

Road Petition
691

Lionhead Subdivision
Abandonment of portion
of Birch Avenue
Sept 5, 1978

Comm Book 39
page 339

PETITION TO ABANDON ROAD

To the Honorable Board of
County Commissioners
Gallatin County, Montana

Gentlemen:

We, the undersigned, pursuant to Section 32-4002, R.C.M. 1947, do hereby petition the County Commissioners of the County of Gallatin to abandon, discontinue and vacate the following described road or avenues in the Lionhead Home Sites, in Section Twenty-three (23), Township Thirteen (13) South, Range Four (4) East, M.P.M., in Gallatin County, Montana, being more particularly described as follows and shown in red on the attached plat, as attached hereto, and marked as Exhibit "A" and made a part hereof.

The Westerly twenty (20) feet of Birch Avenue lying north of U. S. Highway No. 191, commencing at the northerly right-of-way of said Highway No. 191, thence North on said Birch Avenue as said Birch Avenue adjoins Tract E, Tract Twenty-two (22), Tract Twenty-three (23), Tract Fourteen (14), Tract Fifteen (15) and Tract Seven (7), and ending at the southerly boundary of Tract Five (5), a total distance of 690 feet, more or less.

It is furthermore respectfully requested that a hearing on this Petition for vacation and abandonment be conducted in the Town of West Yellowstone, County of Gallatin, State of Montana so that the members of the County Commissioners of the County of Gallatin, State of Montana will have an opportunity to personally view those portions of said Birch Avenue which are being requested to be vacated.

It is also respectfully requested that any and all hearings with respect to this Petition be conducted on or before the first day of September, 1978, in light of the fact that the petitioners as hereinafter named are desirous of being personally present at said hearing, and will not be available for testimony at said hearing if said hearing is conducted on or after the first day of September, 1978.

DONE AND DATED this 7th day of August, 1978.

| <u>NAMES OF PETITIONERS</u> | <u>DESCRIPTION OF LAND OWED BY PETITIONERS</u> |
|-------------------------------|--|
| ✓ <u>Robert B. Klemann</u> | TRACTS 14 - 15 - 16. |
| ✓ <u>Elizabeth C. Klemann</u> | " " " " |
| ✓ <u>Edwin R. Peck</u> | TRACTS 5 - 6 - 7. |
| ✓ <u>Thelma C. Peck</u> | Tracts 5 - 6 - 7 |

