

RESOLUTION 2017 – 115

A RESOLUTION APPROVING MODIFIED ROAD PLAN AS CONTEMPLATED IN THE AMENDED JUDGEMENT DATED MARCH 20, 2015 IN *LEWIS AND CLARK COUNTY v. GREG HAMPTON, cdv 2009-525*

WHEREAS, in September 2004 the Board of County Commissioners, at the request of Greg Hampton, approved lifting the agricultural covenant on his property on numerous conditions, including that he make improvements to the affected sections of Lodgepole and Sweetgrass Roads to meet the County Road standard applicable at the time (Typical Section No. 3, Peccia, gravel) (Exhibit A);

WHEREAS, the County brought an enforcement action when staff learned that Mr. Hampton had built a home on the property without meeting this condition among others and continued in his refusal to complete certain conditions (CDV 2009-526);

WHEREAS, the Montana Supreme Court held that Mr. Hampton was required to make those road improvements (*Lewis & Clark County v. Hampton*, 2014 MT 207, 376 Mont. 137, 333 P.3d 205);

WHEREAS, on remand, the District Court stated in its Amended Judgement dated March 20, 2015, (Exhibit B) that Mr. Hampton shall be responsible for the entire cost of upgrading a portion of Lodgepole Road from Lime Kiln Road to the intersection of Sweetgrass Road and Sweetgrass Road from its intersection with Lodgepole Road to his residence, according to county subdivision regulations (Typical Section No. 3, Peccia). . . “unless Hampton and the other landowners accessing their properties from Sweetgrass Road agree on a more extensive degree of upgrade that is not inconsistent with County standards”;

WHEREAS, Mr. Hampton and the other landowners whose property is affected by this road improvement have reached an agreed upon road improvement plan that County Engineer Dan Karlin, Lewis & Clark Fire Service Area Fire Chief Wally Jester, and the County Attorney have reviewed and approved as an upgrade not inconsistent with County standards (Exhibit C); and

WHEREAS, Mr. Hampton and the affected landowners have also entered into a separate Memorandum of Agreement (Exhibit D); and

WHEREAS, Mr. Hampton has tentatively lined up a construction company to commence work on the improvements in Exhibit A as soon as the Commission and Court approve the modified road plan; and

WHEREAS, all affected landowners signed notarized consents to the modified road improvement plan and those will be recorded in the Clerk and Recorder’s Office along with this Resolution upon the Commission’s approval; and

WHEREAS, Mr. Hampton filed and recorded the deed restriction required by the Court’s Amended Judgment (Exhibit E);



WHEREAS, upon completing the road improvements in accordance with the modified road improvement plans (as determined by County Public Works staff), Hampton will present for filing a Certificate of Survey in compliance with Paragraph 6 of the Amended Judgment (condition 11), and the County shall file it in accordance with County procedures (including the Survey Review Committee's review); and Hampton and the Board of County Commissioners will sign a writing consenting to the removal of the agricultural covenant from the record of title to be filed in the Clerk and Recorder's Office in accordance with Paragraph 7 of the Amended Judgment;


WHEREAS; the Board of County Commissioners held a public hearing on August 22, 2017, to hear public comment on this modified road improvement plan;

NOW, THEREFORE BE IT RESOLVED that the Modified Road Improvement Plan, prepared by Shedhorn Engineering LLC, signed by Tony Prothero, sealed March 27, 2017, and revised April 6, 2017, as presented by Hampton and consented to by the affected landowners is APPROVED; and


BE IT FURTHER RESOLVED that the Commission approves Hampton's request to the Court for an extension of time to complete said improvements and that Hampton be given until but no later than October 27th, 2017, to make such improvements and complete the requirements set forth in Paragraphs 6 and 7 of the Amended Judgment.

Dated this 22 day of August, 2017

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Susan Good Geise, Chair

ATTEST:


Paulette J. DeHart, Clerk of Board



September 24, 2004

Mr. Greg Hampton
2717 Goldrush
Helena, MT 59601

Dear Mr. Hampton:

On Thursday, September 9, 2004 the Lewis and Clark County Commissioners held a public hearing on your request to revoke the Agricultural Covenant for Tract B of Certificate of Survey No 503150/A, generally located in the NE1/4 of Section 5, Township 5 North Range 3 West, Lewis and Clark County, Montana.

On Tuesday, September 21, 2004, the Commissioners convened to make a decision on the request. The attached statement of findings, determinations, and decision outlines the basis of the Commissioners' decision to approve your request for revocation.

