

FINDINGS OF FACT

The Planning staff has prepared the following Findings of Fact for the preliminary plat of Glynn Abbey Subdivision for adoption by the Billings 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 City of 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 in the City but used for agricultural purposes or left vacant for many years. It has utilized irrigation water in the past and also has an irrigation lateral that runs from the Cove Ditch Main Canal north of the subject property to serve property south of Rimrock Road. The irrigation lateral currently crosses the property through the western half. The subdivider is proposing to relocate the ditch to an existing 20-foot-wide utility easement along the west edge of the subject property and install it in a pipe system. The ditch runs south, crosses under Rimrock Road, and goes further south to serve property owned by Ted McFarland.

The subdivider indicates that discussions have been conducted with Ted McFarland and he has indicated that relocating the lateral and putting it into pipe was acceptable as long as he was able to still draw the same amount of water. The subdivider has designed the pipe to ensure that it will convey adequate flows to the McFarland's property. Maintenance of the piped ditch outside of Glynn Abbey Subdivision will be the responsibility of the ditch user. Maintenance of the piped ditch from its head gate north of Glynn Abbey Subdivision to the point where the connection for irrigation for the subdivision is located will be handled by the subdivision HOA and Ted McFarland. Maintenance of the piped ditch from the point of the connection for irrigation for the subdivision south to Rimrock Road will be the responsibility of the ditch user Ted McFarland. Prior to final plat approval, the City will need clarification in the SIA as to the maintenance responsibilities of the piped ditch and documentation in writing that the responsible party has accepted the maintenance **(Condition #1)**.

No water rights are being transferred to future property owners within the subdivision but the subdivider is proposing to have the new Home Owners Association for the subdivision hold irrigation water rights from the Cove Creek Ditch and the property owners will have access to the water via a grey water distribution system owned and operated by the HOA. The property, as it exists, has rights to purchase water shares from the irrigation district of which will be transferred to the HOA. A connection from the relocated irrigation lateral will be stemmed into the central ponds and controlled by a float activated valve. While the subdivider anticipates that the groundwater levels should keep the ponds adequately filled, if

these levels were to drop the connection may be used to fill the ponds back up to the minimum storm water storage level.

2. Effect on local services

- a. **Utilities** – Water service will be provided by the City of Billings from the water main in Rimrock Road. The developer will install new water mains in Glynn Abbey Way and Aston Bay Circle, 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). While the internal streets in the subdivision are proposed to be private a public utility easement is being provided over the roads to enable the City of Billings to access the public water mains for maintenance and repair. The easement will be recorded at the time of final plat approval (**See Condition #2**).
- b. Sanitary sewer service will be provided by connecting to the existing City sewer main at the intersection of Rimrock Road and 58th Street West. 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. While the internal streets in the subdivision are proposed to be private a public utility easement is being provided over the roads to enable the City of Billings to access the public sewer mains for maintenance and repair. The easement will be recorded at the time of final plat approval (**See Condition #2**).

Montana-Dakota Utilities (MDU) will provide gas services and Northwestern Energy (NWE) will provide electric services to the subdivision. MDU and NWE staff indicated that they would prefer 8-foot wide utility easements along the front lot lines for servicing the subdivision. The subdivider has shown 11-foot-wide easements for utilities along the front lot lines.

NWE staff also pointed out that there is an existing overhead power line running north to south across approximately the western quarter of the subdivision property. The line is owned by the Yellowstone Country Club, the property owner directly north of the subject property. The subdivider in Section VI of the Subdivision Improvement Agreement (SIA) indicates that the plan is to realign the overhead line in the access and utility easement of Glynn Abbey Way from Rimrock Road to where Glynn Abbey Way turns east at Lots 11 and 12. At this point, a 10-foot-wide utility easement is shown on the plat that will enable the power line to reach the Yellowstone Country Club property as it does now. The subdivider plans to bury the power line along the entire corridor in the subdivision. The subdivider will need to provide written approval from the Yellowstone Country Club that this realignment and burying of the power line is approved (**See Condition #3**).

- c. **Storm water** – Storm water drainage for the private streets is proposed to be provided by a network of curb and gutter that discharges into storm water pipes and eventually to four ponds to be used for routing and retention. The four ponds are to be located in the

private park land being provided by the subdivider and are intended to function for stormwater, flood management, irrigation supply, and as amenities to the parkland. The ponds are designed to hold water year round. The subdivider is working with the City Engineering Division on the entire storm water system as it has several more complex systems to handle large storm events. The system is being designed to use some of the storm water collected in the ponds for irrigation of lots in the subdivision through a grey water system. Storm water also will either be pumped to the Cove Ditch north of the subject property to reduce pond volumes after storm events or managed using injection wells on the property to send the water underground.

City Engineering staff has proposed language to replace the first bulleted paragraph in Section V of the SIA as follows:

“The existing property does not have any existing or active storm water detention or retention facilities located onsite. The development will include installation of four (4) storm water ponds used for routing and detention. Total detention volume within the central open space area will be sized in accordance with the Storm Water Management Manual for a commercial site. Water will be pumped to the Cove Ditch from the ponds or conveyed via injection well(s) to reduce pond volume to pre-storm volume within 72 hours. All ponds shall be maintained by the Home Owner’s Association.”

Engineering staff is proposing a condition of final plat approval that the subdivider submit a copy of the agreement with the Cove Ditch for pumping storm water and the easement necessary to pump storm water to the ditch where it crosses Yellowstone Country Club Property prior to final plat approval. If the subdivider chooses to employ injection wells to manage the storm water, design, operation and maintenance plans, and any state permitting requirements must be provided to City Engineering for review and approval prior to final plat approval. (**See Condition 4**).

The City has most recently been reviewing storm water facilities proposed in new subdivisions and directing that the facilities remain privately held by the subdivision home owners associations. The home owner associations are being required to maintain the facilities. Prior to final plat approval, City Engineering must review the Glynn Abbey HOA language regarding maintenance of the storm water facilities (**See Condition 5**). 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 Division.

- d. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- e. **Streets** – The lots within the subdivision will be served by internal private streets with two full accesses off of Rimrock Road. Glynn Abbey Way is the main street through the subdivision and connects to Rimrock Road at two points in a loop. A second street is Aston Bay Circle and is a small cul-de-sac off of Glynn Abbey Way to serve five of the

lots in the subdivision. Glynn Abbey Way and Aston Bay Circle will be paved and built to City Standards, with 34-foot widths, curb and gutter.

The subdivider will make a contribution equivalent to construction of half a residential street to fund the future reconstruction of Rimrock Road adjacent to the subdivision to a Principal Arterial Street standard. The contribution will take into account what is already built for Rimrock Road. This requirement is specified in Section III (A) Streets of the Subdivision Improvement Agreement. The contribution will be made prior to final plat approval (**See Condition 6**).

Since the streets are proposed to be private, security gates are planned at both entrances to the subdivision at the intersections of Glynn Abbey Way and Rimrock Road. The gates are intended to be open from 5 am to 9 pm and closed overnight. The gates must be designed to meet all requirements of the City Fire Department and City Public Works Department for emergency and maintenance access (**See Condition 7**).

Sidewalks

The subdivider is proposing to have boulevard-style sidewalks along the outer edge (north side) of Glynn Abbey Way and a short boulevard sidewalk segment along the south side of Aston Bay Circle. These are shown on the preliminary plat. As discussed in the Variance section of the memo for this preliminary plat and in the variance attachments, the subdivider is requesting a variance from the requirement to provide boulevard sidewalks on both sides of the streets in the subdivision. The subdivider is proposing that the variance be granted since the development will provide an interior trail system in the park land on the inner (or south side) of Glyn Abbey Way that will serve as pedestrian access and connectivity in lieu of sidewalk along the lot frontages. Justification for the variance request is provided by the applicant in an attachment to this memo and City staff's reasons for not supporting the variance are outlined in the Variances Requested portion of the memo. It is important that the Yellowstone County Board of Planning understand that it is the Board that may choose to recommend to the City Council that the sidewalk requirements be waived or modified for local residential streets as per Section 23-406 (B)(13) CSR.

