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IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO: DA 24-0492

ROBERT SAYERS,
Plaintiff and Appellant,

vs.

CHOUTEAU COUNTY,
Defendant and Appellee.

APPELLANT'S PETITION FOR REHEARING

On Appeal from the Montana Twelfth Judicial District Court,
Chouteau County, the Honorable Kaydee Snipes Ruiz, Presiding

**ATTORNEY FOR PLAINTIFF AND
APPELLANT**

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I. PETITION FOR REHEARING

Pursuant to M. R. App. P. 20(1)(a)(ii), Appellant Robert Sayers (“Sayers”) petitions this Court for rehearing of its Opinion issued July 29, 2025. The Montana Supreme Court will consider a petition for rehearing presented only upon the following three grounds:

- (i) That it overlooked some fact material to the decision;
- (ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or
- (iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

(Rule 20(1), Mont. R. App. P.)

This petition is based on the following overlooked question presented by Appellant that would have proven decisive in the case:

What level of statutory compliance is required to confer and maintain jurisdiction over a county road abandonment?

This question is decisive because the answer determines whether the Chouteau County Board of County Commissioners (“Board”) ever acquired or retained jurisdiction to abandon the road. Under a strict or substantial compliance standard, the complete omission of a statutory jurisdictional prerequisite would render the Board’s action void. Only under a minimal compliance standard, which

this Court has never articulated or applied in public trust property cases, could the Board's decision be upheld.

In addition to its decisive nature in this case, addressing the question would harmonize controlling authority (see *Bailey v. Ravalli County*, 201 Mont. 138 (1982); *Chennault v. Sager*, 187 Mont. 455 (1980); *Williams v. Stillwater County*, 2021 MT 159; and *GBSB Holding v. Flathead County*, 2025 MT 22), thereby providing needed clarity on the interplay between statutory compliance requirements and curative statutes.

II. ANALYSIS

This case reached the Court under the writ-of-review standard in Title 27, Chapter 25, Mont. Code Ann. Under Mont. Code Ann. § 27-25-102, and as explained in *Williams v. Stillwater County*, 2021 MT 159, ¶¶ 14–17, one of the Court's two tasks is to determine whether the Board exceeded its jurisdiction or failed to act in regular pursuit of its authority.

Sayers does not seek rehearing on the second task, which concerns substantial evidence. As the Court itself observed, “Because the Board never appointed viewers, no viewers’ report was prepared or presented for consideration at the hearing” (Op. ¶ 28). Logically, a hearing on a viewers’ report could not have occurred. The absence of that statutory prerequisite places this case squarely within the first prong of the

writ-of-review analysis, which asks whether the Board obtained and maintained jurisdiction by acting in regular pursuit of its statutory authority. Sayers petitions this Court to clearly articulate the compliance standard by which boards of county commissioners are to be held in order to confer and maintain jurisdiction, thereby avoiding jurisdictional missteps.

A. Decisive Question Overlooked

What level of statutory compliance is required to confer and maintain jurisdiction over a county road abandonment proceeding involving public trust property when a curative statute applies, and can the statute cure the absence of a substantive jurisdictional prerequisite?

This question was preserved and briefed in Sayers' Opening Brief (pp. 28-33) and Reply Brief (pp. 7-10). The Opinion resolves the appeal without answering it, yet the answer directly determines the outcome of this case. If strict or substantial compliance governs, the Board's failure to satisfy a statutory jurisdictional prerequisite requires reversal. If a board of county commissioners needs to only minimally comply with the law, this Court should affirm its holding.

B. It is Necessary for the Court to Review the Record as a Whole, but that Standard in Itself is Not Sufficient

The Opinion clearly adopts “the record as a whole” standard in assessing whether there was evidence sufficient to support the Board’s decision. It does not, however, articulate whether the Court was applying strict compliance, substantial compliance, or minimal compliance with respect to the Board’s adherence to the statutory procedures. Nor does it address what impact, if any, the curative statute has on the applicable statutory compliance standard.

