

PROPOSED YELLOWSTONE COUNTY BOARD OF PLANNING
FINDINGS OF FACT

The Findings of Fact for the preliminary plat of Duck Creek Condominium Subdivision have been prepared by the Planning and Community Services Department staff. These findings are based on the preliminary plat application and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Yellowstone County Subdivision Regulations (YCSR).

A. What are the effects on agriculture and agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety? (76-3-608(3)(a), MCA) (Section 3.2.H.2., YCSR)

1. Effect on agriculture and agricultural water user facilities

Any existing irrigation or surface water shares will be retained by the Subdivider. There is an unnamed irrigation drain ditch near the northern property boundary and along the east property boundary. The ditch will be left in place and any construction activity will take necessary precautions to not disturb the existing ditch. The drain ditch along the northern property boundary is within a 50-foot wide drain ditch easement that was created when Bowman Subdivision was first platted and is on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 3581177.

At the public hearing November 24 public hearing for this proposed condominium development, the Planning Board heard from several neighbors of the proposed subdivision regarding issues with the irrigation drain ditch, the uses on the property, and the existence of a methanol storage tank on the property and whether it met permitting requirements for a hazardous substance. The Board ended up delaying action on the preliminary plat until its December 8 meeting to gather more information on these issues and questions.

Drain Ditch Information

Following the meeting, staff made several inquiries to determine who may be responsible for the maintenance of the drainage ditch on the north side of the property and within the County Road right-of-way of Duck Creek Road. The easement document referenced above states that the easement is for the benefit of Canyon Creek Ditch Company. Staff contacted Everett Gable, President of the Canyon Creek Ditch Company, and asked him about the ditch and maintenance of the ditch. He stated that the ditch company is not in charge of drainage ditches, only water source ditches. He said he believes that the ditch in question was most likely dug out by a farmer many years ago to convey water off flood irrigated fields so they didn't rot the crop in the field. When the ditch was in use for significant irrigation drainage, the drainage ditch would have been cleaned by the farmer using it. After that, Gable said there were drainage ditch boards that monitored ditches and made certain that they were maintained properly. However, when an area developed with more houses and the farming activity that the

drainage ditch was intended for declined, the drainage ditch boards were disbanded. Gable said he believes this is the situation with this drainage ditch and so the cleaning of the ditch would be the responsibility of the property owners where the ditch is located if they want them to be cleaned out.

Staff also spoke with County Public Works Director Tim Miller about the drainage ditch where it is located within the Duck Road right-of-way on the east side of the subject property. Miller stated that the County does not maintain the drainage ditch in the road right-of-way and has no plans to do so in the future. However, Planning staff must note for the Planning Board's information that the County controls the road right-of-way and so any issues with the drainage ditch in the County road right-of-way should be directed to County Public Works.

Miller also said he had the same understanding about how the drain came about as the Canyon Creek Ditch Company President had stated, and Miller said he believed that if the current owners want to clean the drainage ditch out on their property on the north side of the subdivision they could do that. Miller also agreed that the ditch does not serve the same purpose as it did when initially constructed.

Staff also asked Miller about the culvert in the drainage ditch in the road right-of-way under the existing drive access into the proposed site. Mr. Miller responded that the County requires a minimum culvert size of 15 inches diameter and that may be what was installed in the access to the subject property.

2. Effect on local services

Utilities – There is an existing well on the site but it will be removed and replaced with a new well that will serve the condominium development. The proposed well must be approved by MDEQ before final plat. The owners of the condos will have a permanent, non-exclusive right to use the well, and maintenance will be shared as outlined in the Declaration of Unit Ownership documents to be recorded with the establishment of the condominiums with final plat. All of the units on the lot will make use of a shared multi-user public drainfield system. Shared maintenance provisions will also be established for the septic system. The proposed new buildings will be connecting to the existing onsite septic systems and must comply with the State of Montana Department of Environmental Quality (MDEQ) requirements as referenced in the SIA (**Condition #2**).

MDU and NorthWestern Energy will provide gas and electrical utilities as necessary. The applicant is providing an access and utility easement for the benefit of both lots for utility installation. The applicant will be discussing the best location for utility installation and the needed easements with the respective private utility providers (**Condition #1**).

- a. **Stormwater** – Stormwater will be retained onsite and will be in compliance with Section 4.7, YCSR. A stormwater management plan will be submitted and approved by MDEQ prior to final plat approval. Stormwater retention ponds are shown on the plan (**Condition #2**).
- b. **Flood Plain / Flood Fringe** - This proposed condominium development is entirely in the 100 year Flood Plain (Flood Fringe). Since the property is within the Flood Fringe, the owner may build structures as long as they meet the requirements for construction. In order to develop the site, proposed buildings will require finish floor elevations above the base flood elevation. Floodplain permits are required to be completed and approved prior to any construction on the site as outlined in the SIA.

Methanol Tank and Floodplain Information

County Public Works Director Tim Miller also provided information to staff about the Methanol tank currently in use at the site since he is also the County Floodplain Administrator. Miller stated that because it was installed before the property was identified as being in the Yellowstone River Floodplain through the latest updates to the Floodplain maps in the River corridor, it could remain in place and in use. However, he stated that business owner and property owner would not be allowed to increase the tank capacity, install more tanks, or modify the current installation of the tank without a floodplain permit.

Staff also spoke with State Department of Natural Resources and Conservation, and State Department of Environmental Quality staff in Helena regarding the regulation of the floodplain requirements and the methanol tank. Both agency staff stated that the County Floodplain Administrator may interpret the regulations and how they are enforced regarding existing structures and equipment.