To ensure connectivity between the subject property and existing neighborhoods to the west, the subdivider will update Section III (B) of the SIA to clarify that at time of construction of the sidewalks and trails within the subdivision, a 6-foot wide sidewalk will be constructed from where the public right-of-way for Mickey Wright Lane and Arnold Palmer Drive meet the subject property line and the 20-foot-wide public access and utility easement to where the 8-foot-wide trail between Lot 14 and Lot 15 is being built to connect to sidewalk on Glynn Abbey Way and the internal trail system in the open space of the subdivision (**See Condition #10**).

Since the sidewalk referenced above from Mickey Wright Lane and Arnold Palmer Drive will utilize the existing 20-foot wide utility easement along the western boundary of the subdivision, the easement must be updated to reflect public pedestrian access is allowed. Prior to final plat approval the subdivider will provide a revised public access

and utility easement documents for recording that ensures that both utility and public pedestrian access is allowed on the 20-foot-wide utility easement on the west boundary of the subject property (See **Condition #9**).

- f. **Emergency services and access** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 54th St. West and Grand Ave. (Station #7), about 1.3 miles from the subdivision. The subdivision is located within the ambulance service area of American Medical Response (AMR). Police Department stated that while this subdivision is located in an area that includes a mix of City and County properties, it is within an existing patrol area.

Since the subdivision is proposing to have private streets and security gates at the access points, the gates must be designed to meet all requirements of the City Fire Department and City Public Works Department for emergency and maintenance access (See **Condition 7**). Language is also included in Section IV of the SIA regarding the type access systems the gates will be equipped with as per the Billings Fire Department.

Language also is included in Section IV of the SIA that specifies the requirements for emergency access for the Fire Department during initial home construction prior to completion of all roads and infrastructure.

- g. **Schools** – School District #2 provides educational services to elementary through high school students. Schools serving these students are Arrowhead Elementary School, Will James Middle School, and West High School. The District provided information on the student capacities of all three schools. Arrowhead and Will James had limited capacity for additional students while West High is currently 242 students over capacity. The district has completed a master plan for growth addressing school capacity and facilities, including building a new middle school in west Billings, moving 6th grades from the elementary schools to the middle schools, and preparing a redistricting plan for elementary schools. With these modifications, some school enrollments are expected to match capacity in the next few years.

- h. **Parks and Recreation** – Residential subdivisions creating lots with housing densities at or 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. Residential subdivisions creating lots with housing densities greater than ½ acre and less than 1 acre are required by State and local laws to dedicate 7.5% of the net land area (or provide an equivalent cash contribution) for parkland. This subdivision has a mix of lots in these two size ranges, so the total has been calculated to reflect this. The subdivider is proposing to provide more than what is required, at 3.7 acres as private park land maintained by the subdivision's Home Owners Association but with public access easements on the land so that it is open to the public. This arrangement has been used in City subdivisions before and is being applied here to enable the subdivider to receive credit for the park land and to make it so that the Parks, Recreation and Public Lands Department (PRPL) does not have to manage maintenance and fund improvements.

PRPL staff is in agreement with this proposal as long as the access easements are provided on the park land to ensure public access (**See Condition 8**).

Pedestrian Access for Lots 25, 26, and 27:

During the Planning Board public hearing on January 26, it was noted by Planning Board Member Francisco Saldivar that if the variance to not provide sidewalks along Glynn Abbey Way was to be approved, Lots 25, 26, and 27 would not be able to easily access the internal trail system in the subdivision because the pond and water drainage system separated the lots from the trails. Mr. Saldivar pointed out that if the subdivider was making a case for the trails instead of the sidewalks, then all lots affected should have easy access to the trails. The subdivider agreed that this was a valid issue and agreed that footbridges across the drainage system for these lots to access the trail would make sense.

