentation showing the need or reason for the relocation (for example: structure encroachment or surveyor error).

3. ~~A rebuttable presumption exists when a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:~~

    ~~a. The Commission determines that the documentation submitted according to this section does not support the stated reason for relocation or created an additional parcel, and/or~~

~~b. The Certificate of Survey for the relocation of common boundary lines significantly rearranges multiple parcels with little or no resemblance to the original configuration of the parcels.~~

3. The Commission shall determine whether the applicant's claim for exemption has the purpose of evading the Montana Subdivision and Platting Act based on evidence presented by the applicant and any other person. In order to do so, the Commission shall evaluate all relevant circumstances including:

   a. whether the applicant is in the business of dividing and selling land;

   b. whether the applicant has engaged in prior exempt transactions involving the tract;

   c. the proposed configuration of the tract after the allegedly exempt transactions are completed; or

   d. any other relevant circumstances.