Please work closely with the County Planning Department as you proceed with the fulfillment of the conditions placed on the revocation. Once all the conditions of this preliminary approval have been met, the Agricultural Covenant can be lifted.

Sincerely,

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

Michael A. Murray, Chairman

cc: County Planning



**FINDINGS OF FACT AND CONCLUSIONS OF LAW
REVOCAION OF AN AGRICULTURAL COVENANT
GREG HAMPTON, APPLICANT**

The Lewis and Clark County Board of Commissioners has received a written request from Greg Hampton to revoke the Agricultural Covenant on Tract B of Certificate of Survey No 503150/A, generally located in the NE1/4 of Section 5, Township 5 North Range 3 West in Lewis and Clark County. The Board considered oral testimony at the Public Hearing held on September 9, 2004.

FINDINGS OF FACT

1. The division of land that created the parcel with the agricultural covenant was recorded in June 1993, COS No. 503150/A
2. In his original letter of application, the Applicant stated that the agricultural exemption was used because of the insufficient time available to complete the sanitary restrictions process prior to subdivide the lot into the 2 acre home site and the 12 acre remainder.
3. Resolution 1986-55 establishes the policy to be used by the Board of County Commissioners in considering the revocation of an agricultural covenant
- ~~4. That parcel is a 14 acre lot that has similar constraints for agricultural purpose due to topography, soil types and location~~
5. The parcel has no evidence that any agricultural uses, other than possibly grazing, have occurred.
6. There are no parcels that appear to have been used for agricultural purposes adjacent to or even nearby the site.
7. The parcel is not located in the Helena Valley Irrigation District
8. As discussed in the Lewis and Clark County Voluntary Agricultural Land Conservation program report. This lot is not in an area of high-value agricultural soils or other areas of high county conservation values, defined in the Lewis and Clark Voluntary Agricultural Conservation program report.
9. All of the taxes are current
10. The property is currently located in the Open Space Residential Zoning District, as administered by the City of Helena
11. Access to the site is currently obtained through Lodgepole and Sweetgrass Roads, which are private access easements and privately maintained.

NANCY SWEENEY
CLERK DISTRICT COURT

2015 MAR 20 PM 12:37

FILED
BY LISA KATY
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

<p>LEWIS AND CLARK COUNTY, Petitioner, v. GREG L. HAMPTON, Respondent.</p>	<p>Cause No. CDV-2009-526 AMENDED JUDGMENT</p>
--	--

On August 5, 2014, the Montana Supreme Court issued its opinion in the above-entitled matter, stating in part:

The County first contends that the court erred in finding that Lodgepole Road is a public road. The District Court relied on Hampton's post-trial briefing for its findings. Hampton attested that Lodgepole Road is a public road and based this conclusion upon an engineering report he commissioned. That report does not state that Lodgepole Road is public; it merely discusses the specifications of the road. . . . Further, the easement grant attached to Hampton's post-trial briefing does not demonstrate that the public access extends across all of Lodgepole Road. We agree with the County that the court's findings regarding Lodgepole Road are not supported by substantial evidence.

...

The District Court incorrectly concluded that Hampton could not be held responsible for the entire cost of upgrading Lodepole [sic]

1 Road. We reverse this portion of its judgment and remand for entry
2 of a modified judgment requiring Hampton to bear the entire cost
of the upgrade.

3 *Lewis & Clark Co. v. Hampton*, 2014 MT 207, ¶ 37, 45, 376 Mont. 137, 333
4 P.3d 205.

5 The parties having submitted proposed modified judgments and
6 presented oral argument on the issue,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
8 Judgment be, and hereby is, entered as follows:

9 1. Defendant Greg L. Hampton shall be responsible for the
10 entire cost of upgrading to county subdivision regulations (Typical Section No.
11 3, Peccia) a portion of Lodgepole Road from Lime Kiln Road to the intersection
12 of Sweetgrass Road.

13 2. Defendant Hampton shall be responsible for the entire cost
14 of upgrading Sweetgrass Road from its intersection with Lodgepole Road to his
15 residence. The upgrade shall be according to county subdivision regulations
16 (Typical Section No. 3, Peccia) as required by Condition 5, unless Hampton and
17 the other landowners accessing their properties from Sweetgrass Road agree on
18 a more extensive degree of upgrade that is not inconsistent with County
19 standards.

20 3. Hampton shall present a plan for accomplishing the upgrades
21 to Sweetgrass and Lodgepole Roads to the County within 90 days of the date of
22 this Amended Judgment. The upgrades shall be completed before the end of
23 2015. If this is not done, the Court will consider imposition of additional
24 sanctions, including a daily penalty.