NAMES OF PETITIONERS

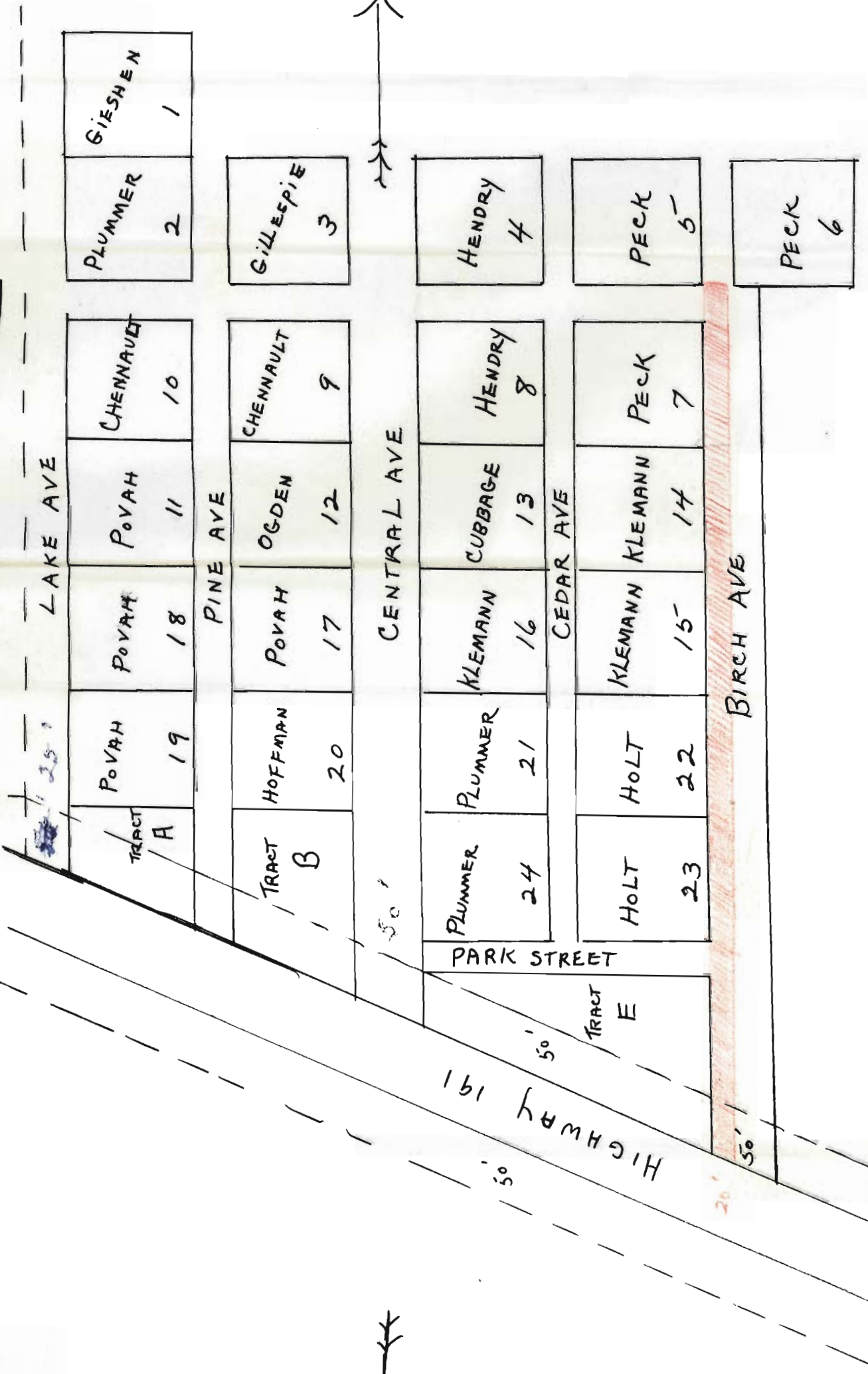
DESCRIPTION OF LAND OWED
BY PETITIONERS

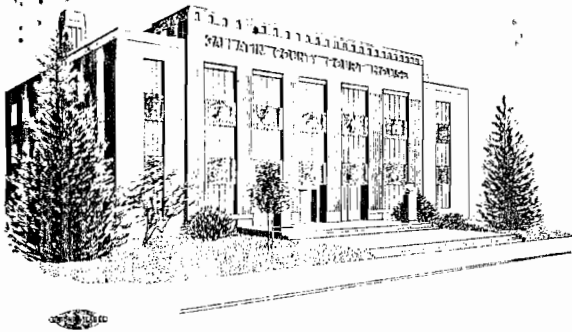
| | |
|---|---------------|
| ✓ ✓ <u>Mr & Mrs William B. Ogden</u> | Tract 12 |
| ✓ <u>Orion L Hendry</u> | tract 4 + 8 |
| ✓ <u>Geraldine J. Hendry</u> | tract 4 + 8 |
| ✓ <u>C B. Chennault</u> | Tract 9 + 10 |
| ✓ <u>Lathrop Gillispie</u> | L. W. 3 |
| ✓ <u>Miss Cabbage</u> | Tr 13 |
| ✓ <u>Ruby Cabbage</u> | |
| ✓ <u>Verdell J. Holt</u> | Tract 22 + 23 |
| ✓ <u>Fennell O. Holt</u> | - - - |

LIONHEAD HOMESITES

WEST

EAST





State of Montana

COUNTY OF GALLATIN

Bozeman

August 21, 1978

NOTICE TO PETITIONERS & ADJOINING LANDOWNERS

This is to notify you that the Board of County Commissioners have set up a hearing on Petitions # 690 and 691 for the abandonment of streets in Lionhead Subdivision.

