

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	01/13/2015	01/27/2015	02/11/2015	02/24/2015	03/10/2015	03/24/2015	04/14/2015	04/28/2015	05/12/2015	05/26/2015	06/09/2015	06/23/2015	07/14/2015	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	-	1													
Patrick Klugman	Mayor/Billings Ward II	1	1	1	-	1	1	-	1													
Donna Forbes	Mayor/Billings Ward III	1	1	E	-	1	1	-	1													
Darell Tunnicliff	Mayor/Billings Ward IV	1	1	1	-	-	1	-	1													
Dick Clark (President)	Mayor/Billings Ward V	1	E	1	-	1	1	-	1													
Vacant	YC District 1	-	-	-	-	-	-	-	-													
Dennis Cook	YC District 2	1	1	1	-	-	E	-	1													
Lisa Sukut	YC District 3	1	E	E	-	-	E	-	E													
Vacant	YC District 4	-	-	-	-	-	-	-	-													
Don Reed	YC District 5	E	E	1	-	-	1	-	1													
Dean Clark	YC District 6	E	E	1	-	1	1	-	1													
Al Littler	YC District 7	1	1	1	-	1	E	-	E													
Clint McFarland	Y County Cons. District	1	1	1		1	1	-	E													
Scott Reiter	Ex-Officio S.D. 2 Facilities Director	E	E			1	1	-	1													
Supt. Terry Bouck	Ex-Officio S.D. 2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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April 28, 2015

To be approved by a motion on May 27, 2015

1. Call the Meeting to Order

President Dick Clark called the meeting to order at 6:00 p.m. on Tuesday, April 28, 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: Candi Millar, Planning and Community Services Department Director; Juliet Spalding, Subdivision Coordinator; Wyeth Friday, Planning Division Manager; Scott Walker, Transportation Planning Coordinator

Others attending: Toby Liechti, Blueline Engineering; Marshall Phil, Blueline Engineering; Jason Hertz, Applicant; Travis West, Engineering West; Birgit Beierwates, resident; Chris Beierwaltes, resident; Kathy Karls, resident; Jim Karls, resident; Jim Routson, resident; Shari Endy, resident; Keith Phillips, resident; Duke Cherpeski, resident; Lanny Lucara, resident; Ted Schmitz, resident; Carol Phillips, resident; Rick McCann, resident; Mike Penfold, resident; Don Vanica, BPAC; Eva Hollenbeck, resident; Roger Williams, resident; Sara Hudson, BSEDA; Kristi Drake, BSEDA; Jason Hertz, resident

- 2. Approval of the Agenda-**President Clark called for approval of the April 28, 2015 meeting agenda. He made a request to move the New Business item 8a) Dover Park and the Bypass Discussion forward to be heard first.

Motion

Donna Forbes made a motion and it was seconded by Don Reed to approve the April 28, 2015 meeting agenda and move New Business Item 8a) Dover Park/Bypass Discussion forward to be heard first.

The motion carried with a unanimous voice vote.

- 3. Meeting Minutes for March 24, 2015. (The April 14, 2015 meeting was cancelled due to a lack of agenda items).** President Clark called for approval of the approval of the March 24, 2015 meeting minutes.

Motion

Donna Forbes made a motion and Patrick Klugman seconded the motion to approve the March 24, 2015, minutes.

The motion carried with a unanimous voice vote.

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- 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.

- 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.

8. NEW BUSINESS

8a. Discussion. Dover Park/North Bypass Project. Planning Board and Staff.

Planning Division Manager Wyeth Friday introduced Darrell Wilson, President, Yellowstone River Parks Association, (YRPA), who provided an overview of history of Sindelar family and Dover Park. He pointed out the posted master plan of the John H. Dover Park and stated YRPA has presently been gifted by the Sindelar family 172 acres with the intent of giving them another 552 acres. They have developed the lower creek bottom and built five bridges, and have approximately 1,200 feet of soft trail completed. He said a soft opening of the Dover Park project could be this fall. The proposal is that the large pond/lake could be used for storm water management as well as recreation uses. There is about 2.5 miles of Yellowstone River frontage for park that included a lot of trails and a bridge crossing of the water areas.

