

November 4, 2003

Mr. Blaine C. Bradshaw
Granite County Attorney
P.O. Box 489
Philipsburg, MT 59858-0489

Dear Mr. Bradshaw:

You have requested an informal non-binding letter of advice regarding the question of whether a proposed property conveyance in Granite County is subject to the Subdivision and Platting Act. The general fact pattern involves a mining claim the Murphys conveyed in 1967 in a deed that reserved to the Murphys the right to segregate and retain one and one-half acres of surface estate for a cabin site. The deed was duly recorded, but your letter does not indicate that the Murphys or anyone else filed any document legally describing the reserved one and one-half acre plot prior to the effective date of the Act in 1974.

In 1997 and again in 1998, parties filed quitclaim deeds purporting to convey “approximately one and one half (1 1/2) acres of the surface rights” to the mining claim. In July, 2003, a quitclaim deed was filed purporting to convey all of the grantors’ right, title, and interest in the entire mining claim, specifically including the one and one-half acre parcel, to Contact Mining, Inc., which in turn conveyed the property to Thor Sichveland. Sichveland now wishes to convey the one and one-half acre parcel, and claims the right to do so without compliance with the Act on the theory that the parcel was created as a “tract of record” by conveyance before the effective date of the Act. See Mont. Code Ann. § 76-3-206.

Your question is highly fact-specific, and involves some factual issues that cannot be resolved in this letter. However, I would offer the following observations.

The documents you provided do not disclose when the Murphys exercised their option to identify the one and one-half acre parcel, nor do any of the documents contain a complete legal description of the parcel the Murphys retained. While “legal description” is not defined in the Act, the term generally refers to a metes and bounds or other description of a parcel by reference to its location within the township and range system of the federal

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land survey. I believe the law is that ambiguities in the description are questions of fact that can be resolved by parol evidence. See, e.g., City of Missoula v. Rose, 164 Mont. 90, 519 P.2d 146 (1974) (recognizing power of court to take evidence to resolve ambiguity in deed description of easement). The documents you have provided are all quitclaims in which the grantor conveys away whatever interest he may have had, but they do not, in my view, legally describe the one and one-half acre parcel so that a disinterested observer could find the parcel.

Under these conditions, it would be my view that the one and one-half acre parcel never became a “tract of record” as that term is defined in Mont. Code Ann. § 76-3-503(17)--“an individual parcel of land . . . ***that can be identified by legal description***, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office.” (Emphasis added.) Assuming that the documents you provided are exhaustive of the pertinent records on file, none of them would permit identification of the specific parcel as a separate tract from the mining claim.

Assuming the parcel was never created as a tract of record, it would not be necessary to determine whether it was reaggregated with the mining claim proper using the process outlined in Mont. Code Ann. § 76-3-103(17)(b) and (c). However, I would note that that subsection 17(c) requires the use of words showing an express intent to reaggregate parcels that have previously been divided. In my view no such words appear in either the Patricia Tarno-Contact Mining, Inc. or the Contact-Sichveland deeds. Thus, I would not find that those documents would have triggered a merger of any previously divided parcels in any event.

I hope the foregoing is helpful. This letter does not constitute an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym