

CITY/COUNTY PLANNING BOARD

“Serving Billings, Broadview and Yellowstone County”

Board Attendance Roster: Please note: “E” stands for excused absence, “A” stands for un-excused absence, “1” stands for present.

BYLAWS, YELLOWSTONE COUNTY BOARD OF PLANNING, (Amended. May 25, 2004)

Section 4. Absences and Removal

- A. Each member shall inform the Planning Director at least one day before the meeting of his/her inability to attend a Board or Committee meeting. Such an absence shall be considered an excused absence.
- B. If any Board member accrues three (3) or more consecutive unexcused absences from regular meetings, notice of which has been given at his/her usual place of work or residence, or by announcement at a meeting attended by him/her, the President may call such absences to the attention of the Board which may then recommend to the appointing authority that such member be asked to resign and that another person be appointed to serve out the unexpired term. Schedule: (** denotes a Wednesday meeting)

	Position	01/13/15	01/27/15	02/11/15	02/24/15	03/10/2015	03/24/2015	04/15/2015	4/28/2015	05/12/2015	05/26/15	06/09/2015	06/23/2015	07/15/2015	07/28/2015	08/11/2015	08/25/2015	09/08/2015	09/22/2015	10/13/2015	10/27/2015	11/10/2015	
Dave Goodridge	Mayor/Billings Ward I	-	-	-	-	1	1																
Patrick Klugman	Mayor/Billings Ward II	1	1	1	-	1	1																
Donna Forbes	Mayor/Billings Ward III	1	1	E	-	1	1																
Darell Tunnicliff	Mayor/Billings Ward IV	1	1	1	-	-	1																
Dick Clark (President)	Mayor/Billings Ward V	1	E	1	-	1	1																
Vacant	YC District 1	-	-	-	-	-																	
Dennis Cook	YC District 2	1	1	1	-	-	E																
Lisa Sukut	YC District 3	1	E	E	-	-	E																
Vacant	YC District 4	-	-	-	-	-																	
Don Reed	YC District 5	E	E	1	-	-	1																
Dean Clark	YC District 6	E	E	1	-	1	1																
Al Littler	YC District 7	1	1	1	-	1	E																
Clint McFarland	Y County Cons. District	1	1	1		1	1																
Scott Reiter	Ex-Officio S.D. 2 Facilities Director	E	E			1	1																
Supt. Terry Bouck	Ex-Officio S.D. 2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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March 24, 2015

To be approved by a motion on April 28, 2015

1. Call the Meeting to Order

President Dick Clark called the meeting to order at 6:00 p.m. on Tuesday, March 24, 2015, in the Miller Building 1st Floor conference room, 2825 3rd Avenue North, Billings, Montana.

Introduction of Planning Board Members and Planning Department Staff

President Clark called for introductions of the members of the Planning Board and staff.

Attending Planning staff members were: Juliet Spalding, Subdivision Coordinator; Wyeth Friday, Planning Division Manager

Others attending: Toby Liechti, Blueline Engineering; Marshall Phil, Blueline Engineering; Jason Hertz, Applicant; Ted Schmitz, resident; Lanny Lucara, resident; Shari Endy, resident; Travis West, Engineering West; Duke Cherpeski, resident; Chris Beierwaltes, resident; Patty Nordlund, Billings Industrial Revitalization District

2. Approval of the Agenda-President Clark called for approval of the March 24, 2015 meeting agenda.

Motion

Donna Forbes made a motion and it was seconded by Clint McFarland to approve the March 24, 2015, meeting agenda.

The motion carried with a unanimous voice vote.

3. Meeting Minutes: President Clark called for approval of the approval of the March 10, 2015, meeting minutes.

Motion

Dean Clark made a motion and Patrick Klugman seconded the motion to approve the March 10, 2015, minutes.

The motion carried with a unanimous voice vote.

4. Public Comment: President Clark asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public may be heard on any subject that is not on the agenda; the Planning Board will not take any action on these items at this time, but could choose to add an item to the next meeting agenda for discussion.

There were no Public Comments given during this time.

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5. Disclosure of Conflict of Interest – Board members and Planning Staff. There were no disclosures of conflict of interest.

6. Disclosure of Outside (Ex Parte) Communication– Board Members and Planning Staff. The Ex Parte Communication Binder is available at the Sign-In and Agenda station. There was none.

7. OLD BUSINESS-7a. Public Hearing/Motion, Diamond Falls Subdivision -- Juliet Spalding, Subdivision Coordinator. Diamond Falls Subdivision is a proposed 61-lot, County major subdivision of S16, T01 S, R25 E, S2NE (Less C/S 2452 & 2892). The 64.781-acre subject property is located on the north side of Austrian Pine Drive, between South 48th Street West and South 52nd Street West. The property is zoned Agricultural-Open, and residential use is proposed. Diamond Falls, LLC, owner; Blueline Engineering, Agent.

Juliet Spalding opened this agenda item and gave a brief presentation on the staff report and recommendation.

INTRODUCTION

On February 2, 2014, the Planning Division received an application for preliminary plat approval for the proposed Diamond Fall Subdivision. The property is generally located on the west side of South 48th Street West and south of King Avenue West. This 61-lot subdivision would be developed in two phases with the first phase containing 13 lots. The proposed lots range from 0.341 acres to 0.91 acres. A concurrent zone change application is in review at this time to change the zoning from Agricultural Open Space to Residential-15,000. This zone change is necessary to allow the subdivision to proceed. The County Commission has approved the first reading on the Zone Change as of the Planning Board meeting on March 24, 2015.

Juliet provided an overview of the proposal, park land, dry hydrant water tank for firefighting, school jurisdiction, road configuration and maintenance. She also explained the requirements for wells and septic systems. The first phase of the subdivision is 13 lots that will be approved by the DEQ. Future wells will need additional approval.

RECOMMENDATION

Staff recommends that the Planning Board recommend that the Yellowstone County Board of County Commissioners conditionally approve the preliminary plat of Diamond Falls Subdivision and adopt the Findings of Fact as presented in the staff report.

Boardmember Dave Goodridge came in to the meeting at 6:18 pm

Juliet reviewed the conditions of approval that are proposed.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To minimize effects on local services, the Homeowners’ Association shall be established concurrent with the final plat recording. Articles of Incorporation,

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Covenants, Conditions & Restrictions, and any other appropriate documents for its creation shall be provided with the final plat documents.

2. To minimize effects on local services, prior to final plat approval, the 30,000 gallon dry hydrant system shall be installed as approved by the Billings Fire Department and a Rural Special Improvement District – Maintenance (RSID-M) shall be created for its maintenance.
3. To minimize effects on the natural environment and public health and safety, a note shall be added to Section II. of the Subdivision Improvements Agreement (SIA) stating that future landowners are responsible for having a Montana Registered Professional Engineer inspect and provide as-built certification that the improvements for the SepticNET drain field are constructed as shown on the Drain field Plans as required by Montana Department of Environmental Quality (MDEQ) at the time of septic permitting. A separate note shall notify future lot owners that there is an operation and maintenance plan in place for the approved septic system that must be followed in order to ensure proper functioning of the system.
4. To minimize effects on the natural environment and public health and safety, a note shall be added to Section II. SIA stating that future landowners are prohibited from building structures on the areas identified as primary drain field and replacement drain field on the MDEQ Certificate of Subdivision Approval exhibit.
5. To minimize the effects on the natural environment, a weed management plan and property inspection shall be approved by the County Weed Department, prior to final plat approval.
6. To ensure compliance with zoning, a note shall be added to Section II of the final SIA indicating that Zoning Compliance Permits shall be submitted for review and approved by the City-County Planning Division prior to construction on the lots.
7. To minimize the effects on local services, prior to final plat approval a Rural Special Improvement District (RSID) will be created or expanded, as appropriate, to provide maintenance of the new interior roads of this subdivision and Austrian Pine Road.
8. To minimize the effects on agricultural water user facilities, evidence that the existing irrigation facility on and adjacent to the subject property does not serve downstream users shall be provided prior to final plat approval.
9. To minimize effects on local services, improvements to Austrian Pine Road shall be made in phases, to bring it up to current County paved road standards. Any necessary improvements from Bridle Creek Trail to S. 48th St. West shall be made during Phase I, while improvements from S. 52nd St. West to Bridle Creek

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Trail shall be made during Phase II. Updates shall be made to Section XI. of the final SIA to reflect these requirements.