Mr. Saldivar then made a motion that an additional condition be added to the preliminary approval that engineered footbridges be provided for the three lots. This motion was made, and supported by the Board, before the sidewalk variance was discussed and voted on. When the Board considered the sidewalk variance itself, Mr. Saldivar supported the variance in alignment with his motion to provide the foot bridges. However, the sidewalk variance failed to be recommended for approval by the Board. Given this situation, staff has drafted Condition 13 so that if the City Council approves the sidewalk variance then the footbridges will be required but if the Council denies the sidewalk variance the footbridges will not be required as sidewalk will then provide pedestrian access to Lots 25, 26, and 27 (**See Condition 13**).

- i. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision. 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 (**See Condition 11**).

3. Effect on the natural environment

The subject property is in an area with a mix of development and property in the City and County. The area consists of irrigated agricultural land, large-lot single family development in the County, a golf course, and some large lot residential development and higher density residential development in the City.

The most significant effect of development in this area on the natural environment is related to the natural drainage in this area and is also discussed in more detail in the Section 5 Public Health, Safety, and Welfare of these Findings of Fact. There is a mapped floodplain for Cove Creek that is being addressed through the proposed development of this property as a portion of the property is within the floodplain of Cove Creek. The subdivider will need to receive the proper floodplain permit(s) for the proposed development prior to final plat approval (**See Condition 12**).

In addition to the floodplain issues, 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 address some impacts on the natural environment from development activity during construction.

4. Effect on wildlife and wildlife habitat

Montana Fish, Wildlife and Parks staff provided comments regarding this proposed subdivision. 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 and antelope in the area, which may cause damage to their landscaping. Montana Fish, Wildlife and Parks staff also stated that a fish and wildlife water right and private pond permit would be required if the subdivider plans to stock fish in the proposed ponds on the property. This subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

Soil conditions and flooding may be the most significant potential effects on the public health, safety, and welfare related to this proposed subdivision.

Soil conditions have the potential to impact the public health and safety of future property owners in this subdivision. A geotechnical investigation was conducted by Rimrock Engineering. The Geotechnical Report for the development found that: Based on subsurface profiles encountered within the borings, it is likely that a majority of the foundations and associated concrete floor slabs will bear on lean clay soils. Silty sand soils were encountered along the south end of the property. Fluctuating groundwater levels should be taken into consideration during design and construction of residential structures. Basement construction may not be feasible unless lower level slabs can be kept 3-feet above groundwater. Language has been added to Section II and Section IX of the SIA alerting future property owners to the Geotechnical Report and stating that homebuilders should perform a geotechnical exploration for each specific structure due to the potential variation from site to site.

According to the current National Flood Insurance Program's (NFIP) Flood Insurance Rate Map (FIRM), approximately 10 acres of the subject property is located in the Special Flood Hazard Area of the Cove Creek Drainage. The subdivider has been working with the City Floodplain Administrator for about one year to seek approval of a floodplain permit for the proposed subdivision. While a permit has not yet been issued by the City, the Federal Emergency Management Agency (FEMA) has been brought into the process through a Conditional Letter of Map Revision to obtain FEMA comments on the impacts the proposed project may have on the Special Flood Hazard Area of the Cove Creek Drainage. The City's Floodplain Administrator has stated that a local floodplain permit may not be issued until the subdivider receives a determination from FEMA on whether the subdivision as proposed requires an update to the Special Flood Hazard Area map through a Conditional Letter of Map Revision process through FEMA. The subdivider will need to receive the proper floodplain permit(s) for the proposed development prior to final plat approval and that approval may contain conditions that must be met prior to construction (**See Condition 12**).

If the subdivision is permitted through the floodplain permitting processes, language has been added to Section II and Section V of the SIA informing future property owners that specific lots in the subdivision are within the Cove Creek 100-Year Floodplain and buildings on those lots will be required to have a finished floor elevation of at least 2 feet above the base flood elevation. The Cove Creek 100-Year Floodplain also is delineated on the preliminary plat and will be required to be shown on the final plat (**See Condition 12**).