The legislature conferred jurisdiction conditioned upon statutory compliance. Thus, the Board could not have been permitted to disregard the statutes, “[i]f counties were allowed to completely ignore the mandates of the statutes, they would be of no legal consequence...and [t]his could not have been the intent of the legislature.” *Madison County v. Elford*, 203 Mont. 293, 302 (1983).

In applying the curative statute, the Court relies on *Bailey v. Ravalli County*, 201 Mont. 138, 142-146 (1982) without acknowledging that in *Bailey*, the substantive prerequisites were satisfied: viewers were appointed, a report was prepared, and a hearing was held on that report. Importantly, the applicable statutory prerequisites for abandonment in *Bailey* were similar in most respects to those in effect at the time the Board issued its decision, as is illustrated by the table below:

Substantive Prerequisites	<i>Bailey</i> Statutes	<i>Sayers</i> Statutes
Petition	Rev. Code Mont. §1635 (1935)	Rev. Code Mont. §§ 1362 and 1363 (1915)
Appointment of Viewers to Investigate	Rev. Code Mont. §§1637 & 1638 (1935)	Rev. Code Mont. § 1366 (1915)
Report Findings to Board	Rev. Code Mont. §1637 (1935)	Rev. Code Mont. § 1366 (1915)
Board’s Hearing on Investigation Findings	Rev. Code Mont. §1638 (1935)	Rev. Code Mont. §§ 1367 and 1368(a) (1915)

In *Bailey*, the Court approved the application curative statute only insofar as it applied to a post-facto notice defect. *Bailey v. Ravalli County*, 201 Mont. 138, 145 (1982). The board of county commissioners was only required to provide notice to affected landowners only after the abandonment decisions had been issued and recorded in the county’s records. That context materially differs from the present case, where notice was statutorily required to be provided prior to the Board’s evidentiary hearing on the viewers’ report. See Rev. Code Mont. §§ 1367 and 1368(a) (1915). The issue left unresolved, as a result, is what level of statutory compliance is sufficient, and relatedly, what missteps can be “cured”.

C. Granting Rehearing to Address the Compliance Standard and Curative Statute’s Scope

There has been a conflict in applicable standards of compliance, and without rehearing, the standard is less clear.

- *Bailey v. Ravalli County*, 201 Mont. 138 (1982) — Substantial compliance found where substantive prerequisites were satisfied; curative statute cured a procedural notice defect.
- *Chennault v. Sager*, 187 Mont. 455 (1980) — Strict compliance required for disposition of public trust property; curative statute does not cure jurisdictional defects.
- *Williams v. Stillwater County*, 2021 MT 159 — Writ-of-review jurisdiction requires verifying boards have stayed within statutory bounds; deference applies only where the record shows statutory compliance.
- *GBSB Holding v. Flathead County*, 2025 MT 22 — Substantial compliance may suffice if substantive prerequisites are met; courts must identify the standard and analyze each statutory step.

These cases, read together, support that a curative statute may cure certain procedural defects but not the complete omission of a substantive jurisdictional prerequisite. The Opinion’s failure to engage that question risks creating inconsistent compliance standards in future road abandonment cases.

This question is outcome-determinative. Requiring substantial compliance with statutory procedures and permitting the curative statute to cure defects that are not substantive prerequisites to abandonment reconciles the above cases and clarifies the standard going forward. With respect to this case, the Board could not have held a substantive hearing on the evidence-based necessity of the road in the absence of the statutorily mandated viewers’ report.

III. CONCLUSION

Resolving the issue now will assure justice for the parties, as well as provide clear guidance for application of the curative statute, ensure uniformity in public trust property cases, and prevent further uncertainty. Sayers respectfully requests that this Court grant rehearing to address the preserved and decisive question of the statutory compliance standard and the curative statute's scope in the context of a substantive jurisdictional defect.

Dated this 13th day of August, 2025.

/s/ Daniel T. Jones

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Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,272 excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

CERTIFICATE OF SERVICE

I, Daniel T Jones, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 08-13-2025:

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