

## **FINDINGS OF FACT**

### **DayBreak Subdivision**

The Planning staff has prepared the Findings of Fact for the preliminary plat of DayBreak Subdivision and has provided them for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

**A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health, safety and welfare? [MCA 76-3-608(3) (a) and BMCC 23-302(H)(2)]**

#### **1. Effect on agriculture and agricultural water user facilities**

The subject property has been used as irrigated cropland in the past and has one residence on it built in 1976. The residence will be removed for development of this proposed subdivision. The property is in the County but is requesting annexation to the City as part of the development process. Developing this property in the City will remove about 18 acres from agricultural production in the County.

An existing irrigation ditch runs east and west along the south side of Grand Avenue along the frontage of the subject property. The ditch serves the subject property and the property immediately to the east that is still in the County. The developer has proposed to pipe the ditch across the DayBreak Subdivision frontage to allow the ditch to continue to serve the property to the east. It appears the ditch will end up in dedicated road right-of-way provided for this development and be within City road right-of-way on Grand Avenue. However, the subdivider is indicating that maintenance of the ditch will be the responsibility of the DayBreak Home Owners Association (HOA). The City will need to approve of the maintenance language for the ditch in the HOA documents prior to final plat approval (**Condition #1**).

#### **2. Effect on local services**

a. **Utilities** – Water service will be provided by the City of Billings from the water main in Grand Avenue. The developer will install new water mains in all of the new local streets, new individual services to all of the lots, and new fire hydrants in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality (MDEQ).

Sanitary sewer service will be provided by connecting to the existing City sewer main in Grand Avenue. The subdivider will install new sewer mains in the local streets and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ. A portion of the southern area of the subdivision (approximately Phase II and part of Phase III) is expected not to be able to utilize gravity flow to the sewer system and will use grinder/ejector pumps to pump sewage to the gravity sewer system.

MDU will provide gas services and Yellowstone Valley Electric will provide electric services to the subdivision. Easements must be shown on the face of the plat that are acceptable to these utility providers (**Condition #2**). The current depiction of a typical easement scenario on the preliminary plat is not needed when the actual easements are shown on the lots on the final plat.

- b. **Storm water** – Storm water drainage for the public streets is proposed to be provided by a network of curb and gutter that discharges into storm water pipes and eventually to up to five retention areas. The five retention areas are proposed as follows
- Two areas (labeled “A” and “B”) within the City road right-of-way on both sides of the DayBreak Drive entry into the subdivision at Grand Avenue.
  - Area “C” at the southeast corner of the intersection of Daylight Lane and Morning Star Lane. This area will be a lot held by the DayBreak Subdivision HOA. It also will have a blanket stormwater easement over it so that if the HOA fails to maintain it the City reserves the right to create a maintenance district in the subdivision to maintain the retention area (**Condition 4**).
  - Area “D” at the southwest corner of the intersection of DayBreak Drive and Morning Star Lane. This area will be a lot held by the DayBreak Subdivision HOA. It also will have a blanket stormwater easement over it so that if the HOA fails to maintain it the City reserves the right to create a maintenance district in the subdivision to maintain the retention area (**Condition 4**).

The City has most recently been reviewing stormwater facilities proposed in new subdivisions and either taken ownership of the facilities or have the facilities remain privately held by the subdivision home owners associations. In either case, the home owner associations are being required to maintain the facilities and permanent storm water easements are being required to be placed over them on the final plat to ensure continued maintenance of the facilities by the HOA or the City. Several conditions of approval are proposed as discussed above to address the design, ownership and maintenance of the stormwater facilities in DayBreak Subdivision (**Condition 3, Condition 4**).

Regardless of the design, ownership and maintenance requirements, all drainage improvements shall also satisfy the criteria set forth by the *City of Billings Storm water Management Manual* and will be subject to review and approval by the City Engineering Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- d. **Streets** – The lots within the subdivision will be served by one initial full access via DayBreak Drive off Grand Avenue with a temporary emergency access also off of Grand Avenue. The short frontage this subdivision has on Grand Avenue made two full accesses a traffic safety and circulation concern for the City. The emergency access will be in place until such time as full secondary access is provided when Morning Star Lane connects to

future development to the east and DayBreak Drive connects to future development to the south of the subject property.

The subdivision will dedicate 60 feet of right-of way for the south half of Grand Avenue where it fronts the subdivision. Thirty feet of the dedication is to replace a 30-foot right-of-way easement and 30 feet is new right-of-way dedication. The subdivider will make a contribution equivalent to construction of half a residential street to fund the future construction of Grand Avenue in the area of the city to a Principal Arterial Street standard. The contribution will take into account what is already built for Grand Avenue. This requirement is specified in Section III (A) Streets of the Subdivision Improvement Agreement. The contribution will be made prior to final plat approval (**Condition 5**).