25 //

1 4. Within 45 days of the date of this Amended Judgment,
2 Hampton shall file with the County an irrevocable deed restriction clearly
3 prohibiting further development or division of the 12.2 acres upon which his
4 home is located, for sale, rent, lease, or other conveyance. The Court intends
5 this restriction to apply whether Hampton proposes to divide the property
6 through subdivision review or otherwise.

7 5. Following Hampton's compliance with Condition 6 through
8 the upgrade of Sweetgrass Road, the County shall, upon application by
9 Hampton, issue the approach permit required by Condition 7.

10 6. If and when Hampton presents a certificate of survey
11 complying with the provisions of Condition 11 as modified by this Amended
12 Judgment, the County shall file the same.

13 7. The County shall accept for filing a writing signed by the
14 Board of County Commissioners and Hampton reflecting all parties' consent to
15 the removal of the agricultural covenant from the record of title.

16 8. Each party shall bear its own costs and attorney fees.

17 DATED this 20 day of March 2015.

18

19

20


KATHY SEELEY
District Court Judge

21

pc: Katie Jerstad/K. Paul Stahl
 David K.W. Wilson, Jr./Robert Farris-Olsen

22

23

T/KS/A&c co v hampton amended j.wpd

24

25

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into on the 2 day of June, 2017, between Greg Hampton and the Neighbors, as identified on **Exhibit A** ("the Neighbors").

Recitals

1. Mr. Hampton is a party to the case of *Lewis and Clark County v. Hampton*, Cause No. CDV 09-526. Pursuant to the March 20, 2015 Amended Judgment in that case, Mr. Hampton is required to make certain improvements and upgrades to Lodgepole Road and Sweetgrass Road in Lewis and Clark County;
2. Pursuant to the Amended Judgment in *Hampton*, Mr. Hampton is also required to file an irrevocable deed restriction prohibiting further development of the 12.2 acres of his land, whether through the subdivision process or otherwise;
3. The Neighbors are property owners on Lodgepole or Sweetgrass Roads whose properties will be affected by any road improvements;
4. The Neighbors were concerned with the impacts to their properties that would be caused by the road improvements required under the Amended Judgment, and considered seeking injunctive relief before any construction began;
5. In 2015, Hampton, Lewis and Clark County, and the Neighbors commenced negotiations intended to ensure that any road improvements were acceptable to the Neighbors, while still meeting the spirit of the Amended Judgment;
6. As indicated in a November 3, 2016, letter from the Lewis and Clark County Attorney to the Neighbors, the County has preliminarily approved the

engineered road improvements proposed by Mr. Hampton in response to the Neighbors' concerns, contingent upon the Neighbors' consent;

7. The County and Mr. Hampton intend to submit the approved engineered road improvement plans to the District Court as evidence of a negotiated resolution; and

8. The Neighbors and Mr. Hampton have agreed to the additional terms set forth below.

Agreement

1. Mr. Hampton will complete the construction of the road improvements in accordance with the engineered plans, which are attached as Exhibit B ("the Plans"). Such construction will be complete on or before the final date provided by Court Order.

2. Mr. Hampton agrees to remediate damage to landscaping on any of the Neighbors' properties caused by the road improvements, including any repair to approaches or driveways caused by the improvements. Any trees or shrubs in the current right-of-way that must be removed for construction of the improvements will not be replaced. As stated on the Plans, such trees will be visibly marked four weeks prior to construction. Mr. Hampton will work with the Neighbors as needed to identify any specific areas of concern, including concerns related to the removal of identified trees, prior to construction.

3. Mr. Hampton agrees to pay the sum of \$7,000.000 to the Neighbors as compensation for their attorney's fees. This amount will be paid in full within seven

days of the execution Court approval of the road construction, and the terms of this negotiated resolution..

4. Mr. Hampton agrees to record the irrevocable deed restriction, as approved by the County, per the Amended Judgment.

5. Mr. Hampton shall present this Agreement to the Court as additional evidence of the negotiated resolution and the Agreement shall become part of any Amended Judgment or court approval of the terms of resolution.

6. The Neighbors agree not to bring a legal challenge to the implementation of the Amended Judgment in Cause No. CDV 09-526 as long as the negotiated resolution, including the engineered plans and this Agreement, are approved by the Court.

7. In the event that either party is required to file a lawsuit to enforce the terms of this Agreement, the prevailing party to such lawsuit shall be entitled to recover reasonable attorneys' fees.

8. This Agreement may be executed in counterparts and each such counterpart when signed shall be effective and binding upon each party.

GREG HAMPTON:


Greg Hampton


Date

