



# CITY/COUNTY PLANNING BOARD

*"Serving Billings, Broadview and Yellowstone County"*

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**August 9, 2016**

*To be approved by a motion on August 23, 2016*

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## **1. Call the Meeting to Order**

President Tunncliff called the meeting to order at 6:00 p.m. on Tuesday, August 9, 2016, in the Miller Building 1<sup>st</sup> Floor conference room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.

## **Introduction of Planning Board Members and Planning Department Staff**

President Tunncliff called for introductions of the members of the Planning Board and staff. Attending Planning staff members were: Wyeth Friday, Interim Director, Planning & Community Services Department; Scott Walker, Transportation Planning Coordinator; Dave Green, Planner II; Tony Chase, VISTA; Sara Channell, VISTA; Robbin Bartley, Administrative Support.

**Others in attendance:** Dan Wells

- 2. Approval of the August 9, 2016 Agenda:** President Tunncliff called for approval of the agenda.

### **Motion**

**Board member Saldivar made a motion and Board member Klugman seconded the motion to approve the August 9, 2016 agenda. The motion carried with a unanimous voice vote.**

- 3. Approval of the July 12, 2016 meeting minutes.** (The July 26, 2016 meeting was canceled due to a lack of agenda items).

### **Motion**

**Board member Saldivar made a motion and it was seconded by Board member Goodridge to approve the July 12, 2016 meeting minutes as submitted. The motion carried with a unanimous voice vote.**

- 5. Public Comment:** President Tunncliff 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.**

## **5-6. Disclosure of Conflict of Interest – Board members and Planning Staff**

**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 were no Conflicts of Interest and no Ex Parte Communications.**

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### **7. OLD BUSINESS: There is no old business.**

### **8. NEW BUSINESS:**

Wyeth Friday introduced Tony Chase and Sara Channell, Americorp VISTAs. Tony discussed the VISTA supported program, Kids in Motion (KIM). This program encourages kids to walk and bike to school. The VISTA program works with the City, District #2 school officials and other stakeholders to help determine the best ways to help kids walk and bike to school. KIM also conducts Bicycle Tune-up Clinics. There were 4 clinics done during the spring at area schools and approximately 100 bicycles were repaired and 120 safety surveys were conducted. The VISTAs have recently been able to work in the classrooms where educating students about bicycles and streets and intersections were discussed with the kids and School District staff. The hope is the School District will eventually take this program over in a much more formal level. Communication is being encouraged to discuss where to bike and walk and where vehicles travel. Sara was welcomed as the new Planning VISTA and Tony Chase's replacement for the coming year.

President Tunnicliff thanked the VISTAs for their service and welcomed Sara. Dave Goodridge asked the VISTAs which side of the road bicycles are supposed to ride on. Tony explained that bicycles are supposed to travel with the traffic.

### **8a. PLAT REVIEW/DISCUSSION. SKYCREST SUBDIVISION. DAVE GREEN, PLANNER II**

Mr. Green gave the introduction below for this agenda item and followed with a PowerPoint presentation.

#### **INTRODUCTION**

On July 1, 2016, In Site Engineering for Regal Land Development, Inc., applied for preliminary major plat approval for Skycrest Subdivision. The proposed plat creates 94 lots for single-family residences on a 64.31-acre parcel of land. The subject property is generally located between South 64<sup>th</sup> Street West and South 72<sup>nd</sup> Street West, north of O'Donnell Lane and south of King Avenue West. The property is outside of zoning. The Yellowstone County Board of Planning will review the plat at this meeting and conduct a public hearing on Tuesday, August 23, 2016. The proposal will go to the Board of County Commissioners for action on September 13, 2016.

#### **RECOMMENDATION**

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

#### **VARIANCES REQUESTED**

No variances have been requested from the Yellowstone County Subdivision Regulations for this proposal.

