

FINDINGS OF FACT

The City/County Planning staff has prepared the Findings of Fact for the Skycrest Subdivision. 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, 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 users' facilities

The subject property has been historically used for irrigated crop land as have properties to the north, east and west. The properties directly south have been developed for residential uses since the early 1970's. Farther south the property was developed for residential uses in 2013. The subdivision will remove approximately 64 acres of agricultural land. This area is generally transitioning out of agricultural use to residential uses near Elder Grove School.

Big Ditch runs along a small portion of the western boundary of the subject property. There are no other irrigation ditches or laterals existing in the proposed subdivision.

No water rights are being transferred to the new lots within the subdivision.

2. Effect on local services

- a. **Water and Sewer** –A community water system is proposed to be used to supply water to the lots and individual septic systems are proposed for sanitary sewer needs. The well or wells for the community water system and the location of the septic systems will be reviewed and approved by the Montana Department of Environmental Quality (MDEQ) prior to final plat approval. These systems will be constructed as approved by the MDEQ and as shown on approved plans. The community water system will need to have a maintenance mechanism to ensure the system works properly and is repaired as needed. The applicant will either create a Home Owners Association or use a third party provider that will be responsible for the maintenance of the community water system in the subdivision. **(Condition #1)**. A paragraph shall be added in the SIA under Conditions that run with the land informing property owners of their obligation to participate in maintaining the community water system **(Condition #2)**.

- b. **Streets and roads** – The proposed subdivision is located between South 64th Street West and South 72nd Street West. Both streets are Principal Arterial streets according to the Billings Urban Area Transportation Classification map. This plat will be dedicating the correct amount of right-of-way for both 72nd and 64th.

All proposed lots shall be accessed from new internal roads dedicated to the public. The new roads will be built to County residential road standards within a

60-foot right of way. An RSID-M for maintenance of the new roads will need to be established (**Condition #3**).

The Traffic Impact Study (TIS) that was submitted with this proposed subdivision used existing traffic counts on South 64th Street West and South 72nd Street West and projected traffic numbers that would be generated by this proposed subdivision. The analysis included impacts on South 64th Street West, South 72nd Street West and their connections to Hesper Road and King Avenue West. King Avenue West and South 64th Street West were identified as having the greater traffic flow impact. King Avenue West is a State controlled road. South 72nd Street West, South 64th Street West and Hesper Road are controlled by the County. Impacts to South 72nd Street West, South 64th Street West and Hesper Road in the TIS were minimal and did not trigger any improvements. In the TIS it was anticipated that most traffic would travel north to King Avenue West to go into Billings for work or shopping needs. The greatest impact was identified at South 64th and King Avenue West. At a future time when more development takes place, there could be a need for a turn lane off of King Avenue West to South 64th Street West. Also, a future right turn lane was identified on South 64th Street West onto King Avenue West. In remarks from MDOT, staff replied that the state does not take in contributions for future road construction. If a TIS identifies need for immediate improvements, MDOT requires construction of improvements to be done at the time of initial development.

This subdivision is proposing a long single main road, Skycrest Drive, that runs from South 64th Street West to South 72nd Street West with quite a few cul-de-sacs along the length of the road. With the many lots on the road there will be quite a few driveways that will access Skycrest Drive. To increase safety and have as few traffic conflicts as possible, the applicant will place a '1 foot no access easement' on the south side of Skycrest Drive from the northwest corner of Lot 4, Block 4 to South 64th Street West, excluding the dedicated rights-of-way for the six cul-de-sacs off of Skycrest Drive on the south. Also, an opening will be left on the park frontage for access to the park. (**Condition #4**). The applicant will also include a '1 foot no access easement' along the north side of Skycrest Drive from the southeast corner of Lot 34, Block 3 to the southwest corner of Lot 46, Block 3, excluding the dedicated rights-of-way for the four cul-de-sacs off of Skycrest Drive on the north (**Condition #5**).

The subject subdivision is proposing to use the west end of O'Donnell Lane to access South 72nd Street West into and out of the subdivision. O'Donnell Lane is a private road that is made up of two 'Road Tracts,' Tracts 4-B and 7 and is 30 feet wide. Road tract 4-B extends from South 72nd Street West going east 1,565.24 feet. At just under half that distance, O'Donnell Lane will meet the road going north into the proposed subdivision. The road that turns north will be South 71st Street West and connects to Skycrest Drive. O'Donnell Lane on its west end, as stated before, is a private road and is within Road Tract 4-B. The applicant will either need to provide evidence that he has a right to use that road tract or

build the road to County paved road standards and then petition the needed distance into the County in a 60-foot-wide road easement (**Condition #6**). The applicant is proposing to use the 30-foot road tract and provide an additional 30 feet for a total of 60 feet of road right of way.

For clarification on these processes for providing public access, here is how the County addresses public access in these situations: When the County creates a petitioned County road, it accepts easements for the road right-of-way. Usually, it does not accept an ownership interest in the road right-of-way. If a property owner has filed a deed that conveys a road tract, a road right-of-way, and the County accepts the deed, the County receives an ownership interest in the road right-of-way. However, as is this situation for this subdivision, if a property owner has not filed a deed that conveys a road tract, and the County grants a petition to create a petition County road easement over the road tract, the County would receive an easement only over the road tract. The problem is that there will be no one to grant the easement to the County in this situation, so the County allows the developer to construct the road over the road tract without an easement and after five years the County would have a public prescriptive easement over the road tract for the road, making it public.