During the plat review by the Planning Board on January 12, the subdivider stated that the fencing along the Rimrock Road frontage of the subdivision would likely be a mix of earth berming and intermittent masonry wall. It is important that the subdivider be aware that if earth berms and an intermittent masonry wall are contemplated along the Rimrock Road frontage these elements must be considered in the floodplain permitting and stormwater design for the property.

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:

1. Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).

While large lot development like what is proposed in this subdivision is more costly to provide services to for the City, the location of this property partially in a mapped floodplain and with the existing large-lot residential development around it, may make the larger lots and added opens space in the proposed subdivision more compatible with the character of the adjacent City and County areas.

2. Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (p. 10).

The proposed trail connections to adjacent property to the west as well as the internal trail network through the open space in the subdivision that provides access to Rimrock Road provides connections and utilizes open space for stormwater management and recreation.

2. 2014 Billings Urban Area Transportation Plan

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. Rimrock Road in this area has an existing 120-foot road right-of-way as per City requirements for a Principal Arterial Street.

3. Billings Area Bikeway and Trail Master Plan

The proposed subdivision lies within the jurisdiction of the Billings Area Bikeway and Trail Master Plan. The Billings Area Bikeway and Trail Master Plan identifies bike lanes on Rimrock Road along the frontage of the subject property. While major improvements to Rimrock Road are not planned with this subdivision, future improvements to the Rimrock Road corridor may include bike lanes in this area. This language has been included in Section III (F) of the SIA.

The subdivider as per comments from the Planning Division and Engineering Division in lieu of a full road connection to existing roads abutting the subdivision to the west, is providing a sidewalk connection from the end of both Mickey Wright Lane and Arnold Palmer Drive along the existing 20-foot-wide Pedestrian and Access Easement on the west edge of the subdivision, and along a 12-foot-wide pedestrian access easement between Lots 14 and 15 to the sidewalk along Glynn Abbey Way. This pedestrian connection where it intersects Glynn Abbey Way will align with the internal trail in the Glynn Abbey Subdivision parkland area to create a pedestrian connection through the park land in the subdivision and between the neighborhood to the west and Rimrock Road.

4. West Billings Plan

The proposed subdivision is consistent with the following goals and policies of the West Billings Plan:

- Create developments in West Billings that are compatible with their surroundings and provide a safe and desirable environment for residents, shoppers, workers and visitors (Community Character Goal 1, Page 38). *This subdivision, while low density for urban services, does fit in with the large lot residential development in the City and County in this area.*
- Identify and protect open spaces, flood channels, waterways, and scenic resources in West Billings (Open Space Goal 1, Page 46). *While this development is occupying a portion of the Cove Creek floodplain, the design will meet local, state and federal floodplain regulations and is utilizing areas of open space for natural drainage and flood management on the property.*
- New parklands should benefit both the individual neighborhood and the overall community park and linear open space system (Open Space Goal 4, Page 50). *Pedestrian connections from the neighborhood to the west of this subdivision and pedestrian walkways and trails through the open space in this subdivision connecting to the west and to Rimrock Road provides for benefits to the subdivision residents and neighbors in the area. When Rimrock Road is reconstructed with pedestrian facilities, these trail connections will be even more beneficial for the area.*

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 is currently zoned Residential-9600 and single-family residential development is planned with the proposed subdivision. The lot sizes within the subdivision will conform to the requirements of the R-9600 zone. 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 is already proposing to provide 11-foot-wide utility easements, exceeding the 8-foot-wide easements requested by MDU and Northwestern Energy on the face of the plat.

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 Rimrock Road via Glynn Abbey Way and Aston Bay Circle.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Glynn Abbey Subdivision, if the proposed conditions of approval are met, should not create any adverse impacts that warrant denial of the subdivision. However, several of the conditions are integral to approval of the subdivision as proposed/designed, including the floodplain and stormwater system conditions.
- 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, February 22, 2016.

Thomas W. Hanel, Mayor