The hearing on these petitions have been set by the Board of County Commissioners for Tuesday the 5th day of September, A.D. 1978 at 3:00 P.M., in the City Office in West Yellowstone, Montana, at which time the Commissioners will make final determination of the merits of said matter, and at which time all persons interested may make objections or offer suggestions relative to the proposals in the petition.

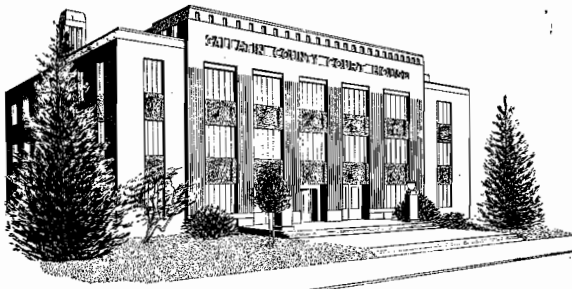
Unless a landowner or taxpayer wants to protest this petition you are not required to attend.

Dated this 21st day of August, A.D., 1978 at Bozeman, Montana.

Sincerely,


Road Office Supervisor

GT:pn



State of Montana

COUNTY OF GALLATIN

Bozeman

August 25, 1978

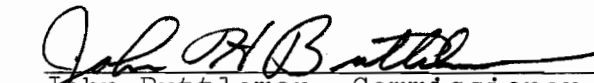
PETITION 691

PETITION TO ABANDON A
PORTION OF BIRCH AVENUE IN LIONHEAD HOMESITES

On August 24, 1978, Birch Avenue in Lionhead Subdivision was viewed for the proposed road requested for closure.

Comments on the feasibility and desirability of closure:

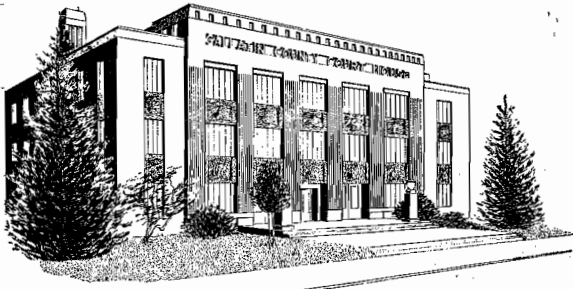
1. Closing of the East 20' of Birch Avenue would again cut off access to lot 5 of Lionhead Homesites.
2. Birch Avenue would have no legal turn around at the end and because it would cut off First Street.
3. No roads in the Lionhead Homesites are built to any minimum standard so closure would not involve improving a County road.
4. Some property owners have already taken upon themselves to close portion of this street, illegally, and for the County to close it now would be in poor judgment condoning this action.



John Buttleman, Commissioner



Robert H. Babb, County Surveyor, PE



State of Montana
COUNTY OF GALLATIN

Bozeman

September 7, 1978

NOTICE TO PETITIONERS AND ADJOINING LANDOWNERS

This is to notify you that the Board of County Commissioners held a hearing on Street Petition number 691 for the abandonment of a portion of Birch Avenue in the Lionhead Home Sites, in Section twenty-three (23), Township thirteen (13) South, Range Four (4) East, M.P.M, in Gallatin County, Montana, being more particularly described as follows:

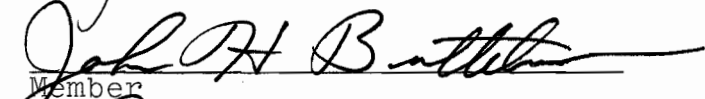
The Westerly twenty (20) feet of Birch Avenue lying north of U.S. Highway No. 191, commencing at the northerly right-of-way of said Highway No. 191, thence North on said Birch Avenue as said Birch Avenue adjoins Tract E, Tract Twenty-two (22), Tract Twenty-three (23), Tract Fourteen (14), Tract Fifteen (15) and Tract Seven (7), and ending at the southerly boundary of Tract Five (5), a total distance of 690 feet, more or less.