Discussion

Darrell Wilson asked the Board for questions. Donna Forbes asked about flooding potential for this area and Darrell Wilson said flooding would probably be more likely near the 5 Mile Creek Drainage through the creek bottom. He stated YRPA has been deeded 172 acres, with some owned by the nature conservancy and a conservation easement. In response to a question by Dick Clark, Mr. Wilson said it will be a public park with public access. He said ownership will be non-profit but in a partnership with City and County. Dick Clark asked about the location of the Bypass and Darrell Wilson explained the Bypass will enter and bisect the park at its lower end. He invited the Board to schedule and attend a tour of the park.

Lockwood TEDD/Bypass, Sara Hudson, BSEDA

Ms. Hudson provided the Board with an update on the Lockwood Targeted Economic Development District, (TEDD) along with the history of how the TEDD plan came to be with industrial park feasibility study. She explained the Trailhead Commerce Park effort had started so BSEDA also coordinated with that private effort as well. She said the projects

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are tied together as the Bypass bisects the TEDD and Dover Park. She said the Lockwood Pedestrian and Lighting District expressed concern about pedestrian safety and the need for facilities along the Bypass. BSEDA met with the MDT Director on April 27, 2015, and he expressed support and commitment to ensuring the bridge/bypass has safety facilities. Director Tooley is looking at identified alternatives and will follow up. Also, MDT is working to get a consultant under contract to complete the project design.

Discussion

Dave Goodridge asked whether the Record of Decision on the Bypass project would be opened. Ms. Hudson said the June 19, 2015 deadline is last opportunity to file a claim for judicial review. Darrell Tunncliff asked if there are reservations about having an industrial park next to the Yellowstone River or if any industrial accident mitigation is needed. Ms. Hudson replied Weave Management conducted a feasibility study. No other questions were asked and President Clark closed the item.

7. OLD BUSINESS- 7a. Subsequent 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 Residential-15,000, and residential use is proposed. Diamond Falls, LLC, owner; Blueline Engineering, Agent.

Juliet Spalding opened this agenda item at 6:20 pm and gave a brief presentation on the staff report and recommendation. She said since the Planning Board's recommendation of denial on March 24, 2015 the applicant has taken consideration of the discussion and wish to provide additional information to support the application. She stated the Commissioners' agreed there is substantial information and recommended staff return this review to the Planning Board for a subsequent public hearing. She clarified that the hearing and discussion this evening is to focus on the new information provided and not repeat the information and hearing comments from the first Planning Board hearing. She completed an abbreviated presentation on the subdivision, timeline, and the new information on the septic systems. She said there were five new pieces of information on the SepticNet systems proposed to service the lots. She went into some detail on the new information on the systems to limit nitrate release into the soil. She also noted the operation and maintenance procedures.

RECOMMENDATION

Planning staff recommends that the Planning Board review the additional information provided by the applicant, hold a subsequent public hearing to take testimony on the new information, and make a recommendation to the Board of County Commissioners. Based on the original submittal information and the additional information provided by the applicant, staff recommends the Planning Board recommend conditional approval of the Diamond Falls Subdivision.

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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, 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 an RSID-M 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 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.

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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 Discussion

President Clark called for discussion and questions from the members of the Board. Donna Forbes asked if a septic tank is needed and then the SepticNet system, or just the Septic Net system? She also asked how a power loss would affect the systems.

Public Hearing

At 6:30 p.m., President Clark opened the public hearing and asked if there was anyone wanting to speak in favor or in opposition to Diamond Falls Subdivision.

