



Memo

TO: Andres Haladay, Hearing Examiner
Board of Environmental Review

Electronically Filed with the Montana Board of
Environmental Review

FROM: Joyce Wittenberg, Interim BER Secretary
P.O. Box 200901
Helena, MT 59620-0901

This 8 day of August, 2017
at 9:58 o'clock am

DATE: August 8, 2017

By: Meranda Sikess

SUBJECT: Board of Environmental Review Case No. BER 2017-06 SUB

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: DENNIS AND SANDRA
DICKENSON'S APPEAL OF DEQ
SUBDIVISION SECTION CONTRACT
REVIEWER'S DECISION TO DENY THE
DICKENSON'S SUBDIVISION
APPLICATION, EQ#17-1398, JEFFERSON
COUNTY, MONTANA.

Case No. BER 2017-06 SUB

The BER received the attached request for hearing on August 1, 2017.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Aaron Pettis
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Acting Bureau Chief
Engineering Bureau
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Attachments

BER 2017-06 SUB

JEFFERSON COUNTY
Environmental Health Department
P.O. Box H
Boulder, Montana 59632
(406) 225-4126

July 27, 2017

Department of Environmental Quality
Board of Environmental Review - Joyce Wittenberg, Secretary
1520 East Sixth Avenue
PO Box 200901
Helena, Montana 59620-0901

Re: Appeal of denial - request for hearing

Dear Joyce,

As a contract reviewer for the Subdivision Section, I recently reviewed a submittal for Dennis and Sandra Dickenson. A denial letter was mailed June 22nd with instructions on how to proceed if they wished to appeal my denial. A copy of the denial letter is enclosed.

On July 21st, I received a letter from Scott Svee with Jackson Murdo & Grant, P.C. representing the Dickensons. Mr. Svee has requested a hearing before the Board of Environmental Review. I visited with Aaron Pettis, DEQ attorney, and after consultation with his boss, he recommended I forward the request to you. Please find a copy of the request enclosed.

If you have questions, don't hesitate to contact me at the number listed above.

Sincerely,



Megan Bullock, R.S.
County Sanitarian

c: Aaron Pettis, DEQ
Steve Haddon, Jefferson County Attorney

enc

JEFFERSON COUNTY
Environmental Health Department
P.O. Box H
Boulder, Montana 59632
(406) 225-4126

COPY

June 22, 2017

North Fork Technical Services, LLC
Randi Rognlie
9 Crossfire Drive
Clancy, Montana 59634

Re: E.Q. # 17-1398
Canty-Dickenson BLA
Jefferson County

Dear Randi,

The application for the above referenced subdivision was received by this office and reviewed in accordance with ARM Title 17, Chapter 36. This is to inform you that the subdivision application cannot be approved at this time. Additional information is being requested to demonstrate compliance with the Sanitation in Subdivisions Act (76-4-101, MCA) and regulations (ARM Title 17, Chapter 36).

Until the information required by law and regulation as specified in this letter is submitted to this office and found to be adequate, I cannot produce a statement that the subdivision is free of sanitary restriction. Because I am required to make a decision to deny or approve your application within statutory deadlines, I hereby deny the application until the required information is submitted for review.

If you wish to appeal my denial of certification, you may request a hearing before the Board of Environmental Review, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

If you have any questions, please feel free to call me at the number listed above.

Sincerely,



Megan Bullock, RS
County Sanitarian

Re: E.Q. # 17-1398
Canty-Dickenson BLA
Jefferson County

Additional Information:

General

1. Per ARM 17.36.335 (2) Existing non-public water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM 17.36.601 from:

(a) the setback requirements in ARM 17.36.323; and

(b) the well construction requirements of ARM 17.36.333, if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

The existing well was previously approved as an individual water supply and is now being proposed as a shared water supply thus it must comply with current rules. The well is only grouted to 18 feet, but must be either grouted to 25 feet or a waiver approved per ARM 17.36.601. Please note all waiver requests must include justification and a \$200 review fee.

2. The existing well is within a road easement shown on Certificate of Survey # 146961 between Lots 3 & 4 of South Hills Park filed in the Jefferson County Clerk & Recorder's Office March 3, 1989. The easement is identified in an earlier Certificate of Survey # 139390 filed February 13, 1987 as being dedicated for public use.

A legal opinion from DEQ recommended the landowners use a quiet title action to terminate the easement; however, in this case, they would also accept releases from all other landowners whose deeds reference the recorded plat or certificate of survey that show the easement provided the landowners had the authority to release all of the possible rights.

With the road easement being identified as dedicated for public use on Certificate of Survey # 139390, it's unclear whether the landowners have the authority to abandon the easement.

Please provide documentation supporting that the governing body terminated the road easement as being dedicated for the public's use to a roadway under private ownership. Lack of documentation may require a quiet title action to proceed with abandoning the easement.

Additional questions or comments may be required based upon the continued review of this file and the content of future submittals.

JACKSON MURDO & GRANT, P.C.

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Direct Dial: 406-513-1119
Fax: (406) 443-7033
Email: ssvee@jmgm.com

July 21, 2017

Via Certified Return Receipt and First Class

Meghan Bullock
Jefferson County
Environmental Health Department
P.O. Box H
Boulder, MT 59632

COPY

*Re: Hearing Request
E.Q. #17-1398
Canty - Dickenson BLA
Jefferson County, Montana*

Dear Megan:

Our firm represents Dennis and Sandra Dickenson. We received a copy of your June 22, 2017, denial letter regarding the application for the above-referenced subdivision. North Fork Technical Services, LLC submitted additional information as requested in the denial letter, and a meeting was held on July 14, 2017, with the MDEQ attorney who issued the legal opinion referenced in your letter in an effort to resolve MDEQ and Jefferson County's confusion concerning the additional requested information. Given the fact we have not heard anything from MDEQ following our July 14, 2017, meeting, we hereby request a hearing pursuant to Section 76-4-126, MCA as indicated in your letter.

Yours very truly,

JACKSON MURDO & GRANT, P.C.



Scott M. Svee

cc: Dennis and Sandra Dickenson
North Fork Technical Services, LLC