

## MEMO

To: Flathead County Commissioners  
From: David W. Randall, Deputy Flathead County Attorney  
Re: Petition for Road Abandonment Request No. 500  
Date: May 8, 2018

The Petition for Road Abandonment proposes abandonment of the portion of county right of way (ROW) at the end of Swimming Lake Court. The same proposed abandonment was heard by the Flathead County Commissioners in 2015 as Petition for Road Abandonment Request No. 491. The original Petition was denied.

In every case of road abandonment, application of §7-14-2615(3), MCA must be considered. The section prevents abandonment of a county ROW which provides existing legal access to public land or waters, including access for public recreational use unless there is substantially the same access from another ROW or road.

On May 2, 2018, Commissioner Pam Holmquist, Road and Bridge Department Director Dave Prunty, Parks Director Jed Fisher, various Parks Board Members, and I have conducted an on-site investigation of the roadway identified in Petition. Petitioner Terry Cito was notified of the inspection, was present, and was given the opportunity to display the ROW, which he flagged, and engage in discussion with each of the attendees. I have also thoroughly reviewed the Petition, Flathead County GIS, and the applicable MCA. The portion of the ROW at issue for abandonment has not been developed into a roadway. The traveled ROW ends in a cul-de-sac and the section at issue extends therefrom. The ROW sought to be abandoned borders three parcels; two are owned by Terry Cito and Lisa Birkeland (co-petitioners for this abandonment) and the other is Flathead County Park property Assr. No. E000045 (identified as "PARK" on the maps attached to the Petition). The Park is located on the shoreline of Swimming Lake- which also has another County Park with lakefront access.

Petitioners have explained the purpose of the Petition is to reroute trespass from the public by abandoning the ROW and erecting signage and providing a trail for access to the Park. Mr. Cito has clarified he would be willing to install a trail from the cul-de-sac across a small portion of his property (which is less steep) for access to the Park. Mr. Cito has also indicated he would like to install signage to direct the public to the Park and also to Jake Lake- a seasonal lake bordering the Park to the South.

Under §7-14-2615(3), MCA, it is not advisable to grant the Petition. If it were granted, the abandonment would not completely isolate the Park; however, the legal access to the Park would be narrowed from 60' to 30' with the Park parcel taking to the centerline of the ROW. The offer from Mr. Cito to install an access trail (on the portion of the ROW he would take) raises concern over compliance with the American with Disabilities Act (ADA) which requires ADA access be developed to the Park if any improvements are made, including Mr. Cito's trail. The concern here is simply abandoning a ROW that provides legal access to public Park property and shoreline of Swimming Lake. Further, under §7-14-2602, MCA, the Petition must contain the "necessity for and advantage of" the abandonment. The Petitioners cite the trespass issue as

the reason for the Petition; however, it remains unclear how abandoning the right of way (removing a strip 30' wide) would ease the Petitioner's trespass issue. Given the concerns over a potential conflict with §7-14-2615(3), MCA, it is difficult to discern the advantage the abandonment will provide Flathead County residents. Finally, it is understood that, at this time, Flathead County Parks & Recreation is considering a master plan for the future of the numerous Parks located in the Many Lakes area. Abandoning the ROW before a determination is made as to the future of this Park could affect access to the parcel, if it were to be developed or its marketability, if it were to be surplusd at some point in time. For the reasoning contained herein, it is recommended to deny the Petition.

Please contact me with any questions.

Thank you,

A handwritten signature in black ink, appearing to read 'David W. Randall', with a large, stylized flourish above the name.

David W. Randall  
Deputy County Attorney