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## Aspen Trails Ranch, LLC v. Simmons

Jessica DeMarois

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Jessica DeMarois

**ABSTRACT**

This case decision carries a strong message from the Montana Supreme Court to local planning bodies and aspiring developers. Environmental assessments included in subdivision proposals must conform with the provisions of the Montana Subdivision and Platting Act by providing all available information on the proposed development’s potential impacts to natural resources in the area. Without such data, planners are unable to take a “hard look” at the proposal and thus any plat approval will be deemed “arbitrary and capricious or unlawful” by the court if challenged by area landowners who stand to be harmed by the development.

**I. INTRODUCTION**

*Aspen Trails Ranch, LLC v. Simmons*<sup>118</sup> represents the affirmation of a recent shift in Montana’s judicial attitude toward land use planning. In this case, the Montana Supreme Court affirmed a district court decision to overturn approval of a preliminary subdivision plat near Helena based on inadequate investigation of the proposed site’s impacts on the area’s watershed.<sup>119</sup> The Court found area landowners, both with and without property adjacent to the site, had standing to sue based on possible adverse effects to water quality and the site’s rural landscape.<sup>120</sup> This decision sent a message to local planning bodies and developers that: (1) the guidelines of the Montana Subdivision and Platting Act (MSPA) must be

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<sup>118</sup> *Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, 356 Mont. 41, 230 P.3d 808.

<sup>119</sup> *Id.* at 821.

<sup>120</sup> *Id.* at 818.

closely adhered to; and (2) the courts will demand that planning bodies provide evidence that under the “hard look” standard, a plat approval was not unlawful, arbitrary, or capricious.<sup>121</sup>

## **II. FACTUAL BACKGROUND**

In August 2005, developer Richard Bowen filed an application for subdivision approval with the Helena City Commission (Commission).<sup>122</sup> He planned to build 325 residences on a 260-acre parcel north of Helena along Prickly Pear Creek.<sup>123</sup> Prickly Pear Creek flows into Lake Helena and ultimately into the Missouri River.<sup>124</sup> The parcel is in a rural area that contains wetlands.<sup>125</sup> In most places, the water table under the site is extremely high, averaging two to ten feet below the surface.<sup>126</sup>

Bowen’s plan was for the “Aspen Trails Ranch” subdivision to be annexed to the city of Helena’s sewer and water systems.<sup>127</sup> Along with his application, Bowen submitted a fifty-three page Environmental Assessment (EA), which included a community impact assessment and a summary of proposed mitigation measures to offset anticipated impacts from building a development of the size proposed in the area of the site.<sup>128</sup> The City of Helena’s Planning Division also submitted a staff report on the proposed development outlining twenty-seven conditions to mitigate adverse impacts to agriculture, the natural environment, wildlife, public health, and other areas of concern highlighted in their findings of fact.<sup>129</sup>

After reviewing the EA and staff report, and taking public comment on the proposed subdivision, the Planning Board denied the application based on the impossibility of mitigating the project’s impacts

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<sup>121</sup> *Id.* at 820 (citing *Clark Fork Coalition v. Mont. Dept. of Env’tl. Quality*, 2008 MT 407, 347 Mont. 197, 197 P.3d 482).

<sup>122</sup> *Id.* at 811.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 812.

<sup>127</sup> *Id.* at 811.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

on the natural environment, wildlife, and wildlife habitat.<sup>130</sup> The Commission then held a public meeting and voted to approve the preliminary plat, despite concerns voiced by contiguous landowners and Commission members about the high groundwater table and flood potential in the area.<sup>131</sup> The Commission reasoned that any potential adverse impacts could be mitigated by the twenty-seven conditions of approval it imposed.<sup>132</sup> Immediately after the Commission's decision to approve the preliminary plat, three area landowners filed suit against the Commission in district court, challenging its decision to approve the preliminary plat on the grounds that the proposed subdivision would have substantial and significant impacts on ground and surface water, as well as area wildlife habitat.<sup>133</sup>