Based on actual travel speeds on Grand Avenue, the City Engineering Division determined an auxiliary left turn lane is needed on Grand Avenue at full build out of the subdivision. Based on projected traffic, Phases I & II can function without the turn lane. Based on other projects in the area (Vintage Estates, widening at 54<sup>th</sup> & Grand, and the proposed middle school at 56<sup>th</sup>) there is a possibility that a single overall project could be advanced to widen Grand, rather than doing each project independently. If a single project moves forward prior to the start of phase III, a cash contribution equal to the cost of widening just for Daybreak Subdivision would be sought (**See Condition 6**).

The other streets in the subdivision classified as local residential streets are Clear Sky Drive, Daylight Lane, Morning Star Lane, First Light Circle and Sunlight Circle. They will all be built within 56-foot dedicated rights-of-way to City standards by providing a 34-foot width, curb/gutters, and boulevard sidewalks. They will be built in at least three phases. Any dead-end sections of these streets greater than 150 feet in length will need to have a temporary turnaround built to City standards at their terminus.

DayBreak Drive is identified as a north-south Collector street, and as such, the subdivider would normally be required to dedicate a 74-foot right-of-way for development of this street through the subdivision. The applicant has requested a variance from Section 23-406(B)(6), BMCC that would require the provision of 74 feet of right of way for DayBreak. The applicant is requesting to dedicate 60 feet of right-of-way (See Variance Request attached to this memo). The City Engineering Division was supportive of this variance request as long as parking was prohibited along the eastern side of DayBreak Drive to facilitate full design of a Collector street.

A Traffic Impact Study (TIS) was completed for DayBreak Subdivision in order to evaluate the subdivision's impact on the street network in the surrounding area. Impacts were evaluated for two main area intersections that will be effected by the development of the subdivision. These intersections are 48<sup>th</sup> Street West and Grand Avenue and 54<sup>th</sup> Street West and Grand Avenue. The contributions toward the two intersections are based on the standard methodology used to determine the pro rata share of a development's intersection improvement cost. City Engineering has determined that a contribution of \$5,400 will be required of the subdivider for the 48<sup>th</sup> Street West and Grand Avenue intersection, and a contribution of \$5,800 will be required of the subdivider for the 54<sup>th</sup> Street West and Grand

Avenue intersection. Prior to final plat approval, the subdivider shall make these contributions (**See Condition 7**).

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 54<sup>th</sup> St. West and Grand Ave. (Station #7), about 0.3 miles from the subdivision. The subdivision is located within the ambulance service area of American Medical Response (AMR). While this proposed subdivision is in an area that has development already in the City near it, the Police Department continues to express concern that continued development and annexation adversely affects the Departments ability to deliver services. The City is planning to pursue an additional public safety mill levy in 2014, but it will have to be approved by voters.

**Emergency Access** - A temporary emergency access off of Grand Avenue connecting to Clear Sky Drive will be constructed prior to final plat approval as specified in Section IV Emergency Service of the SIA. The emergency access will be in place until such time as full secondary access is provided when Morning Star Lane connects to future development to the east and DayBreak Drive connects to future development to the south of the subject property. The Emergency Access will be built to City standards for emergency access roads. Since the access is to be only 20 feet wide, gates need to be erected at the Grand Avenue and Clear Sky Drive ends of the access to prevent it from being used for parking of vehicles. Signage shall be posted on the outsides of the gates and shall include “Fire Lane – No Parking” in addition to “Emergency Access Only”. Language in Section IV of the SIA needs to be updated to reflect the need for two gates and the need for signage on the outside of the two gates (**Condition 9**).

- f. **Schools** –School District #2 provides educational services to elementary through high school students. Schools serving these students are Central Heights Elementary, Will James Middle School, and West High School. No written responses from the district were received at the time this report was drafted. However, the district has completed a master plan for growth addressing school capacity and facilities, and is now looking at adjusting district boundaries to better serve residence in different areas of the City.
- g. **Parks and Recreation** – Residential subdivisions creating lots with housing densities less than one dwelling unit per ½-acre are required by State and local laws to dedicate 11% of the net land area (or provide an equivalent cash contribution) for parkland.

The 11% requirement amounts to 1.37 acres for this subdivision. The subdivider, Parks, Recreation and Public Lands Department (PRPL) staff and Planning Division staff have been in discussions on the subdivider’s proposal to meet the parkland dedication toward a combination of dedication and cash-in-lieu. A resolution had not been reached at the time this memo was completed, but staff has prepared a summary of the situation here and expects further discussion at the Plat Review Meeting.

The subdivider originally proposed to meet this requirement with both land dedication and cash in lieu of land in the following way: The subdivider proposed to dedicate three 10-foot wide trail corridor connections as parkland in addition to a park/stormwater retention area.