Marshall Phil, Blueline Engineering, 2110 Overland Avenue, Billings, Montana

Mr. Phil is the agent for Diamond Falls, LLC, (Rod Lorenz and Jason Hertz). He focused on roads and irrigation in the area. He said the only irrigation user is to the east; and they are talking to that land owner about drilling him a well or finding another option for his irrigation needs. The developer has discussed widening Austrian Pine Road along with possible tree trimming to adjust it to make it feel safer and easier to travel. County Public Works is reviewing a proposal for 52nd Street West for a slightly narrower half-street cross section.

Travis West, Engineering West, Columbus, Montana

Mr. West stated his firm has worked on the storm water, septic, and well permitting and systems. He said there were a lot of questions at the last hearing and they did not have the data but they do now. He explained that each property will need a septic tank, SepticNet system and drain field. Nitrate levels on the property are around 10 mg/L. The new SepticNet systems can reduce the nitrate levels to 5.5 mg/L. The reduction of nitrate levels by the SepticNet will act as a filtering system for the existing nitrate levels in the ground and put less nitrate into ground than is there now. A power failure would mean no pumping for water well and so no wastewater discharge. Mr. West said he asked the inventor of SepticNet about failure of the bioreactors or pump failure. The system stops discharging and the property owner has 3 days to address failure while system has capacity to hold effluent during that time. Each system has a computer that sends out reports daily to the company and has some capability for remote operation. Mr. West said the system provides a lot of data and he asked that the decision be made by Board to let MDEQ complete its review and determine if it is acceptable per the MDEQ review and approval process.

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Discussion

Darrell Tunncliff noted that the information presented noted three of the five systems that were presented failed. He said it seems the households with fewer residents had the trouble with the systems. Travis West said he could not comment on details of test system data but said this is the only system approved that can meet MDEQ’s requirements. Darrell Tunncliff also asked about the system maintenance and operation, and who will ensure homeowners will take care of the system. Travis West replied that MDEQ has enforcement ability if the home owner fails to maintain the system.

David Goodridge asked if the system must meet certain levels of treatment and if there is a level of nitrates too high for SepticNet to manage. Travis West stated he is not aware of a situation that was too high for the system to manage.

Donna Forbes asked how many systems have been installed to date. Mr. West said a system is being installed in West Billings this week for a commercial application, (storage project for Todd Iccopini), and one was installed last year. He said others have been installed around Montana and the information provided was for MDEQ.

David Goodridge asked who will manage maintenance and operations. It was discussed that the property owner in conjunction with a SepticNet technician would be responsible for maintenance and operations.

Jason Hertz, 3472 Stone Mountain Circle, Billings, Montana

Mr. Hertz is the developer. He stated his purpose is to build a quality subdivision with homes matching and exceeding the surrounding area homes. He said SepticNet will provide a service tech in Billings to manage systems in this area given the demand for the systems. Mr. Hertz asked the Planning Board to forward a recommendation of approval so that MDEQ can proceed with its review process. He pointed out they need local approval of the subdivision before MDEQ will complete its review; they are unable to move forward if it is not approved. Mr. Hertz explained that a Home Owners Association cannot address issues with a septic system on private property. MDEQ has the regulatory authority to enforce proper operation.

Travis West explained the process of local subdivision and MDEQ review. He reiterated MDEQ approval must be obtained before the final plat may be approved.

Dick Clark asked whether the Board has ability to look into specific systems in regard to its recommendation. Candi Millar said that the Board is expected to review all of the information but not be an expert on any one issue. She said MDEQ does have experts on staff with the ability to make a final denial or approval.

David Goodridge asked if other residential subdivisions in Montana use these systems. Mr. West replied he does not know.

Darrell Tunncliff asked if the test systems are still working and providing subsequent data. Travis West stated he does not know but MDEQ requires reporting on the systems. He said they are conducting sampling on an annual basis as required on any Level 2 system.

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Don Reed commented that this is a pretty complex system and there will be 61 complex systems in this development. He asked if consideration was made for an alternative system to service the entire subdivision. He pointed out each homeowner carries the responsibility of system treatment. Travis West said the computer on the system will report needs for repair and MDEQ will deal with instances of neglect.