South 71st Street West is depicted on the Amended Plat of Tract 6, Certificate of Survey (COS) 1233 as a 30-foot-wide piece of Road Tract 7. This COS was recorded in June of 1973. On Amended Tract 3-B and Tract 4 of COS 1233, South 71st Street West is depicted as a 60-foot-wide road easement centered over the property line of Tract 4-A and 3-C. This amended COS was recorded in July of 1976. South 71st Street West is not built or used as a private road, it is currently farmed. The applicant will need to gain the right to use the 30-foot road tract on the neighboring property and provide the additional 30 feet on his property for a 60-foot road right of way. If he does not obtain the use of the 30-foot road tract on the neighboring property, he will need to provide the entire 60 foot right of way on his property (**Condition #7**).

- c. **Fire and Police Services** – The property is within the Billings Urban Fire Service Area (BUFSA) jurisdiction and it will provide fire service. It is the subdivider’s responsibility to ensure provisions of a water source and adequate access to the proposed lots for emergency service needs. A 30,000-gallon dry hydrant system is in a subdivision to the south, Dewitt Subdivision, and it is proposed to be used by this subdivision for its first phase. With any future phase development, this subdivider will be required to install a 30,000-gallon dry hydrant system in the subdivision (**Condition #8**).

The applicant is proposing to install the 30,000-gallon dry hydrant system in O’Donnell Park. O’Donnell Park is an existing undeveloped park in the subdivision to the south. This new subdivision and the existing subdivision to the south will both benefit from the installation of the system. The applicant will need to have permission to install the system in the county park. A letter from

the County Park Board will need to be obtained before final plat approval (**Condition #9**). An easement for the location of the dry hydrant system shall be shown on the face of the final plat, and a recordable easement document provided for this location as well. When the system is installed in the next phase, the applicant will have the BUFSA sign off on the installation and functionality of the dry hydrant system prior to that phase being released for development (**Condition #8**). Maintenance of the 30,000-gallon dry hydrant will be done through an RSID-M to be created prior to the filing of the final plat as stated in the SIA in Section IV (**Condition #3**). The BUFSA has indicated that the proposed use of the dry hydrant system in Dewitt Subdivision for the first phase is acceptable. Development of any future phase will require the 30,000-gallon fire suppression system and BUFSA staff would provide specifications for the dry hydrant system.

The Yellowstone County Sheriff's Department will provide law enforcement services.

- d. **Solid Waste disposal** – The Billings Landfill has capacity for solid waste disposal. Solid waste will be collected and disposed of by a private garbage collection company. Each lot owner will be responsible for arranging for collection.
- e. **Storm water drainage** – All storm water drainage shall satisfy storm water management requirements and specifications of MDEQ. The water is proposed to be absorbed on-site in the ditches along the paved road within the public right-of-way.
- f. **School facilities** – The proposed subdivision is located in School District #8 for Elementary and Middle School, and School District #2 for High School. Elder Grove School responded that they have additional capacity for more students and the proposed subdivision is on an existing bus route. Staff did not receive any comments from West High School at the time of the writing of this staff report.
- g. **Parks and recreation** – This proposed subdivision is required to provide 7.5% of the net area as parkland pursuant to Section 10.2, YCSR and 76-3-621, MCA. This amount totals 3.58 acres, the applicant is proposing to dedicate 3.67 acres. They are proposing one 2.86-acre park in the southeast corner of the subdivision by South 64th Street West. Another park is on the west end of the proposed development and is .81 acres. This subdivision will also have access to the existing O'Donnell Park just west of the center of this proposed subdivision. O'Donnell Park is 3.77 acres. The applicant will need to create a County Park Maintenance District for maintenance of the new parks in the subdivision (**Condition #10**). O'Donnell Park does not have an RSID for maintenance and since the applicant is not the only beneficiary of the use of O'Donnell Park in the area, the County would have to consider initiating creation of an RSID for O'Donnell Park in the future.

- h. **Historic features** – No known historical or cultural assets exist on the site. The land has been farmed for many years and there would be no historical item left intact from the farming activity.
- i. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has requested the installation of centralized mailbox units (CBUs). The developer will work with the USPS to identify appropriate locations of CBUs prior to final plat approval (**Condition #11**).
- j. **Phasing** – The subdivider is planning to develop this property in three phases. Phase one includes Lots 1-9, Block 1 and Lots 20-27, Block 4. Phase two includes Lots 10-34, Block 1; Lot 8, Block 3 and Lots 1-19, Block 4. Phase three includes Lots 35-48, Block 1; Lots 1-11, Block 2 and Lots 1-7, Block 3. See attached map of the proposed phases. The subdivider will be providing all the needed paperwork for the phased development of this subdivision prior to final plat approval (**Condition #12**).

3. Effects on the natural environment

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 #13**).