10. To minimize effects on local services, prior to Phase II development, the developer shall apply for and receive the appropriate provisional permit for additional water rights from Montana Department of Natural Resources and Conservation (DNRC). A note shall be added to Section VI.A. of the final SIA stating this requirement.
11. To minimize effects on local services, a note shall be added to the face of the final plat and Section VI.B. of the final SIA indicating which lots will retain sanitary restrictions until future approval is granted by MDEQ.
12. To minimize effects on local services, a Park Maintenance District shall be established prior to final plat approval for future maintenance of the dedicated parkland.
13. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
14. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, and the laws and Administrative Rules of the State of Montana.

Planning Board Questions:

Board member, Donna Forbes asked about access to park land for homes in the subdivision. Planner, Juliet Spalding explained the access to the park area from the roads and from where the park land comes down to the road near 48th Street West.

Board member, Dick Clark asked who has to deal with the trees that encroaching on Austrian Pine Road. Juliet Spalding said that it is a public road so County Public Works would look at the trees and see if trimming or removal might be needed in the future when road improvements are needed.

Board member, Don Reed asked how far is Elder Grove School from subdivision and if kids be walking to school. Juliet Spalding explained that Elder Grove is at 64th and so it is several miles away and kids would likely not be walking to school. Mr. Reed followed with another question on whether the trees along Austrian Pine Road would block pedestrians from walking along the road. Juliet Spalding said that the north side of the road will be improved further with this subdivision, but also the trees may need to be trimmed, if determined so by County Public Works.

Board member, Donna Forbes pointed out that there are no sidewalks required in in this subdivision, but asked if it were to be brought into the City would sidewalks be required. Juliet Spalding said that if the property were annexed into the City in the future, the

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current City policy would require the subdivision to be brought up to City standards, which currently requires boulevard sidewalks.

No other comments were received by the board at this time.

President Clark opened the public hearing.

Public Hearing Comments:

Marshall Phil, Blueline Engineering, 2110 Overland Avenue, Billings, Montana Mr. Phil is the agent for Diamond Falls, LLC, (Rod Lorenz and Jason Hertz). He explained that two engineers are involved in the project, one to address roads and subdivision design and the other to address, water, septic systems and storm water management. Mr. Phil said that he wanted to answer an irrigation question from the last meeting. He said that the irrigation ditch that traverses the subdivision also serves a separate 10 acre parcel at the northeast end of the project above Hogan Slough. He said the plan is to see if the property owner would be willing to use an irrigation well so the ditch could be abandoned. He said if that is not possible, the ditch will need to be rerouted to accommodate the use of the ditch.

Mr. Phil said they also are working with County Public Works about building narrower 52nd St. W. half-street cross section in the proposed 40 foot right-of-way. When future development to the west is done, the other half of 52nd would be dedicated and it would then be built out to full width. He said they are also discussing with Public Works about Austrian Pine to address the trees and the narrow width of the street.

Board member Don Reed asked if 52nd St. W. would be built narrower. Marshall Phil said that 52nd St. W. would be built narrower for now, but would be widened later. He said he understood the concern but that 52nd St. W is not being extended north very far right now.

Travis West, Engineering West, Columbus, MT 59019 Mr. West indicated that he was designing the storm water, wells and septic systems for the project. He said 13 permits for water rights on the wells are in place for the first phase. He said they are working toward application for additional wells for the subdivision through DNRC. Mr. West talked about the SepticNet septic systems proposed to be used because of the high nitrate levels in the groundwater. He said higher nitrate levels are common in West Billings will likely increase. He said septic technology is very advanced.

Board member Dave Goodridge asked if the special septic systems will need additional maintenance, management and inspections. Travis said that testing and inspection annually will be needed and the property owners will be responsible for costs and maintenance. Board member Goodridge followed up with a question about how property owners would know if a system fails.

Mr. West said that alarms will notify owners if a pump were to fail or other system issues come up.

Lanny Lucara, Resident, 1212 Bayberry Circle, Billings, MT 59106 Mr. Lucara indicated that his lot backs onto Austrian Pine Drive. He said that based on an 80-foot right-of-way there should be 26 feet from his fence to the road shoulder. This is not the case, so he

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thinks current road base is offset to the south now and is not centered. He said centering the road to the north will bring it into the center of the ROW. Mr. Lucara said he also has environmental concerns with the proposal, the main one being the impacts of the new septic systems on their groundwater. He said they built on 1 acre lots and he said the SepticNet systems are new and he is not aware of their viability and durability.