### **III. PROCEDURAL HISTORY**

The Commission moved to dismiss the complaint, alleging that the landowners lacked standing to sue.<sup>134</sup> The district court denied the motion, noting that at least one landowner had standing under the MSPA, which expressly allows Commission decision appeals by contiguous landowners.<sup>135</sup> The non-adjacent landowners were allowed to piggyback on that standing.<sup>136</sup> The court further noted that the harms alleged by the plaintiff landowners in their first amended complaint failed to tie directly to an action taken by the Commission.<sup>137</sup> The landowners were thus allowed to file a second amended complaint incorporating specific allegations of harm that were previously set forth in a supplemental affidavit.<sup>138</sup> The landowners alleged that neither the EA nor the staff report adequately addressed possible impacts resulting from the proposed subdivision.<sup>139</sup> Specifically, they claimed the EA did not address

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 811-812.

<sup>134</sup> *Id.* at 811.

<sup>135</sup> *Id.* at 811-812 (citing Mont. Code Ann. § 76-3-625(3) (2009)).

<sup>136</sup> *Id.* at 818 (citing *Clinton v. City of New York*, 524 U.S. 417 (1998)).

<sup>137</sup> *Id.* at 812.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

impacts to water quality in the Lake Helena watershed from the proposed subdivision.<sup>140</sup> The landowners further argued that the Commission’s findings of fact for conditional approval did not adequately describe the potential impacts of the development, especially with regard to wildlife, water quality, and flooding.<sup>141</sup>

At an evidentiary hearing on the matter, the landowners’ primary contention was that the EA failed to comply with the MSPA, which requires an EA to include “available groundwater information.”<sup>142</sup> While the EA noted that the groundwater table on the proposed site was very high, two to ten feet below ground, it failed to include data from an available USGS report on the area or data obtained from monitoring wells on the site.<sup>143</sup> The landowners’ expert testified that without this type of baseline information the impacts on groundwater from a development of the proposed size could not be adequately anticipated or mitigated.<sup>144</sup> The landowners further contended that neither the staff report nor the EA addressed the non-point source pollution impacts on the watershed from pesticides, fertilizers, and other household sources.<sup>145</sup> They argued these impacts would be significant from a development of the size planned.<sup>146</sup>

The district court reviewed the complaint under the “arbitrary and capricious or unlawful” standard set forth in *Kiely Construction, LLC v. City of Red Lodge*.<sup>147</sup> The court noted that the MSPA required the Commission to consider the developer’s application, the preliminary plat, the EA, public comment, and the Planning Board’s recommendations in reaching a decision.<sup>148</sup> The MSPA requires the EA to contain information including:

(a) a description of every body or stream of surface water that may be affected by the

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 812-813 (citing Mont. Code Ann. § 76-3-603(1)(a)).

<sup>143</sup> *Id.* at 812, 814.

<sup>144</sup> *Id.* at 812.

<sup>145</sup> *Id.* at 813.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* (citing *Kiely Const., LLC v. City of Red Lodge*, 2002 MT 241, 312 Mont. 52, 57 P.3d 836).

<sup>148</sup> *Id.* (citing Mont. Code Ann. §76-3-608(1)).

proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision; [and]

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.<sup>149</sup>

The district court, citing Montana Code Annotated § 76-3-608(3)(a) of the MSPA, also stated that one of the primary reviewing criteria was the impact of the subdivision on the natural environment.<sup>150</sup>

The district court then considered the appropriate standard under which to analyze the Commission's review of the EA and adopted the "hard look" standard set forth in *Clark Fork Coalition v. Montana Department of Environmental Quality* in 2008:

In other words, the Court looks closely at whether the agency has taken a hard look at the question presented. The Court does not take a hard look itself but requires that the agency does so. The Court focuses on the validity and appropriateness of the administrative decision making process without intense scrutiny of the decision itself. In this way, the Court examines the elements of the decision without interfering with the administrative authority over the decision itself.<sup>151</sup>

