



**DORSEY**  
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April 28, 2005

**VIA ELECTRONIC MAIL AND POSTAL  
SERVICE**

Sue Shannon  
Planning Director  
Lake County Planning Department  
106 Fourth Avenue East  
Polson, MT 59860

Re: Kootenai Lodge

Dear Sue:

As you know, this law firm represents Mark and Debi Rolfling, owners of the Kootenai Lodge property. Over the past several months, the Rolflings, as owners of the Kootenai Lodge property, have been put in an uncomfortable and awkward situation because Lake County has proceeded to process an incomplete preliminary plat/subdivision application for the Kootenai Lodge property without the Rolflings' consent. The Rolflings have discussed this matter with the County Commissioners and have asked us to write to further express various concerns regarding Lake County's actions with regard to the Historic Kootenai Lodge Condominium Preliminary Plat Application submitted to the County by the Milhous Group.

As you know, the Milhous Group entered into an agreement with the Rolflings, on August 20, 2004, for the purchase of the Kootenai Lodge property, but the sale has not yet closed. During the due diligence period allowed under the purchase and sale agreement, without the knowledge or participation of the Rolflings, the Milhous Group submitted to Lake County Planning Department a Preliminary Plat Application seeking preliminary approval of a 65-unit condominium subdivision on the Kootenai Lodge property (the "Plat Application"). The Plat Application submitted by the Milhous Group was incomplete, in part, because it did not include a completed State Subdivision Application, also known as the Montana Department of Environmental Quality Local Government Joint Application Form ("Joint Application Form"), signed by the Rolflings. Without the Rolflings' signature on the Joint Application Form, the County had no right under the applicable Subdivision Regulations of Lake County, to process the Milhous Group's incomplete Plat Application. The County has no obligation to the Milhous Group to process an incomplete preliminary plat application. Section II(B)(4)(1) of the Subdivision Regulations of Lake County, which you cited to me, provides only that the County "shall approve, conditionally approve or disapprove the preliminary plat within 60 days of determination of completeness" (emphasis added).

Section II (B)(2)(a) of the Subdivision Regulations of Lake County expressly requires that in submitting an application for a preliminary plat approval with the County Planning Department, the developer or subdivider must submit a completed Joint Application Form, along with the Application for Public Review. The Application for Public Review may be signed by the

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developer; however, the Joint Application Form clearly states that it "must be signed by the owner of the land proposed for subdivision...." The Plat for Preliminary Form, Contents, and Supplements, Appendix B to the Subdivision Regulations, sets forth a list of "Information Required for a Major Subdivision." Among the requirements for submittal is "A completed State Subdivision Application [the "Joint Application Form]." Section 76-4-129 of the Montana Code also requires that the review of the Joint Application Form "shall occur concurrently" with the review required under the Local Regulations for Subdivisions. Accordingly, both Lake County regulations and Montana state statutes require that a Joint Application Form be signed by the property owner and submitted and reviewed as part of the county application process for the preliminary approval of a proposed subdivision.

A requirement that the owner of the subject property sign the Joint Application Form also makes perfect sense. It ensures that a developer or anyone else cannot initiate a land use action with regard to certain property without actually holding record title to the property or obtaining the prior written approval of the record owner of the property. It also ensures the owner is part of the process and a willing participant which would avoid the hardships encountered by the Rolings.

Unfortunately, the required procedure was not followed with respect to the Kootenai Lodge Preliminary Plat Application process. The Rolings did not sign the Joint Application Form when requested by the Milhous Group last February or two weeks ago when Paul Milhous showed up without notice at the Kootenai Lodge and asked Mark Roling to sign the Form. The Rolings would and could not sign the Joint Application Form when they have not been part of the process, do not know what representations are being made in it, do not want to be held responsible for matters that are not within their control, and do not want to be viewed as supporting the proposed development.

Rather than obtaining the Rolings' signature on the Joint Application Form, the Milhous Group signed the form as the "Contract Owner," inserting those words on the Joint Application Form in place of the word "Owner" and submitted the Plat Application to the Lake County Planning Department. The County's first response to this action by the Milhous Group was the correct response. The County sent a letter to Land Solutions, LLC, the consultant for the Milhous Group, dated February 18, 2005 stating that the Plat Application was incomplete and that in order for the County to proceed with its review of the Plat Applications, the Milhous Group either needed to obtain the Rolings' signature or that of their designated agent. Specifically the February 18, 2005 letter states:

This letter is intended to inform you that the preliminary plat application for the Historic Kootenai Lodge Condominiums subdivision is incomplete as submitted. There are a number of items that must be submitted in the formal subdivision application before Lake County Planning Department staff, the Planning Board and the County Commissioners will be able to review your proposal and must be submitted before review can continue. These include:



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4. On the Montana Department of Environmental Quality Local Government Joint Application Form, the last sentence on the last page requires the signature of the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale on the form. Lake County records indicate the property is still owned by the Mark and Debi Rolfing Revocable Trust. You will need to obtain either their signatures or the signature of the designated agent by the Rolfings.