**PROPOSED CONDITIONS OF APPROVAL**

Planning staff recommends the following conditions of approval:

1. To provide for the maintenance of the community water system, before final plat approval the applicant will create a Home Owner Association (HOA) with the requirement in the HOA that residents contribute to and maintain the community water system.
2. To ensure there is notice to future home owners of their responsibility to maintain the community water system, before final plat approval the applicant will add a paragraph in the SIA under Conditions that run with the land informing property owners of their obligation to pay into a maintenance fund for the maintenance of the community water system.
3. To mitigate impacts on local services, prior to final plat approval the subdivider shall create a Rural Special Improvement District – Maintenance (RSID-M) for future maintenance of the new internal roads and the dry hydrant system.
4. To promote as much traffic safety and as few conflicts as possible, before final plat approval the applicant will place a ‘1 foot no access strip’ on the south side of Skycrest Drive from the north west corner of Lot 4, Block 4 to South 64<sup>th</sup> Street West. Excluding the dedicated rights-of-way for the 6 cul-de-sacs off of Skycrest Drive on the south. Also an opening will be left on the park frontage for access to the wells in the park.
5. To promote as much traffic safety and as few conflicts as possible, before final plat approval the applicant will place a ‘1 foot no access strip’ along the north side of Skycrest Drive from the south east corner of Lot 34, Block 3 to the south west corner of Lot 46, Block 3. Excluding the dedicated rights-of-way for the 4 cul-de-sacs off of Skycrest Drive on the north.
6. To minimize the effects on local services, prior to final plat approval a 60-foot wide dedicated road shall be shown on the face of the final plat for this subdivision for O’Donnell Lane where it fronts South 72<sup>nd</sup> Street West. Either entirely on the subject property, or 30 feet on the subject property and using the 30-foot Road Tract 4-B centered on the north edge of Road Tract 4-B. With the applicant showing proof of right to use the 30-foot Road Tract 4-B. If not able to show proof of right to use Road Tract 4-B, the applicant may petition the portion of Road Tract 4-B they need for access to their proposed subdivision into the county and building it to county paved road standards. Amendments shall be made to the final Subdivision Improvements Agreement to reflect whichever scenario is secured for the dedicated public roadway.

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7. To minimize the effects on local services, prior to final plat approval a 60-foot wide dedicated road shall be shown on the face of the final plat for this subdivision for South 71<sup>st</sup> Street West where it fronts O'Donnell Lane and proceeds north to Skycrest Drive. The applicant will need to either gain the right to use the 30-foot road tract on the property they do not own to the east and provide the additional 30 feet on their property for a 60-foot road right of way. If not, they will need to provide the entire 60 foot right of way on their property. Amendments shall be made to the final Subdivision Improvements Agreement to reflect whichever scenario is secured for the dedicated public roadway.
8. To provide for proper fire suppression within this subdivision, before final plat approval the applicant will add language in the SIA under Emergency Service defining the phasing of the subdivision and that the 30,000-gallon dry hydrant fire suppression system will not be built in Phase I but will be required before release of the next phase. The system will be inspected and signed off by BUFSA before the phase can begin development.
9. To ensure public park land is being used in accordance with the desires of the County Park Board, prior to final plat approval and before any construction of the dry hydrant tank system, the applicant will get permission from the County Park Board to install the 30,000-gallon dry hydrant system in the O'Donnell Park.
10. To mitigate impact to the parks used in the subdivision and to ensure park land is able to be maintained, prior to final plat approval the applicant will create a Parks Maintenance District to provide for the maintenance of new parks in the subdivision.
11. To minimize the effects on local services, prior to final plat approval the subdivider shall provide written verification that the US Postal Service has approved the mail facilities and its location for this subdivision.
12. To ensure proper documentation for the proposed phasing of Skycrest Subdivision prior to final plat approval the applicant will include a Declaration of Restriction of Transfers, a Release, and a Certificate for each proposed phase of Skycrest Subdivision.
13. To minimize the effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be approved by the County Weed Department.
14. To ensure proper easement placement for a proposed future trail easement along Big Ditch, before final plat approval the applicant will move the easement depicted as being a 20-foot trail easement measured from the center of the Big Ditch to be measured 20 feet from the edge of the east bank of the Big Ditch.