The district court concluded that the information contained in the EA regarding groundwater at the site was inadequate to allow the Commission to take a "hard look" at impacts on water quality.<sup>152</sup> The court noted that the information was so incomplete that sewer pipes could plausibly be placed directly into groundwater, increasing the risk of leakage and contamination of Prickly Pear Creek.<sup>153</sup> The EA also failed to address the impact of surface water pollutants on the watershed.<sup>154</sup> The district court concluded that the approval of the preliminary plat was unlawful under the MSPA for failure to provide available

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<sup>149</sup> *Id.* (quoting Mont. Code Ann. §76-3-603(1)).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 813-814 (quoting *Clark Fork Coalition*, 197 P.3d at 493-494).

<sup>152</sup> *Id.* at 814.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

groundwater information, and arbitrary and capricious insofar as it failed to consider the impacts of surface water pollution from the subdivision.<sup>155</sup> The Commission declined to challenge the district court's decision, and Aspen Trails, LLC was allowed to intervene for purposes of the appeal.<sup>156</sup>

#### **IV. MONTANA SUPREME COURT HOLDING AND ANALYSIS**

The Montana Supreme Court dealt with three issues on appeal. It swiftly concluded that the district court properly allowed Aspen Trails, LLC to intervene on appeal,<sup>157</sup> and that the district court properly allowed the suit to move forward based on at least one landowner's statutory right to challenge approval of the plat.<sup>158</sup> The Court then turned to the substantive issue on appeal, whether the record established that the governing body acted arbitrarily, capriciously, or unlawfully in accordance with the district court's conclusions.<sup>159</sup> The Court concluded that the district court did not err in allowing the landowners' expert to testify at the evidentiary hearing pursuant to its holding in *Skyline Sportsmen's Association v. Board of Land Commissioners*.<sup>160</sup> It further held that the district court properly analyzed the actions of the Commission under the "hard look" standard set forth in *Clark Fork Coalition* in deciding whether the Commission's ultimate decision was arbitrary, capricious, or unlawful.<sup>161</sup> Finally, the Court held that the district court did not err in concluding that the Commission's approval of the preliminary plat was unlawful for failure to provide adequate groundwater information under the MSPA and that it was arbitrary and capricious for failure to consider surface water pollution impacts created by the subdivision.<sup>162</sup> Therefore, the Court concluded that the district court's decision to void the plat was not erroneous.<sup>163</sup> The remedy was correct under the MSPA, and the developer had the ability to re-apply

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<sup>155</sup> *Id.* at 815.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 817.

<sup>158</sup> *Id.* at 818.

<sup>159</sup> *Id.* at 819.

<sup>160</sup> *Id.* at 820 (citing *Skyline Sportsmen's Assoc. v. Bd. of Land Commrs.*, 286 Mont. 108, 113 951 P.2d 29, 32 (1997)).

<sup>161</sup> *Id.* (citing *Clark Fork Coalition*, 197 P.3d at 493-494).

<sup>162</sup> *Id.* at 821.

<sup>163</sup> *Id.*

for approval once a more thorough EA was complete.<sup>164</sup>

## **V. CONCLUSION**

Many of the Montana Supreme Court's recent decisions regarding land use planning have indicated a growing awareness and emphasis on protection of natural resources through careful development. Under the MSPA, a developer must present a complete and accurate analysis of the environmental impacts of the proposed development when applying for preliminary plat approval. The governing body tasked with reviewing and approving applications must take a "hard look" at the information provided, and after *Aspen Trails Ranch*, must also demand additional information if that provided is inadequate to allow informed decision making. Landowners in the area have standing to challenge an approved plat if they can show that the approval and subsequent development could adversely impact the environment, water quality, or wildlife habitat in the area. This decision cements a more encompassing governmental attitude towards land use planning that equates the importance of protecting Montana's valuable natural resources with allowing for future growth and development.

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<sup>164</sup> *Id.* at 820-821.