The total land dedicated would be about 17,000 square feet. The remaining dedication would be met by cash-in-lieu to go toward the development of Cottonwood Park about 0.8 miles to the north of the subdivision.

PRPL staff found that the trail corridors proposed were too narrow, very difficult to maintain, and were not part of the larger Heritage Trail system. The PRPL staff also found that the small, 13,000 square foot stormwater detention pond and park area would not be a usable park space given its size and the potential for water to be present regularly. PRPL and Planning staff provided an alternative to the subdivider that suggested the subdivider could receive credit for parkland dedication for the trail corridors under the following conditions: The trail corridors must be 20 feet wide to meet the standard width for trail corridors in the City, the trail corridors be privately held and maintained by the DayBreak Home Owners Association, and the 13,000 square foot stormwater detention pond and park area remain privately held and maintained by the DayBreak Home Owners Association and not be given credit for park land.

Just prior to this report being finalized, the subdivider proposed the trail corridors be 15 feet wide and still potentially be dedicated to the City for park land or by other means. The subdivider also proposed that he would build the trail but would want the cost of the trail construction to be included in the parkland contribution requirements for the subdivision.

#### **Park Land Dedication Allocation**

At the Plat Review Meeting, the Developer's Agent Scott Worthington, PE, and PRPL Park Planner Mark Jarvis discussed the approach and options to meeting the park land dedication for the subdivision. All agreed that the trail corridor is an asset to the public and provides a connection for people internally and externally to the subdivision. Worthington stated that: The developer is willing to hold the trail corridors privately and maintain them through the Home Owners Association (HOA) in the subdivision and the developer is also willing to provide 15 foot-wide corridors. Worthington said the developer would like credit for construction of the trail to go toward the subdivision's cash-in-lieu contribution for the remaining park land dedication requirement. He said the developer is also proposing to limit fence heights for adjacent lots to 4 feet to prevent the "tunnel" effect 6 foot fences create and also to improve safety and views of the corridors from the neighboring lots.

Mark Jarvis, Park Planner with the Parks, Recreation and Public Lands Department (PRPL), explained that the 20 foot wide trail corridors proposed by PRPL staff is a safety issue as it provides room for trail users to get off the trail safely, provides better access for emergency vehicles, and makes access for maintenance easier as well. However, he said the PRPL staff would be willing to have the corridors be 15 feet wide in this situation as they will be privately held and maintained. He said he was very supportive of the lowered fence height. He said that PRPL staff is supportive of providing park land dedication credit for the trail corridors through the subdivision with the balance in cash-in-lieu going to Cotton Wood Park.

Jarvis said that PRPL could not support accepting the trail improvements as part of the cash-in-lieu contribution as this had not been done before and raises issues of the construction

process, standards, purchasing policies of the City and other concerns. He said PRPL has worked with developers to build improvements in public parks where the City has oversight of the projects and standards. He said these trails will be private and the same oversight is not possible.

At the Planning Board Public Hearing on the plat, the Developer Dan Wells made another proposal for the park land design where only a portion of the Stormwater Pond on the east side of DayBreak Drive would be used for stormwater, the rest would be used for park land, and an adjacent lot, Lot 15, would also be provided as park land. This new proposal generated a lot of discussion. Jarvis said Parks was concerned with the new proposal in terms of the actual area of the land that would be functional for park land versus the stormwater area and also the safety of the park area users adjacent to DayBreak Drive. He said that the City Engineering staff had not had a chance to review this new proposal and determine how much of the area the stormwater would take up of the park area.

The Planning Board decided to delay action on the plat until its June 10 meeting so that Engineering, Parks, and the Developer's agent could better analyze the new proposal and see if it would function for park land. Staff has analyzed the situation and found that stormwater on the subdivision can be managed without using any of the open space on the east side of DayBreak Drive for stormwater control. The subdivision will utilize the other four stormwater facilities and this area will be strictly for park use. The park, like the trail corridors, will be held by the Daybreak Subdivision HOA privately and be maintained by the HOA.

Given the discussion, clarifications, and confirmations from City Engineering, the developer's agent and the PRPL staff since the May 28 public hearing meeting, the park land dedication for this subdivision will be met in the following way:

- a. The three trail corridors across the subdivision as shown on the plat and the park land area on the east side of DayBreak Drive will be counted toward the park land dedication requirement for the subdivision (Approximately 25,811 Sq.Ft.) . Public access easements will be shown and provided over the park land area and the three trail corridors to ensure public access is maintained.
- b. The trail corridors will be 15 feet wide
- c. The trail corridors will be privately held land owned by the Home Owners Association
- d. The trail corridors will be maintained by the Home Owners Association
- e. Fence heights along the trail corridors will be limited to 4 feet maximum height
- f. The remaining cash-in-lieu will go toward future development of Cotton Wood Park.