There being no objections it was unaminously carried by the Board of County Commissioners that the Westerly twenty (20) feet of Birch Avenue lying North of U.S. Highway No. 191 be abandon and reserve for a snow easement.

Sincerely,

Board of County Commissioners


Chairman


Member


Member

CC:pn

Minutes of Hearing of Lionhead Homesites

Road Abandonment Hearing

September 5, 1978

West Yellowstone, Montana

The hearing was called to order by George Sager at 3:00 p.m. Commission members present were George Sager, John Buttleman, and Joy Nash. The purpose of the hearing was to review petitions #690 and #691 for closing of streets or portions of streets in the Lionhead Homesites Subdivision.

George Sager asked Attorney Bennett, who was representing the petitioners, if the petition was correct reading that the East 20 feet of Birch Avenue be closed, where he understood it was the wishes of the Petitioners to close the West 20 feet of Birch Avenue. Mr. Bennett stated that the corrected petition, which was filed as corrected, stated the West 20 feet.

Mr. Bennett stated that he was authorized to accept certified mail addressed to some of the petitioners who would be hard to reach.

George Sager read the petition and stated that they viewed the site over a year ago and it was viewed again and looked at again this morning. Comments on this site were that on August 24, 1978, Birch Avenue in Lionhead Subdivision was viewed for the proposed road requested for closure. Comments on the feasibility and desirability of closure: "Closing of the West 20 feet of Birch Avenue would again cut off access to Lot Five (5) of Lionhead Homesite. Birch Avenue would have no legal turnaround at the end because it would cut off First Street. No lots on Lionhead Homesites are built to any minimum standard so closure would not involve improving a county road. Some property owners have already taken upon themselves to close a portion of this street illegally before the county could close it, and that would be in poor judgment in doing this action. Signed John Buttleman, Commissioner, and Robert H. Babb, County Surveyor."

George Sager stated that it would seem that the portion that is being traveled now would be the East 30 feet of the right-of-way and the reason for the property owners to close the West 20 feet would be to preserve the trees and to avoid parking of vehicles on the right-of-way itself. Robert H. Babb, County Surveyor, added that the main concern was that there was not a cul-de-sac and if First Street were abandoned, Birch Avenue would become a dead-end street. If the case were that Birch Avenue has a private ending then a sign showing it as a deadend street should be placed out at the beginning of Birch Avenue.

George Sager asked: Would it inhibit anyone if the 50 foot right-of-way was reduced to 30 feet? Mr. Carkeek stated that he owned the majority of the East Half and that a 30 foot road might be impossible to keep open in the winter. Last year it was hard to keep the 50 foot road clear. Mr. Sager asked him how much room he would need. Carkeek said it would depend on the winter, but he would prefer the 50 feet.

Mr. Bennett commented for the petitioners stating that when the petition was drawn up, it wasn't intended to eliminate access for anyone to the area. The two main concerns were (1) not to remove any trees. The petitioners all own summer homes; they don't live there in the winter, and don't care if the snow is piled up. (2) The homes in the area are built close to the right-of-way. One home is within three feet and one is within three and one half feet. If the road were widened to 50 feet, it would make the market value of the petitioners homes less because it would ruin the rustic atmosphere of the area. Mr. Bennett stated that Highway 191, which runs in front of the property, is 26 feet wide from white line to white line and is over 30 feet including the shoulder and provides ample access for the traffic.

Mr. Bennett was asked if he felt that the landowners could work something out with Mr. Carkeek concerning the right of way. He said it was a difficult proposition due to the lack of time, as most land owners will be leaving the area within the month. He wouldn't guarantee anything to the commission. The same question was asked of Mr. Carkeek and he said he'd be willing to try. He didn't want to cut down any more of the trees either, but he needed the room for access during winter months. He stated that the State wouldn't plow the road because it was too narrow.