Public Hearing Comments:

Shari Endy, 1215 Bayberry Circle, Billings, MT, 59106

Ms. Endy’s property is adjacent to the subdivision. She said she won’t repeat what she said at the last meeting but she has done more research. She said that while the SepticNet system is a great system it may not be the right system for Diamond Falls Subdivision.

Ms. Endy stated the SepticNet system won’t reduce the nitrate levels in the groundwater. She reported a conversation with Barb Kingery of MDEQ who explained they consider water quality, quantity and availability. Ms. Endy has spoken with the State Nitrate Manager, Scott Patterson. She explained what happens when 10 parts per million of nitrate in a drinking well system for a public system is exceeded. She said this must be monitored and often times, the systems are forced onto cisterns. Ms. Endy stated she doesn’t understand why individual residential systems are not held to same standards. She said she does not think that the Type 2 SepticNet system is the answer for this subdivision. She said SepticNet is not approved for commercial treatment and does not treat phosphorous. Ms. Endy stated said her primary concern is homeowners operating these complex systems, as the opportunity for failure is significant. She plans to bring this issue to MDEQ for consideration in subdivision review. Ms. Endy commented on the West Billings Hydrogeology Study that found that irrigation is the recharge for all wells in the area.

Darrell Tunnickliff asked how much nitrate agriculture puts into the ground compared to residential subdivision. Ms. Endy described the process of calculating nutrient levels and said she does not know the difference in nitrate levels between agricultural production properties and residential development. Darrell Tunnickliff also asked if she is opposed to new subdivisions. Ms. Endy stated she is not opposed to the subdivision; her primary concern is the groundwater quality and feels there are other treatment options for this development.

Carol Phillips, 5152 Bridle Creek Trail, Billings, Montana

Ms. Phillips is a systems engineer and the Tech Director at Elder Grove School. She said she knew this land would someday be developed, and assumed the developer would be interested in the value of the surrounding properties, health, and safety. She voiced concern with this subdivision as it has many points of failure that will affect area water quality. Her concerns are related to the SepticNet system has alarms and reporting systems including power failures; MDEQ’s response time to failures; SepticNet’s ability to respond to multiple calls for service; the lack of a land line for monitoring; and the viability of SepticNet as a business. She commented septic systems are only supposed to operate for five years and asked who will address the issues if the system fails. She said she feels the SepticNet system is too new for this large of a project and it is too great a

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risk. Ms. Phillips stated she doesn't have an issue with a subdivision next door but feels that these systems are not tried and true.

Shari Endy, 1215 Bayberry Circle, Billings, Montana

Ms. Endy asked how MDEQ can enforce a private system as the reporting is tied to the contract between the home owners and SepticNet.

Kathy Carls, Bridle Creek Trail, Billings, Montana

Ms. Carls considered purchasing the property at the southeast corner of subdivision. The water was tested and was at 11.3 mg/L in nitrate levels. She was advised by MDEQ that the water is unsafe to drink.

Eva Hollenbeck, 4950 Austrian Pine Drive, Billings Montana

Ms. Hollenbeck lives on Austrian Pine at south side of this property. She said MDEQ is understaffed and can't respond quickly due to limited resources and staffing.

Ted Schmitz, 5040 Bridle Creek Trail, Billings, Montana

Mr. Schmitz asked the Board for their serious consideration of this proposal, and to not “toss it down” to MDEQ. He said he read the SepticNet material and he is concerned about limited testing to it and its viability. He said the SepticNet maintenance and operation of the systems is very complex and asked what happens if something goes wrong or the ownership is transferred. In reference to the proposed upgrades to Austrian Pine Drive, he stated he thought the street improvement was going to be wider than 4 feet and expressed concern that it will have a lot more traffic when this is developed.