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15. To provide for the installation of the needed private utilities within the subdivision, prior to final plat approval the applicant will coordinate with private utility companies and provide easements on the plat, if needed, and easement documents for those easements.
16. 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.
17. 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.

### **Discussion**

At 6:28pm, President Tunncliff called for discussion by the members of the Board. Dennis Cook asked Staff what guarantees the owners would have access to the property given the road right-of-way and easement situation. Staff replied easements and road tracts may be petitioned into the County upon paving and meeting County road standards. Staff also replied that this is a valid concern with easements and road tracts where the ownership has not changed over time, even when property around it is sold. All these situations must be addressed and resolved before this subdivision can be approved, according to staff.

Board member Bass asked why the development would not connect to City Water. Staff showed that the nearest City infrastructure is 2.5 miles away. He then asked why the development would not use irrigation as it is located right on the Big Ditch. Staff deferred to the developer regarding this question.

Board member Goodridge inquired when the neighbors to the South would be notified of this development proposal. Staff explained that surrounding Property Owner letters went out the week of August 1 and residents are invited to the next meeting on August 23, 2016. There has been one call to staff from a local resident inquiring about water and sewer. Staff stated that it was explained to the caller that this development is still County and no annexation for City infrastructure is contemplated.

President Tunncliff addressed the matter of death in a Title issue. There are two ways to gain ownership in a property owner death situation. One is a Quiet Title action and the other is Adverse Possession. President Tunncliff asked who will transfer ownership of these road tracts to anyone. Staff replied the applicant will be taking ownership. President Tunncliff then asked how this can happen if the ownership is tied back to someone long deceased, or their heirs or assigns. Staff explained that anyone in the County can petition to put a private road into the County.

### **Applicant**

President Tunncliff asked for presentation by the Applicant.

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### **Dan Wells, Wells Built Homes**

Mr. Wells said he purchased this land from the previous owner who acquired it from the O'Donnell family. He said that the road tracts in question have also been purchased by another owner and he is working to coordinate legal access for the Skycrest Subdivision with this new owner. President Tunnickliff stated that he does not want new home owners to be in litigation later over road access issues. Mr. Wells replied the roads will be County roads at the completion of the plat and there will be no access issues.

Mr. Wells explained that he also intends to improve the park areas. The larger park area will be developed and the new homeowners will incur a fee for the park maintenance. Sidewalks, a parking lot and water facilities will be included in this area. Three wells have been drilled with excellent quality and quantity, up to 400 gallons a minute. These results have been submitted to the Department of Natural Resources and Conservation. The Water Rights for the three drilled wells will not be transferred to property owners and an irrigation ditch along the north side of the property is being considered for later usage, according to Mr. Wells. Regarding the Conditions of Approval, although a Home Owners Association will be established, Mr. Wells said he would prefer the community water system be monitored, maintained, and billed thru a certified water operator, a third party private entity. He asked that the condition be modified to reflect the potential for a third party to manage the system for the property owners.

Mr. Wells said that he had spoken with County Engineer Mike Black regarding conditions 4 and 5 and requests that the 1-foot no access easement requirement not be included. He said he believes the new owners will want circular driveways and these no access restrictions are usually found when entering an arterial not a residential street.

Board member Saldivar asked if the established HOA could fund the 3<sup>rd</sup> party entity to maintain the water system. Mr. Wells stated in his experience neighbors do not govern other neighbors well.

Board member Saldivar asked if the one foot no access requirement is eliminated, how will it be ensured or mandated that a circular driveway is put in on the corner lots. Mr. Wells indicated two mechanisms to insure the correct installation, a County issued approach permit and written language into the covenants.