Shari Endy, 1215 Bayberry Circle, Billings, MT, 59106 Ms. Endy indicated that her house backs up to Austrian Pine also. She said she has a number of concerns. She has lived there for 11 years. The subject property has been looked at before for development and nitrate levels were a concern then and still are an issue. She said she is an environmental engineer and nitrate levels are something she works with a lot. She said her well has been tested for nitrates and they fluctuate from 4 parts per million (ppm) to 10 ppm. She said she is curious how the first 13 wells were permitted. She said agricultural uses and drain fields contribute to higher nitrate levels.

Ms. Endy said the groundwater direction of flow is to the southeast, so drainage from Diamond Falls septic systems will drain SE toward her neighborhood. Wells in her neighborhood range from 25 to 35 feet deep and the groundwater is shallow. She said SepticNet was approved in 2012 by the State but she said extensive research and testing has not been done. She said system is supposed to keep nitrate levels below 7 ppm. She said the systems are very expensive and complex to manage. She said there are a lot of questions on how the systems will be managed and maintained and she could not find proven data for systems over time. Solution is probably septic vaults and not drain fields as 61 drain fields is a lot of impact for the area. She said she would like to see the samples that were done for the tests for nitrates.

Ted Schmitz, 5040 Bridle Creek Trail, Billings, MT 59106 Mr. Schmitz expressed concerned about the proposed septic systems and wells as well as road impacts. Austrian Pine from Bridle Creek down to 48th St. West is narrow and the trees are a bit of a problem. Cars can pass on it but two cars and pedestrians will be dangerous; he indicated that trees also block views. He pointed out that Austrian Pine Rd. will be used more as the proposed subdivision is developed. He felt the road will have to be widened to the north and that safety is a big concern. He would like to see a sidewalk or bike path along the north side of Austrian Pine Rd.

Chris Beierwaltes, 1228 Bayberry Circle, Billings, MT 59106 Mr. Beierwaltes stated Austrian Pine is too narrow now and it is off-set. He said that we need wider road section on Austrian Pine. He indicated his concern about the project and the faith in the proposed septic systems to try and avoid the nitrate issues. He stated: “What will happen when nitrates get worse? Who will be there to address it? What if whole west end goes bad on you? Who is responsible?” I indicated he may need to move out to get away from nitrate levels.

Shari Endy came back up and added information on 2012 Water Study in West Billings – she named off areas in west Billings where nitrate levels have been reported. She said problem is real and a concern. But also indicated that the high nitrate levels are in isolated areas, no across the entire west end.

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President Clark closed Public Hearing at 6:57 PM

Discussion:

President Clark asked how close the subject property is to city water service now.

Juliet Spalding said City services are presently at King Avenue West and 44th Street West.

Board member Don Reed questioned if the property could be annexed to the City. It was pointed out that it is not within the 5 year limits of annexation established by the City Council and that in the future a lot of modifications would be needed to have this property meet City standards.

Board member Clint McFarland asked what is the speed limit on 48th Street West. It was discussed that the speed limits range all over the west end from 45 to 65 mph.

Board member Donna Forbes asked for clarification on the right-of-way for Austrian Pine Rd. Juliet Spalding clarified that the new subdivision will provide additional 40 feet to make up total 80 foot right of way. She said the road is currently built in the southern 40 feet of ROW so it will be offset. She pointed out on the plat where the new ROW would be provided.

Board member Dean Clark made a motion to table the application to get more information on nitrates, MDEQ reports and other data needed to evaluate the concerns. The motion died for lack of second.

President Clark asked Juliet Spalding what options the Board has for a motion at this time. She said the Board could recommend denial or conditional approval of the application to the County Commissioners, or could see if an extension would be agreeable to applicant. The recommendation cannot be tabled beyond the review period without the request to do so by the applicant.

Juliet also pointed out that plat approval it is a two-step process. This step is the preliminary plat review. MDEQ wants local preliminary approval before it will make final approval of lifting sanitary restrictions. Therefore we cannot hold off on preliminary action until after MDEQ approval.

April 28th is the expiration for Preliminary plat review. Currently scheduled to go to BOCC on April 14. It was pointed out that a summary of the Planning Board public hearing and discussion is provided to the BOCC for their consideration.