General discussion was had concerning removal of trees and snow removal. The trees can't be moved without county approval because they are on county land so that should be no problem. Snow removal may be difficult, but the landowners stated that since Mr. Carkeek was the only one there in the winter, there should be no need to have a 50 foot wide road. Other roads were named that were between 16 and 30 feet wide, and could be cleared amply. Mr. Babb stated that the county won't accept a subdivision without a 60 foot right-of-way for the road. Even if the road is only 16 feet wide, there is still a right-of-way for snow removal and development. No county road is over 24 foot, but there is still ample right-of-way.

The proposition of a 30 foot road with a 20 foot snow easement was mentioned. Comments were why not take the 30 foot out of the center and 10 feet on each side; the landowners did not object. Mr. Carkeek was not fully willing to go with the suggestions of Mr. Bennett on behalf of his clients.

Mr. Sager asked for a motion for the 30 foot road right-of-way with a 20 foot easement for snow removal. The motion was made and seconded. A vote was taken and the petition was granted according to conditions.

The petition for abandonment of sections of roads in Lionhead Homesite was read, along with a letter to Mr. and Mrs. Hendry from Mr. Sager explaining why the hearing would be after the 1st of September.

Comments on the feasibility and desirability of closure were given. Homesites Three (3) and Four (4) would no longer have public access. Central Avenue and Birch Avenue would deadend without legal turnaround areas, cul-de-sacs. No roads in the Lionhead Homesites are built to any minimum standards so closure would not involve improving county roads. Some property owners have already taken it upon themselves to close portions of this street.

A letter from Carkeek and Robert F. Dye was read regarding the closure of abandonment of First Avenue and Lionhead Homesites, stating that they were not in favor of closing this area, because there would be no access to portions of their property.

Robert H. Babb gave his report that in closing roads, you could not cut off any property that has been given access to. Blocks Three (3) and Four (4) would be cut off as stated on the petition. South Fork property has no other access on the map as stated.

Mr. Bennett said the owners of lots Three (3) and Four (4) wave concern about access to their property from First Avenue. The second concern is there being a deadend where Central Avenue passes through. Mr. Bennett proposed to close First Avenue except where it crosses Central, which would take care of the objections viewed by Mr. Babb. There was no protest to this proposal.

Mr. Sager stated that according to Mr. Babb's report, Central Avenue was shown as an access to South Fork properties on the recorded plat, so you would be closing an access to South Fork properties if First Street were abandoned as petitioned.

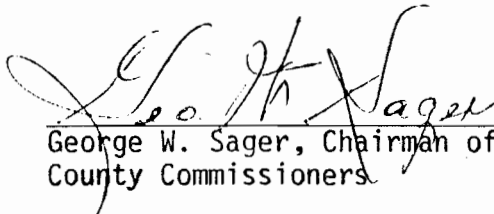
Mr. Bennett then took his clients to the hall for a conference. He said his clients wanted to amend the present petition to state that First Avenue would be abandoned except where it crosses Central Avenue. Mr. Sager said they would have to repetition and the commission would have another hearing.

Mr. Sager asked if the owners of South Fork properties would waive protest if this petition were resubmitted of closing the First Street as shown on the map except where it crosses Central Avenue. There would be no protest.

Mr. Dye stated his and Mr. Carkeek's plans for their property in Lionhead Homesite. There was considerable discussion about these plans, concerning a large developed road permitting large trucks to travel and damage to the owners land and trees in the area because of this development.

There being no further business, the petition will be resubmitted. A motion was made and seconded that this hearing will be continued when the petition was resubmitted and another hearing date set.

The meeting was adjourned.


George W. Sager, Chairman of Board of
County Commissioners

September 8, 1978

Mr. Lyman H. Bennett, 3rd
P.O. Box 260
Bozeman, Mt 59715

Dear Mr. Bennett:

Attached are the letters concerning the outcome of the hearing held by the Commissioners regarding street Petition number 691. Please distribute these to your clients. Thank you.