**(See Condition 8 for how these items are to be reflected in the final plat approval and SIA)**

- h. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has indicated that centralized mailbox units will be required. In order to assure the coordination of mailbox locations, it is recommended as a condition of approval that the subdivider provide a letter from the postal service acknowledging its agreement with the mailbox locations prior to final plat approval (**Condition #10**).

### **3. Effect on the natural environment**

The subject property is in an area where conversion of agricultural land to suburban and urban development has been happening for many years. The area consists of irrigated agricultural land, large-lot single family development in the County, and some large lot residential development and higher density residential development in the City. During development, storm water pollution prevention best management practices are required to be used and monitored to prevent erosion on exposed ground. These provisions should help balance any impacts on the natural environment.

### **4. Effect on wildlife and wildlife habitat**

There are no known endangered or threatened species on the property. There is a note in the SIA that warns future lot owners of the presence of deer in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat.

### **5. Effect on the public health, safety and welfare**

Soil conditions have the potential to impact the public health and safety of future property owners in this subdivision. A geotechnical analysis was completed for the subject property and found that “the soils at this site are weak, compressible, and potentially collapsible when moisture is induced.” The report also states that “the presence of relatively shallow groundwater along the northern portion of the site is of concern” since full basements may be constructed for homes in this subdivision. Groundwater was found between 7 feet and 15 feet on the property. The report specified several mitigation measures to be followed during construction. The Building Official, based on the report, also provided comment on construction for footings, backfill requirements, and how to handle roof drainage for the site. Therefore, verification from a geotechnical engineer that the site has been prepared according to the report must be provided prior to foundation approval. Section IX. Soils/Geotechnical in the SIA references the geotechnical analysis and that recommendations in the report must be followed for construction in the subdivision.

## **B. Was an Environmental Assessment required? [(MCA 76-3-616 and BMCC 23-302(H)(1)]**

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

## **C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy, the Urban Area Transportation Plan 2009 Update and the Billings Area Bikeways and Trail Master Plan? [BMCC 23-302(H)(4)]**

### **1. Yellowstone County-City of Billings 2008 Growth Policy**

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. Goal: More housing and business choices within each neighborhood (p. 6).

- b. Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).
- c. Goal: Safe, functional, and attractive streets for all users, including drivers, bicyclists and pedestrians (p. 13).
- d. Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation., resource conservation and cost effectiveness (p. 10).

## **2. Urban Area Transportation Plan 2009 Update**

The proposed subdivision adheres to the goals and objectives of the 2009 Transportation Plan Update and preserves the street network and street hierarchy specified in the plan.

## **3. Billings Area Bikeways and Trail Master Plan**

The proposed subdivision lies within the jurisdiction of the Billings Area Bikeway and Trail Master Plan. A proposed bike lane is shown on Grand Avenue as well as on the collector street identified in this subdivision as DayBreak Drive. The City will construct Grand Avenue in the area of this subdivision to a full Principal Arterial Street standard at some time in the future and the bike lane and/or trail along Grand will be built at that time. When DayBreak Drive is constructed by the subdivider through the subdivision, it will be built to a Collector Road Standard and bike lanes will be provided at that time.

### **D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608(3)(b) and BMCC 23-302(H)(3)(a)]**

If approved with the proposed conditions of approval, the proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

### **E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-302(H)(3)(e)]**

The subject property has been rezoned to Residential-6000 by the City Council. The property also has been annexed into the City Limits. The lot sizes within the subdivision will conform to the requirements of the R-6000 zone. Further setbacks and structure specific requirements will be reviewed for compliance at the time of building permit review.

### **F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608(3)(c) and BMCC 23-302(H)(3)(b)]**

The subdivider will provide utility easements as requested by MDU and Yellowstone Valley Electric Cooperative on the face of the plat (**Condition 2**).

**G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608(3)(d) and BMCC 23-302(H)(3)(c)]**

Legal and physical access is provided to the proposed lots from Grand Avenue to an interior collector street proposed to be known as DayBreak Drive, and interior local streets proposed to be known as Morning Star Lane, Daylight Lane, Clear Sky Drive, Sunlight Circle, and First Light Circle.

**CONCLUSIONS OF FINDINGS OF FACT**

- The preliminary plat of DayBreak Subdivision should not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several of the goals and policies of the 2008 Growth Policy Update and does not conflict with the Transportation or Bikeway/Trail Plans.
- If proposed conditions of approval are met, the proposed subdivision will comply with state and local subdivision regulations, local zoning, and sanitary requirements and will provide legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, June 23, 2014.

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Thomas W. Hanel, Mayor