Board member Patrick Klugman made a motion to recommend conditional approval of the preliminary plat if information from the neighbors is provided to the BOCC for its consideration. Nitrate levels information should be passed along to the BOCC as they are important and valid concerns. Pass information to BOCC with preliminary, conditional approval. Board member Dave Goodridge seconded the motion.

Discussion on the motion:

Board member Forbes pointed out that nitrate levels have not been such a large issue before even though we have seen a lot of subdivisions in this area.

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Juliet Spalding explained that this is the first subdivision to go through our review with lots allowed to be less than 1 acre with both individual wells and septic systems. The recent law change has allowed this. She said she could not think of other areas with such extreme nitrate levels, but there may be some.

Board member McFarland indicated that in his experience with the Conservation District and water sampling, he has seen that effluent is a problem all over west Billings and as population increases nitrate levels increase. He indicated he is very concerned in what MDEQ is allowing and is not confident in it.

Board member Darrell Tunncliff expressed reservations about the background data on septic systems, and was not sure the Board should pass it along to other agencies to deal with.

Board member Dave Goodridge indicated that in his experience as a realtor, when Home Owner Associations are involved and/or property owners are expected to pay for long term contracts and take care of the maintenance of systems, it can be problematic and difficult to ensure compliance.

President Clark called for vote on the motion for the recommendation of conditional approval.

Aye – Board members Klugman and Forbes

Nay – Board members Goodridge, Tunncliff, McFarland, Dean Clark, Reed, Dick Clark.

Motion failed on a vote of 2-6

Board member Dave Goodridge made a motion to recommend denial of the subdivision to the Board of County Commissioners. Board member Clint McFarland seconded the motion.

Discussion:

Board member Goodridge indicated he was not against getting this sorted out, but he had unresolved concerns about the mechanical sustainability of the proposed septic systems.

President Clark called for vote on the motion for recommendation of denial.

Motion passed unanimously.

It was announced that the proposal will be presented to the Board of County Commission at their meeting on April 21, 2015– 9:30 am.

7b. Motion. Affirmation of the East Billings Urban Renewal District. Wyeth Friday, Planning Division Manager.

President Clark asked Planning Division Manager Wyeth Friday to open this agenda item. This item was first reviewed by the Board on March 10, 2015.

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INTRODUCTION: City Council on March 23 adopted a resolution to modify the East Billings Boulevard Urban Renewal District (EBURD). The EBURD was originally created in November 2006 and while the tax increment in the district has increased, a significant amount of long range planning and project planning has also occurred to position the EBURD for development and redevelopment. The Council's intends to modify the district to include newly annexed properties east of the existing EBURD in the Exposition Gateway Concept Plan area as well as include two properties adjacent to the District that a property owner has asked be brought into the EBURD.

The Yellowstone County Board of Planning is being asked to review the EBURD Modified Plan and determine for the City Council if the modification is in conformance with the 2008 Yellowstone County and City of Billings Growth Policy. This is a requirement of both the creation and modification of an urban renewal district under state law. The City Council since it has passed the resolution of intent to modify the EBURD on March 23, will conduct a public hearing on April 13 and consider action on the modification. It is prior to this action and hearing that the Council will expect a recommendation from the Planning Board.

Discussion

President Clark indicated that he had heard that the bids for one of the upcoming improvement projects had come in high, and he was disappointed that the scope would have to be reduced. Patty Nordland of the Billings Industrial Revitalization District (BIRD) indicated that the recent City Council action was more so a precautionary measure to have a contingency fund established in the event that bids were to come in high. The bids are not final yet.

Board member Reed asked if there was any reason the board should not recommend the proposed expansion of the district.

Wyeth Friday indicated that there was not but it is part of the expansion procedures outlined in state law that the Planning Board is to determine if the expansion is in conformance with the Growth Policy and send a letter to that effect.

Board member Tunncliff made a motion to recommend that the Board President send a letter in support of the EBURD expansion to the City Council. Patrick Klugman seconded the motion.

President Clark called for vote on the motion.

Motion passes unanimously.

****There are no agenda items at this time for the April 14 meeting.**

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ADJOURNMENT:

ATTEST: DRAFT. To be approved on April 28, 2015

Richard Clark, President, Yellowstone County Board of Planning

Wyeth Friday, Manager, City-County Planning Division (in Candi Millar’s absence)