Staff reminded the board they have the right to modify, remove or add conditions at the public hearing on August 23, 2016. President Tunnickliff stated he is uncomfortable about drafting language during the discussion. Staff will discuss having some language alternatives ready for the public hearing if the County Public Works staff is open to some changes in the conditions. Dave Green will speak with County Public Works about modifying the language. The boards report will be updated with new conditions, etc. Board modifications would be potentially drafted at the public hearing.

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Board member Klugman asked Mr. Wells about the removal of the no access easement and if he is willing to provide language in the SIA and covenants insuring a circular driveway be installed. Mr. Wells confirmed he would. Wyeth Friday suggested that the County Public Works Department could consider changing the no access easement to a controlled access easement, which allows review on a case by case basis. However, this is something County Public Works would have to determine would be acceptable.

### **8b. DISCUSSION. DRAFT 2017 UPWP. SCOTT WALKER, TRANSPORTATION COORDINATOR**

President Tunnicliff asked Scott Walker to open this agenda item. Scott Walker gave the introduction below and followed with a PowerPoint presentation.

#### **PROBLEM/ISSUE STATEMENT**

The Planning Division is presenting information regarding the Billings Metropolitan Planning Organization's (MPO) Unified Planning Work Program (UPWP) document. Staff will provide background information regarding the MPO and the importance and need of having the UPWP.

#### **BACKGROUND**

The UPWP is primarily for the purpose of programming the federal dollars Billings receives from the Federal Highway Administration (FHWA) for transportation planning. These funds are passed through the Montana Department of Transportation (MDT). However, all planning activities are included in the UPWP so that it represents a comprehensive document of the urban transportation planning program. The UPWP corresponds directly with the Planning Division's annual work plan. The UPWP proposes planning activities for each Federal Fiscal Year which runs from October 1 through September 30.

#### **FINANCIAL IMPACT**

None as this is for informational purposes only.

#### **RECOMMENDATION**

Presentation/Discussion only. No action is required during this meeting. A public hearing will be held at the next Planning Board meeting on Tuesday, August 23, 2016. The Planning Board will forward a recommendation at that time.

#### **Discussion**

Scott Walker discussed the recent events regarding the 5<sup>th</sup> Avenue Corridor. He indicated the 5<sup>th</sup> Avenue Corridor Study has been discussed in its many forms for many years. There has been and still is a lot of interest in the downtown area. The 5<sup>th</sup> Avenue Corridor was originally thought to start at the YMCA and extend east all the way to Metra Park. It is more than a corridor study, it is actually a feasibility study, according to Walker, that is intended to determine if this project is something that the community wants and is it feasible to do. Walker explained that the study was intended to determine if the community has buy in by adjacent property owners, the City and County, the railway and all entities that recognize 5<sup>th</sup> avenue as being a public right of way and

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underutilized. He explained that KLJ was brought on board with the understanding after the 1<sup>st</sup> public meeting if feasibility seemed possible they would proceed forward. If feasibility did not seem possible, the project would be stopped. In order for the study to proceed, a contract must be drafted and processed thru the City Council then signed by the Mayor. At the time of the City Council meeting where this contract was to be signed, EBURD representatives opposed the feasibility study contract with KLJ and the City Council did not execute it. This event left things in limbo because the Policy Coordinating Committee (PCC), in the 2016 work plan, approved of the feasibility study. The PCC has the final say in how the federal money is spent for local projects and needs to weigh in on the situation.

Walker explained that there are a couple of ways to possibly correct this. A PCC meeting will be held in August to talk about the process and have action taken by PCC to determine the status of the project whether to move forward or stop. The Planning Board is one of the entities that approves the UPWP every year. When MDT heard about the events at City Council it raised questions. We do not want to jeopardize the monies in these programs. The Planning Board needs to understand the significance of what is being done. The next PCC meeting will discuss why the City Council did not sign the contract and the PCC will then make a decision based on that information. Perhaps this project will be shelved for a couple of years which would be acceptable, however, the staff and PCC need to figure out how to avoid this procedural glitch in the future.