- c. **Solid Waste** – Solid waste disposal will be provided through a private hauler. The Billings landfill has the capacity to accommodate waste from this subdivision.
- d. **Streets** – Access to the subdivision is from Duck Creek Road, a paved petitioned county road. Duck Creek Road is on the east side of the proposed subdivision. No additional street right-of-way is necessary. Duck Creek is currently maintained by the County and no additional RSID is being created at this time for its maintenance.

Access approaches for the lot were also determined with the original plat. Lots 1 and 2 will use a shared 40-foot wide approach. This internal access will be built with a 24 foot wide asphalt driving surface with 2 foot shoulders according to County Road Standards with a turn around area for the fire department. Maintenance of the internal driving surface will be shared

proportionately, as outlined in the Declaration of Unit Ownership documents to be recorded to establish the condominium ownership.

- e. **Emergency Services** – The subject property is within the jurisdiction of the Billings Urban Fire Service Area (BUFSA). The proposed condos will be serviced by looping driveways constructed to meet the fire department needs. The subdivision is installing a 30,000 gallon underground storage tank dry hydrant system. An RSID-M will be created that include the proposed condominium units prior to final plat approval to maintain the dry hydrant system (**Condition #1**).

The Sheriff's Department will provide law enforcement services for the subdivision and does not have any concerns.

- f. **Mail Delivery** - The United States Postal Service will service the new lot. The applicant will install either a Centralized Mailbox Unit or individual delivery boxes depending on what the USPS requests (**Condition #4**).

3. **Effects on the natural environment**

No alteration of any stream will occur with this subdivision.

The development will use noxious weed control measures to prevent the spread of noxious weeds to adjacent developed or agricultural land. A weed management plan will be completed and a property inspection done prior to final plat approval (**Condition #5**).

There are no apparent or known natural hazards on the property.

4. **Effects on wildlife and wildlife habitat**

There are no known endangered or threatened species on the property. Montana Fish, Wildlife and Parks (FWP) was provided information about the proposed subdivision and did not have any comments regarding this area. The applicant has included in the SIA a paragraph under Conditions That Run With The Land that deer may damage landscaping and unless there is commercial agricultural damage, or a threat to public safety, FWP does not assist with wildlife problems. A note to this affect is found in the 'Conditions that Run with the Land' section of the SIA.

5. **Effects on public health and safety**

There are no known manmade public safety hazards that would affect this subdivision. Plans and designs for wells, septic systems and stormwater will be reviewed and approved by MDEQ prior to final plat approval (**Condition #2**). Fire and emergency services are provided for this proposed subdivision, including a water supply for firefighting purposes.

B. Was an Environmental Assessment required? (76-3-603, MCA)(Section 9.2.C.1, YCSR)

An environmental assessment was not required for this subdivision as per Section 9.2.C.1., YCSR. A Summary of Probable Impacts was provided. No major issues were identified.

C. Conformance with the Yellowstone County – City of Billings 2008 Growth Policy Update, the 2011 Billings Area Bikeway and Trail Master Plan, and the Billings Urban Area Transportation Plan 2009 Update (Section 3.2.H.4., YCSR)

1. Yellowstone County – City of Billings 2008 Growth Policy Update

The proposed subdivision is consistent with the following goals of the growth policy:

- Goal: Controlled weed populations. (p. 9)
The developer will complete a weed management plan following an inspection performed by the County Weed Department.
- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)
The proposed subdivision is not within the County zoning jurisdiction. It is located south of Interstate-90 in an area that has been developed in recent years for commercial uses. Therefore, it seems to be consistent with the neighborhood character in this area.
- Goal: More housing and business choices within each neighborhood (p.6).
The proposed subdivision would allow for additional business development in this area of Yellowstone County.

2. 2014 Billings Urban Area Transportation Plan

Duck Creek Road is classified as a collector street and is expected to handle the additional traffic generated by this commercial subdivision. The required right-of-way was dedicated with the original Bowman Subdivision to meet the required half width for a collector street. The proposed subdivision maintains the street hierarchy defined in the Transportation Plan.

3. Billings Area Bikeway and Trail Master Plan

The subdivision is within the Billings Area Bikeway and Trail Master Plan jurisdictional area. Duck Creek Road is considered a planned ‘primary on-street bikeway’. There are no bike lanes, or even shoulders on Duck Creek Road, but these facilities may be considered when future upgrades to the road are made. A waiver of right to protest future RSID’s for street improvements is being signed and recorded with this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608(3)(b), MCA) (Section 3.2.H.3.a., YCSR)

The subdivision, with the proposed conditions, satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the Yellowstone County 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? (Section 3.2.H.3.e., YCSR)

The subject property is outside of the County zoning jurisdiction.

F. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608(3)(c), MCA) (Section 3.2.H.3.b., YCSR)

Utility easements will be provided on the face of the final plat for both electric and natural gas, as requested by MDU and NWE.

G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608(3)(d), MCA) Section 3.2.H.3.c., YCSR)

Access to the subdivision lots will be from Duck Creek Road, a petitioned County road.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Duck Creek Condos Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- With the proposed conditions, Duck Creek Condos Subdivision is in compliance with the Montana Subdivision and Platting Act and the Yellowstone County Subdivision Regulations.
- New water and wastewater facilities will be approved through the Montana Department of Environmental Quality.

ATTACHMENTS

A: Aerial Image

B: Photos of Existing Drainage Ditch