Despite these position stated in this letter, the developer, the Milhous Group, was permitted to proceed with the preliminary application process and the County has proceeded to review the Plat Application without a Joint Application Form signed by the Rolfings, in violation of both Montana state law and Lake County regulations. It appears from the contents of a February 23, 2005 letter from the County to Land Solutions, LLC that County representatives met with Dave DeGrandpre, now of Land Solutions, LLC and representing the Milhous Group, but recently a former Lake County Planning Director. After that meeting, for reasons unknown to us, the County changed its position with respect to requiring the Rolfings' signatures as a necessary submittal item before the County could proceed with reviewing the Plat Application. The County cites no authority to support its change of position on this issue in the February 23, 2005 letter. As of today, several public hearings have been held and a decision by the county commissioners on the preliminary plat and condominium project is imminent, all in apparent violation of both state law and local regulations.

Not only has the County proceeded to process the preliminary plat application without their required signature but the County never provided the Rolfings formal notice of the proposed action either as the owner of record or as an adjacent property owner. The Rolfings only became aware of the submission and processing of a preliminary plat application for their property from conversations with a neighbor.

The failure to follow the proper and legal procedure in processing the Milhous Group's application has resulted in significant problems for the Rolfings. The County's processing of the Plat Application has placed the Rolfings in a very difficult and awkward position with their neighbors and others in the Swan Lake community, as well as with the Milhous Group. The Rolfings have had to walk a fine line so as not to be criticized or sued by either the proponents or opponents of the Plat Application. The Rolfings have been good stewards of this historic property and would not have submitted or supported a proposal to develop the property as described in the Plat Application. In fact, the Rolfings were told by the Milhous Group prior to entering into the purchase and sale agreement that it had no intention of commercially developing the Kootenai Lodge in the manner described in the Plat Application. Thus, it came as a great surprise and disappointment to the Rolfings when they were belatedly informed the Milhous Group submitted the Plat Application seeking to develop the property into a 65-unit condominium subdivision. Yet, many people have assumed the Rolfings are associated with and support the proposed development, even though the Rolfings did not propose, approve or



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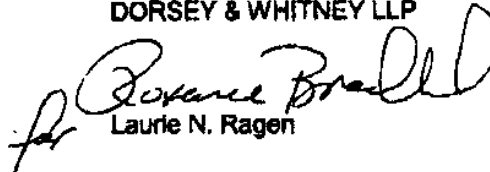
have any involvement in the Plat Application. The Rolings' name and reputation have been affected, and this has caused the Rolings a great deal of stress and worry. They have endured garbage being dumped on their property and the posting of large derogatory sign on their neighbor's property reading "Don't Serve Your Greed by Destroying Swan Lake - Milhous - Roling." The Rolings are finding it more and more difficult to engage in local activities because of the perception by some that they are assisting in the Milhous Group's efforts to develop the Kootenai Lodge Property.

The County's premature review and processing of the Plat Application has had other negative effects on the Rolings. They have had to retain lawyers and incur costs to protect their interests and to assist them in understanding the planning and development process and their rights related to that process. The Rolings have also suffered a loss of their privacy and their peace and quiet at the property as all sorts of consultants, County representatives and other interested parties inspect and tour the property, sometimes without permission and without prior notice. In addition, their property has been inspected and staked during this process.

Lake County's acts of reviewing and processing the Milhous Group's Plat Application without a completed Joint Application Form is contrary to state law and county regulations. Without the signed Joint Application Form there is no basis to continue processing the Milhous Group's Plat Application and proceeding with a final decision from the County Commissioners. If and when the Milhous Group purchases the Kootenai Lodge property from the Rolings, it will be the legal owner and can then sign the Joint Application Form itself. Only at that time will it be legal and appropriate for the County to proceed in reviewing the Milhous Group's Plat Application for the Historic Kootenai Lodge Condominium Subdivision.

Sincerely,

DORSEY & WHITNEY LLP

A handwritten signature in black ink, appearing to read 'Laurie N. Ragen', with a small 'for' written to the left of the signature.

Laurie N. Ragen

cc: Mark and Debi Roling