### **President Tunnicliff called for questions and discussion by the members of the Board.**

Board member Cook asked if the PCC was in favor originally. Scott Walker explained the 2016 work program included the feasibility study which the City Council approved at that time along with all other members of PCC. When the contract came to be signed to pay the consultant, the Council did not sign the contract. If the Council had signed, and a feasibility study had been initiated, individual property owners in the study area would have been contacted and their input would have been documented for consideration. This is an \$80,000 study and is totally federally funded. No City or County funds were to be used.

Board member Goodridge requested more information regarding the federal input. Planning staff explained that they asked the administrative level of MDT if they had ever heard or seen this type of glitch happening in the State of Montana before. The answer was No. The issue here is not the study, it is the procedure. The procedure is being compromised. The MDT District Administrator took notice because it is his job to move projects and funds through the system and get things built in the community or planning studies completed. If the procedure is breaking down in an area, MDT does not want to see those dollars lost. Board member Goodridge said that he felt that if persons were given more information, like the information the board is receiving tonight, there might be a different outcome.

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Board member Saldivar asked how many years the dollars on the Contingency line in the Work Program had been increasing. Walker explained that it is a 2 year cycle. The money needs to be spent as programmed. When it is not being used, it brings attention to the Billings MPO and the chance of losing those funds if they are not used, increases. Walker explained to the Board that the Planning Division has a Planner I position vacant and a part time Bike/Ped Coordinator position that should be moved to a full time position. These positions have been approved in the Work Program but have not been approved through the City. Consequently, the spending has been approved but is not spent so the contingency continues to grow.

Board member Bass stated he has seen things such as the Corridor Study contract being turned down by the City Council and then supported in less than a month. Scott Walker indicated there has been no further consent to move forward from administration or the Council at this time.

Board member Goodridge asked if a Planner I position can be totally covered by PL funds. Board member Klugman asked if these dollars and eligibility are related to staff and time not construction. Walker stated that the Planner I position would be funded about 40% locally and 60% federally. He also confirmed that the Work Program funding is for staff and planning work, but not construction or full engineering design.

President Tunnicliff stated that he supports the feasibility study based on everything presented and he would like feedback from the board members so that he can carry their wishes to the PCC.

Board members Cook and Bass indicated they are in favor of the feasibility study. Board member Klugman reiterated that if this contract is signed, there is an out clause and that he is also in support of the study based on the information presented. Board member Goodridge would like to see what the EBURD development plan looks like since the biggest objection given was the rail spur. What does the plan call for in the future and will there eventually be something other than a steel recycling plant in that location, Goodridge stated.

President Tunnicliff stated when open discussion happens it creates areas of opportunity for mitigation and understanding.

**\*\*A public hearing for the DRAFT 2017 UPWP will be held during the next Planning Board meeting on August 23, 2016.**

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### **9. OTHER BUSINESS**

**Standing Item. Staff update. Long Range Strategic Issues and an overview of future City and County issues and projects.**

The City of Billings, Billings Beyond Growth Policy was adopted on August 8 at the City Council meeting. Final copies will be available on line and in print soon. A PCC meeting will be scheduled in August. The 2017 County Growth Policy shall begin when we have 3 seated Commissioners.

President Tunnicliff added Tina Volek called and is scheduling interviews for the Planning Director position.

**ADJOURNMENT: 7:54 p.m.**

### **FUTURE AGENDA ITEMS: AUGUST 23, 2016**

- Public Hearing. Skycrest Subdivision. Dave Green, Planner II, presenting.
- Public Hearing. DRAFT 2017 UPWP. Scott Walker, Transportation Coordinator, presenting.

**ATTEST: DRAFT. To be approved by a motion on August 23, 2016**