Chris Beierwaltes, 1228 Bayberry Circle, Billings, Montana

Mr. Beierwaltes thinks liability is a big issue for all of these systems. He stated he maintains his septic system and has had trouble even though it is simple. Recently his water quality was tested as 11 mg/L. He asked who is the expert when developers say, “Push it down the line”. He said the experts are working for the applicants so there is a conflict of interest. Mr. Beierwaltes asked if we are going to continue to piecemeal the development of the west end of Billings until something happens. He stated development of smaller lots with septic systems is creating a bad situation.

Keith Phillips - 5152 Bridle Creek Trail, Billings, Montana

Mr. Phillips is an electrical engineer. He stated the SepticNet system may be okay but it is going to fail and it impact the residents' water and safety. He said there are going to be 61 systems installed and failures will occur and asked the Board to weigh the issues.

Rebuttal of developer

Travis West, Engineering West, Columbus, Montana

Mr. West stated they have looked at many of the concerns brought forward and they are valid questions. A community system was considered but that kind of system impacts the soil more than individual systems. He stated SepticNet systems are approved for residential use and commercial uses with residential-level discharge. DNRC will review water rights for the 61 wells and it is unknown if they will approve of all of the applications. He pointed out the cumulative issue in West Billings is there whether this

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development is approved or not. This system will add less nitrogen to the ground but existing drain fields are putting high levels of nitrate into the ground anyway. He stressed the problem needs to be fixed either way. Mr. West commented his expertise is biased for the developer which is why MDEQ completes the review and checks the developer's work. MDEQ will complete the technical review including review of all public comments.

Jim Carls, 5063 Bridle Creek, Billings, Montana

Mr. Carls asked if this project connect to the City system as it is a short distance away. He said this is his recommendation.

Candi Millar reminded all in attendance of the public hearing procedures. She said the City has an annexation policy and they are limited on the ability to provide police and fire services. This property is not within the current limits of annexation established by the City's policy.

President Clark asked if there is anyone else wishing to speak in favor or against the Diamond Falls Subdivision. There was none. President Clark closed the Public Hearing at 8 p.m.

Darrell Tunncliff asked if Planning staff looks at technical information. Candi Millar responded they do but must rely on MDEQ for technical review of septic systems. She continued and explained the role of the Planning Board to use criteria and look at mitigation through conditions. She said the Board can recommend denial but must make sure it cannot be mitigated as State law requires that a recommendation of denial must be reasonably related to the impact that cannot be mitigated.

Motion

David Goodridge made a motion and it was seconded by Dean Clark to forward a recommendation of conditional approval of Diamond Falls Subdivision with the conditions and Findings of Fact presented by Staff.

Discussion

President Clark called for discussion on the motion.

Dave Goodridge stated that in his opinion this is outside the Board's review to determine if the SepticNet systems will work or not but MDEQ is qualified and will review the proposal. He stated the proposed density makes him nervous but there are checks and balances with the new system. He noted you don't know a standard system is failing until snow turns brown and said the development will have some system in place one way or the other.

Darrell Tunncliff commented a vault system may provide better containment of the sewage. Juliet Spalding stated a vault system requires monthly pumping and she is not aware that a community system would work.

Donna Forbes said initially there will be 13 systems and if the system doesn't work they will know prior to installation in the rest of the development. Candi Millar stated the

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subdivision could be conditioned to have phasing of project. Juliet Spalding stated the subdivision is already phased and restricted so that wells and septic systems must be approved before additional lots could be approved. Donna Forbes reiterated the project will have a few houses to start with; the systems will be tested; and if they don't work a different system will be used.

Discussion

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

The motion carried 6-2 with Board members Don Reed and Darrell Tunncliff voting against the motion. Board members in favor of the motion included David Goodridge, Darrell Tunncliff, Dean Clark, Dick Clark, Patrick Klugman, Donna Forbes, and Dennis Cook.

ADJOURNMENT:

ATTEST: DRAFT. To be approved on May 26, 2015

Richard Clark, President, Yellowstone County Board of Planning

Candi Millar, Planning Board Executive Secretary and Planning and Community Services Department Director