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

4. Effects on wildlife and wildlife habitat

There are no known endangered species on the property. Montana Fish, Wildlife, and Parks (FWP) responded to a request for review and comment on the proposed subdivision. It stated that there are deer and antelope in the area and home owner homeowners should be made aware that unless they take steps to deter animals such as fencing their yards they may experience damage problems. A note to this effect is found within the SIA to help inform future landowners.

5. Effects on public health and safety

Plans and designs for use of the proposed community water system and septic systems will be reviewed and approved by MDEQ prior to final plat approval. Fire and emergency services are provided for this proposed subdivision.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-616, MCA) (Chapter 9, YCSR)

An Environmental Assessment (EA) was required for this subdivision as outlined in Section 9.2. A. of the County Subdivision Regulations. The EA outlines impacts to the surrounding and addresses water, sewer and storm water issues that have historically existed on the proposed subdivision site. There were no identified negative impacts to wildlife or water systems in the area. Because this parcel is used for farming, wildlife

habitat has not existed for quite some time. Ditches near the property will not be impacted by this subdivision.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy Update, the 2014 Billings Urban Area Long Range Transportation Plan, and the Billings Area Bikeway and Trail Master Plan? (Section 3.2 (H)(4), YCSR)

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

This proposed subdivision conforms to the following goals of the Growth Policy:

- **Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)**

This subdivision will create 94 lots of approximately 20,000 to 30,000 square feet for single family residences, consistent with some of the immediately surrounding neighborhoods to the south.

- **Goal: New developments that are sensitive and compatible with the character of adjacent County townsites. (p. 6)**

There are similarly sized lots containing single-family homes in the surrounding neighborhood near the subject property.

This proposed subdivision does not conform to the following goals of the Growth Policy:

- **Goal: Protection of groundwater, surface water, riparian areas, air quality, and productive agricultural land. (p. 9)**

This proposed development will take 64 acres of prime agricultural land out of production in Yellowstone County in an area that has some large-lot residential development but also continues to have a significant amount of agricultural land in production.

2. 2014 Billings Urban Area Long-Range Transportation Plan

The subject property is within the study area of the Transportation Plan. The subject property has frontage on South 64th Street West and South 72nd Street West. These streets are principal arterials, and the appropriate amount of right-of-way is being dedicated for those two streets. All access to the lots will be from the new internal local streets.

3. Billings Area Bikeway and Trail Master Plan (BABTMP)

The subject property does not have a bike lane identified within the subdivision. There is a proposed long range bike lane identified on South 64th Street West. There is a potential future trail alignment identified along the Big Ditch on the western edge of this subdivision. The applicant has identified a 20-foot trail easement along the Big Ditch that is on the northwest edge of the proposed subdivision. On the plat, this easement is depicted as being a 20-foot trail easement measured from the center of the Big Ditch. The applicant will change the location

of the 20-foot trail easement to be measured 20 feet from the edge of the east bank of the Big Ditch. (**Condition #14**).

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

The proposed subdivision meets the requirements of the MSPA and the YCSR. The subdivider and the local government have complied with the subdivision review and approval procedures that are set forth by local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [Section 4.8(C) and 4.9 (C), YCSR]

The subdivider must receive approval from MDEQ for the proposal to make use of the proposed community water system and septic systems for the new lots, prior to final plat approval.

F. Does the proposed subdivision meet any applicable Zoning Requirements? [Section 3.2(H)(3)(e), YCSR]

The subdivision is outside the County's zoning jurisdiction so there are no zoning requirement on the land. The applicant is proposing Covenants Codes and Restrictions (CCR's) to govern the subdivision. CCR's are not enforced by the county but by the homeowners in the subdivision.

G. Does the subdivision provide for necessary planned utilities? [76-3-608(3)(c), MCA and Section 3.2 (H)(3)(b), YCSR]

Utility easements shall appear on the face of the final plat as requested by utility companies providing private utilities to the subdivision and be accompanied by easement documents (**Condition # 15**). An easement has also been shown for the dry hydrant system. A recordable easement document for the hydrant shall be submitted with the final documents.

H. Does the proposed subdivision provide for legal and physical access to all lots? [76-3-608 (3)(d), MCA and Section 3.2 (H)(3)(c)(d), YCSR]

Legal and physical access will be provided for the proposed lots from the new public internal streets, which are off of South 64th Street West and 72nd Street West.

CONCLUSIONS OF FINDINGS OF FACT

- The Skycrest Subdivision does not create adverse impacts that warrant denial of the subdivision.
- Impacts to agriculture water user facilities, local services, public health and safety, the natural environment, and wildlife should be minimal. The impact to

agriculture will be taking 64 acres of prime agricultural land out of production. Aside from the loss of agricultural land, other impacts identified can be mitigated by reasonable conditions of final plat approval.

- The subdivision conforms to some of the goals of the 2008 Growth Policy, the 2014 Transportation Plan and the BABTMP.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

RECOMMENDATION

Staff recommends that the Planning Board recommend to the Board of County Commissioners conditional approval of the preliminary plat of Skycrest Subdivision and adoption of the Findings of Fact as presented in the staff report.