Sincerely,

Road Office Supervisor

GT;pn

C
O
P
Y

No. 695689

Road

RECEIPT FOR CERTIFIED MAIL

| | |
|---|--|
| SENT TO <i>Mr Carhook & Dye</i> | POSTMARK OR DATE |
| STREET AND NO. <i>P.O. Box 699</i> | BOZEMAN SEP 8 PM 59715 |
| P.O., STATE AND ZIP CODE <i>West Yellowstone Mt. 59758</i> | |
| OPTIONAL SERVICES FOR ADDITIONAL FEES | |
| RETURN RECEIPT SERVICES | 1. Shows to whom and date delivered With restricted delivery |
| | 2. Shows to whom, date and where delivered With restricted delivery |
| RESTRICTED DELIVERY | |
| SPECIAL DELIVERY (extra fee required) | |

PS Form Jan. 1976 3800 NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See other side) ☆ GPO: 1975-O-591-452

No. 695691

Road

RECEIPT FOR CERTIFIED MAIL

| | |
|--|--|
| SENT TO <i>Leman H. Bennett 3rd</i> | POSTMARK OR DATE |
| STREET AND NO. <i>P.O. Box 460</i> | BOZEMAN MT SEP 3 FM 59715 |
| P.O., STATE AND ZIP CODE <i>Bozeman Mt. 59715</i> | |
| OPTIONAL SERVICES FOR ADDITIONAL FEES | |
| RETURN RECEIPT SERVICES | 1. Shows to whom and date delivered With restricted delivery |
| | 2. Shows to whom, date and where delivered With restricted delivery |
| RESTRICTED DELIVERY | |
| SPECIAL DELIVERY (extra fee required) | |

PS Form Jan. 1976 3800 NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See other side) ☆ GPO: 1975-O-591-452

No. 695690

Road

RECEIPT FOR CERTIFIED MAIL

| | |
|---|--|
| SENT TO <i>Edward Ljischens</i> | POSTMARK OR DATE |
| STREET AND NO. <i>Ironhead Subdivision</i> | BOZEMAN MT SEP 8 FM 59715 |
| P.O., STATE AND ZIP CODE <i>West Yellowstone, Mt 59758</i> | |
| OPTIONAL SERVICES FOR ADDITIONAL FEES | |
| RETURN RECEIPT SERVICES | 1. Shows to whom and date delivered With restricted delivery |
| | 2. Shows to whom, date and where delivered With restricted delivery |
| RESTRICTED DELIVERY | |
| SPECIAL DELIVERY (extra fee required) | |

PS Form Jan. 1976 3800 NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See other side) ☆ GPO: 1975-O-591-452

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
[] Show to whom and date delivered.
[] Show to whom, date, and address of delivery.
[] RESTRICTED DELIVERY
Show to whom and date delivered.
[] RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Lymon H. Bennett, 3rd
P.O. Box 460
Bozeman, Montana 59715

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
695687

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [] Addressee [] Authorized agent

4. DATE OF DELIVERY POSTMARK
Judith K. Rutenbach

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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[] RESTRICTED DELIVERY
Show to whom and date delivered.
[] RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Edward L. Gieschen
Leadhead Subdivision
West Yellowstone, MT 59758

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
695688

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [] Addressee [] Authorized agent

4. DATE OF DELIVERY POSTMARK
Ed. Gieschen

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

PS Form 3811, Apr. 1977

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[] RESTRICTED DELIVERY
Show to whom and date delivered.
[] RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Carbeck + Oye
P.O. Box 699
West Yellowstone, Mt. 59758

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
695685

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [] Addressee [] Authorized agent

4. DATE OF DELIVERY POSTMARK
Carbeck

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
[] Show to whom and date delivered.
[] Show to whom, date, and address of delivery.
[] RESTRICTED DELIVERY
Show to whom and date delivered.
[] RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Lymon H. Bennett 3rd.
P.O. Box 460
Bozeman, Mt. 59715

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
695691

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [] Addressee [] Authorized agent

4. DATE OF DELIVERY POSTMARK
Judith Rutenbach

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS