



County of Yellowstone Board of Adjustment
AGENDA-Thursday, March 9, 2017, 4:00 p.m.
Miller Building, 1st Floor Conference Room
2825 3rd Avenue North, Billings, Montana

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

Call the meeting to order.

Introduction of the County Board of Adjustment Members and Planning Department Staff.

Public Comment

Motion Approval of Minutes: November 10, 2016. (The December 2016, January 2017, and February 2017 meetings were cancelled).

Disclosure of any Conflict of Interest-Members of the Commission and Staff

Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff
a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.

Regular Business:

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

Public Hearings:

- a. **County Variance 285 – Fire Rock Subdivision – Lot 7** – A variance from 27-308 requiring a minimum lot area of 1 acre to allow a minimum lot area of 0.5 acres on proposed Lot 7, Block 1, Fire Rock Subdivision in an Agriculture Suburban (A-S) zone generally located at 1008 64th St West. Presented by Nicole Cromwell, Zoning Coordinator

Other Business/Announcements

Adjournment

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed variance. Testimony regarding the above mentioned items may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 657-8246. Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at deinest@ci.billings.mt.us.

County Board of Adjustment

Meeting Date: 03/09/2017

Information

Subject

Motion Approval of Minutes: November 10, 2016. (The December 2016, January 2017, and February 2017 meetings were cancelled).

Attachments

YBOAminutes_2016_11_10



Yellowstone County Board of Adjustment

Minutes

November 10, 2016

The County Board of Adjustment met on Thursday, November 10, 2016 in the 1st Floor Conference Room, of the Miller Building located at 2925 3rd Avenue North. Vice Chairman Bailey called the meeting to order at 4:00 p.m.

Name	Title	01/14/2016	02/11/2016	05/12/2016	06/09/2016	10/13/2016	11/10/2016						
Bruce Reiersen	Board member	E	-	1	1	E	1						
Board member Poppler	Board member	1	-	E*	1	1	E						
Carlotta Hecker	Chairperson	1	-	E*	E	1	1						
Delores Terpstra Miner	Vice Chairperson	1	-	1	* CC	1 CC	1						
Robert Bailey	Board member	E	-	1	1	E	E						

Chairman Hecker introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Jeannette Vieg, Planning Assistant.

Others in Attendance: Chris Thome; Greg Erpenbach, Yellowstone County General Services Dept., Al Ripaz, Schutz Foss Architects

Public Comments

Chairperson Hecker opened the public comment portion of the meeting and asked if anyone wished to speak on an item not on today's agenda. There was none.

Approval of Minutes: October 13, 2016

Motion

Board member Terpstra-Miner moved and Board member Hecker seconded to approve the October 13, 2016 meeting minutes as submitted. Board member Reiersen requested corrections on page 6. The motion carried with a unanimous voice vote.

Disclosure of Conflict of Interest: There were none.

Disclosure of Exparte Communication: Zoning Coordinator Nicole Cromwell stated staff has not received any communications following the preparation of the staff report.

PUBLIC HEARINGS: Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting for reviewing and acting on each variance. She stated three votes in favor of the Board of Adjustment are required to pass a variance. This evening there are 3 Board members attending. No action is required.

Vice Chairman Terpstra-Miner called for the staff presentation by Ms. Cromwell.

Item #1 County Variance 284 – 3150, 3246 & 3316 King Ave East – Land Use Contrary to Zoning – A request to conduct a public forum for the proposed future use of these lots for public parking to the benefit of the County Detention Facility on the north side of King Avenue East. This use normally requires an application for special review approval. The County will not be submitting a special review. The County Board of Adjustment has no power to approve, deny or attached conditions to the proposed use. State law (MCA **76-2-402**) requires a forum before the Board of Adjustment to receive public comment. The property is within the Residential 15,000 (R-150) zoning district and is described as C/S 1334, Parcel 1 & Parcel 1A, and Cissel Acreage Tracts Subdivision Tract 2, a 13.047 acre parcel of land. Tax IDs: D01861, A19369 & D01862. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

The Planning Division is recommending the Board conduct the public hearing and allow comment on the future County parking lot plans.

Discussion

Question from Vice Chairman Terpstra-Miner regarding the parcel surrounded by the Facility and if eminent domain would be used in the future. Greg Erpenbach, Yellowstone County Facilities Department, answered that the County would not entertain the use of eminent domain but would purchase the property should it come up for sale.

Public Hearing

Chairperson Miner opened the public hearing and asked if there was anyone wanting to speak regarding County Variance #284. There was none. Chairperson Miner closed the public hearing. No action is needed on County Variance #284.

Other Business

The County Board of Adjustment will not be meeting in December. The next meeting will be January 12, 2017, if needed.

The meeting was adjourned at 4:20p.m.

ATTEST: DRAFT TO BE APPROVED BY A MOTION

Jeannette Vieg, Planning Assistant



County Board of Adjustment

Meeting Date: 03/09/2017

SUBJECT: Variance 285 - Fire Rock Subdivision - Lot Area

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

Information

REQUEST

County Variance 285 – Fire Rock Subdivision – Lot 7 – A variance from 27-308 requiring a minimum lot area of 1 acre to allow a minimum lot area of 0.5 acres on proposed Lot 7, Block 1, Fire Rock Subdivision in an Agriculture Suburban (A-S) zone generally located at 1008 64th St West. Presented by Nicole Cromwell, Zoning Coordinator

RECOMMENDATION

Planning staff recommends denial and adoption of the findings of the 7 criteria.

APPLICATION DATA

OWNER: Levi and Barbara Britton

AGENT: Jim Slehofer, D & J Surveying

LEGAL DESCRIPTION: Proposed Lot 7, Fire Rock Subdivision

ADDRESS: 1008 64th St West

CURRENT ZONING: A-S

EXISTING LAND USE: Vacant - developing subdivision

PROPOSED USE: Subdivision - 28 lots with 1 proposed for common area

SIZE OF PARCEL: 1.78 acres

CONCURRENT APPLICATIONS

None.

APPLICABLE ZONING HISTORY

Subject Property - A zone change was approved from A-1 to A-S on the subject property in 2013. Fire Rock Subdivision received preliminary approval in 2013 and the final plat was filed in December 2016. The Subdivision Improvement Agreement and the easement documents filed with the subdivision intend to ensure the common facilities are located within an easement on Lot 8. The variance application would create a new lot - Lot 7 - for these common facilities with no owner named or intended by the filed subdivision documents.

Surrounding Property - One property has received a zone change from A-1 to A-S (2009). There are several lots in the immediate area that are less than required by the zoning, although none have received a lot area variance. The BOA has granted some lot area variances and denied others. The BOA approved a lot area variance in Lockwood in 2013 for second dwelling unit, a lot area variance to divide a lot on Lenhardt Lane with 2 existing homes, a subdivision lot area variance for Greensleeves Estates (a conservation subdivision) to vary the lot sizes from 1/2 acre up to 1.24 acres, a lot area variance to allow a subdivision road entrance to divide an existing parcel, and a lot area variance to allow a court ordered division of property to proceed. The BOA has not granted lot area variances

to allow the creation of a lot to contain common area facilities such as dry hydrants, mail boxes and storm drainage facilities.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning: A-S Land Use: Low density residential
SOUTH:	Zoning: Un-zoned Land Use: Single family residence and horse pasture
EAST:	Zoning: A-1 Land Use: Single family homes
WEST:	Zoning: A-S Land Use: Low density residential

BACKGROUND

This is a lot area variance request by the developer of a subdivision to create a lot of less than 1 acre to eliminate the need for the easement for the common facilities that serve the entire subdivision. The current Lot 8 in the Fire Rock Subdivision is approximately 1.76 acres in area and the east 1/2-acre of the lot is covered by a public facilities easement. The easement area is for the 30,000 gallon dry hydrant, the storm water drainage pond and the central mail boxes for the residents. The subdivision was approved with conditions and those conditions included the maintenance of the dry hydrant through an RSID-M assessed to the lot owners in perpetuity. The other common facilities, the storm water pond and the central mail boxes, are not covered by this RSID-M and have to be maintained separately by the Homeowners' Association.

The applicant contends the sale of Lot 8 with the public access easement will be difficult since the lot owner would pay taxes on the entire property but only have 1.2 acres of usable lot area. Oakridge Subdivision at 48th St West and Broadwater Avenue had a similar situation for their community water supply well and pump house. The solution in that instance was to re-zone the lot to Public and the property continues to be owned by the developer. The Public zone has no minimum lot area and common private utilities are allowed uses in this zoning district. In addition, the property can be owned by the Homeowners' Association who would ensure the taxes are paid on the separate lot.

There is no hardship with the land or topography that prevents the owner from using the property in conformance with the zoning regulations. The DEQ approval for the subdivision, exempted this portion of Lot 8 from review since it was to be used for these common facilities. The BOA has granted some lot area variances in Yellowstone County but none for this specific reason and purpose. There are lots in the area that are less than required by the zoning district, but none as small as 1/2 acre.

The Planning Division received a negative recommendation from the County Public Works Director Tim Miller. He stated he was concerned that placing all of the common facilities on a lot separate from Lot 8 may jeopardize the County's ability to maintain the dry hydrant in the future. The public facilities easement would need to be amended to specify the new lot, and the applicant would have to specify an owner to assume the responsibilities. If the developer or other private owner fails to pay taxes on the lot, ownership may end up with the County. The County does not want to assume ownership of the property along with the liability for the storm drainage pond and the central mail boxes. All of the lots in the subdivision will own one-half of the private road easement along the property frontage. The ownership of common facilities in a County subdivision is not unusual. The easement document filed for the common facilities on Lot 8 does not mention the storm water drainage pond. The document also does not mention the assignment of liability for maintenance or for accident or injury that may occur in the future.

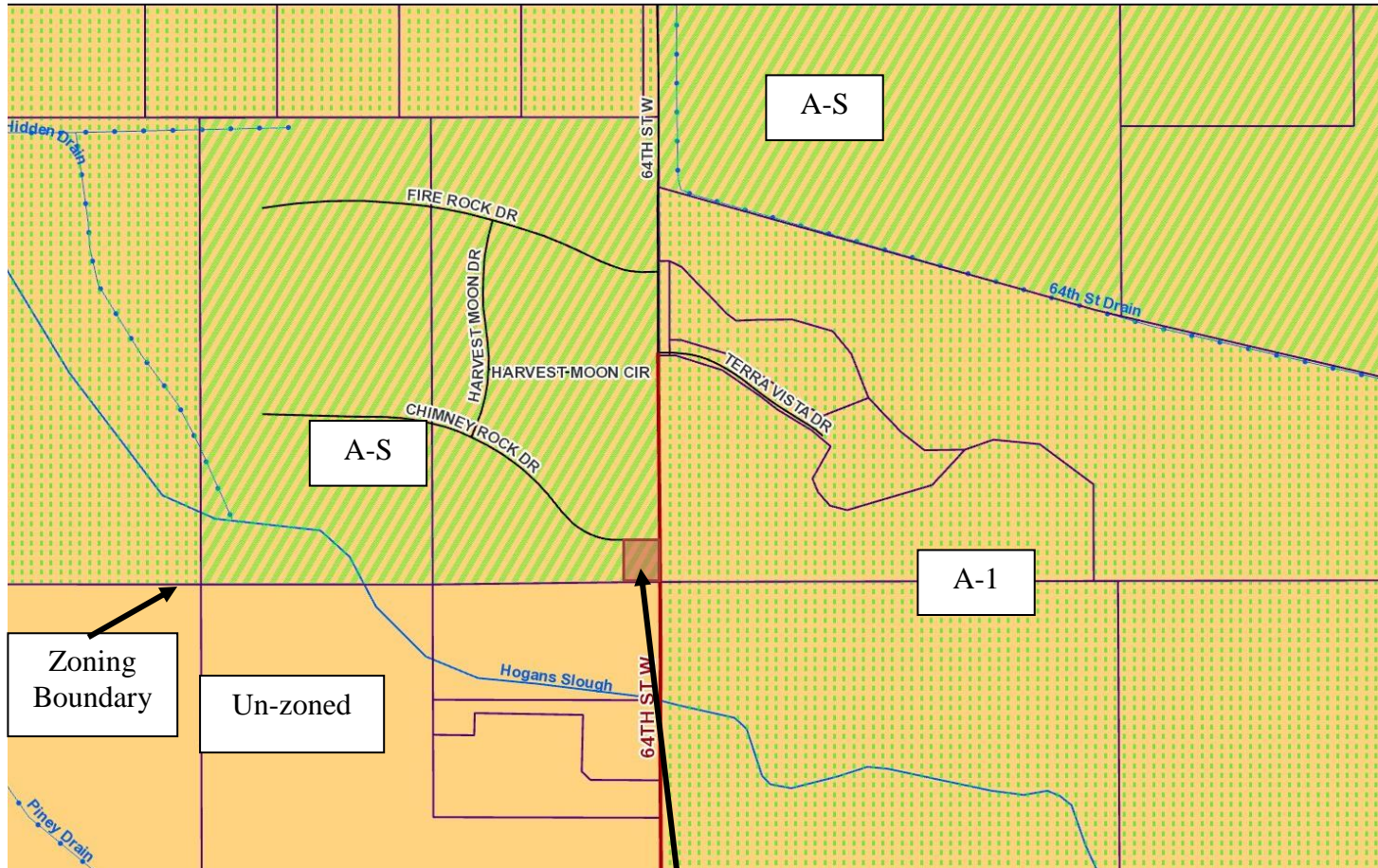
RECOMMENDATION

Planning staff recommends denial and adoption of the findings of the 7 criteria.

Zoning Map and Site Photos
Easement Document
Proposed Findings of the 7 criteria
Applicant Letter & Site Plan

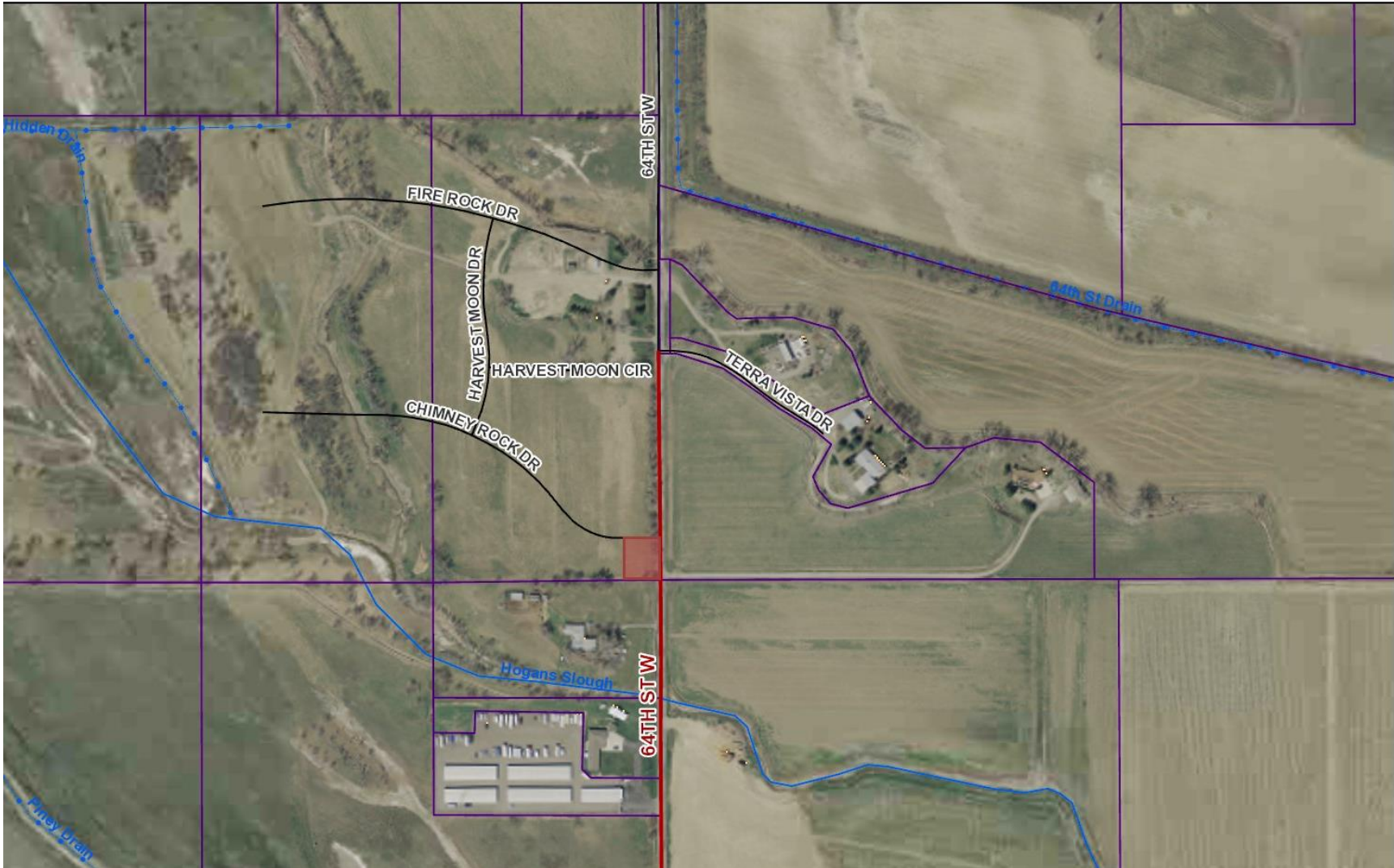
Variance 285 – Fire Rock Subdivision – Lot Area
Zoning Map

Var 285 Fire Rock Sub



Subject Property

Var 285 Fire Rock Sub





Subject Property – at new street intersection



View east across 64th St West



Common Facilities lot – view south



View south east



View north east



EASE

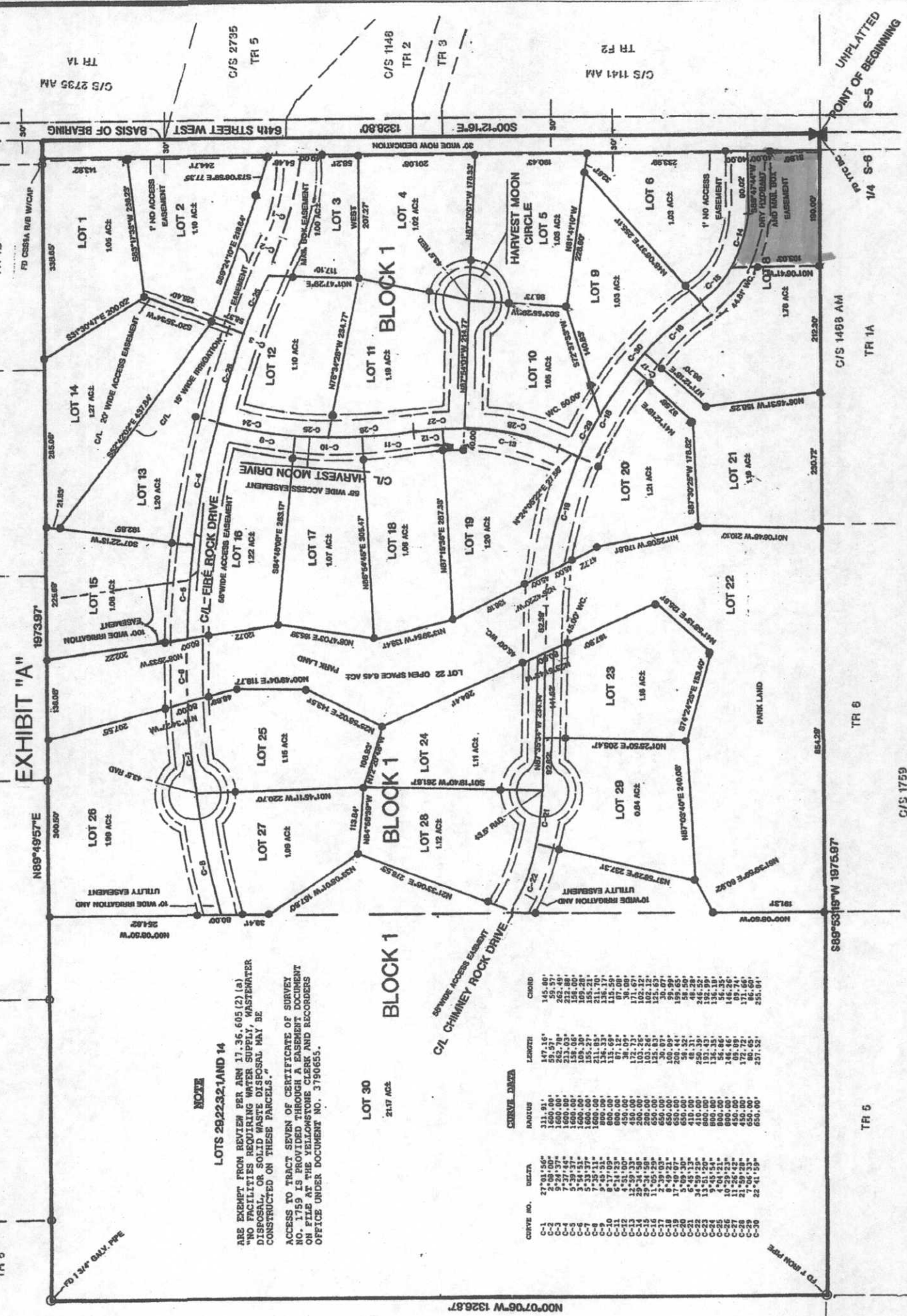
3796193

FIRE ROCK SUB.

EXHIBIT "A"

C/S 1412 11/16/2016 08:22 AM Pages: 2 of 2 Fees: 24.00
 Jeff Martin Clerk & Recorder, Yellowstone MT
 C/S 1412 11/16/2016 08:22 AM

THIS CERTIFICATE OF SURVEY HAS BEEN REVIEWED BY THE COUNTY ATTORNEY'S OFFICE AND IS ACCEPTABLE AS TO FORM.
 DATE: _____
 REVIEWED BY: _____



NOTE
 LOTS 28,29,30 AND 14
 ARE EXEMPT FROM REVIEW PER ANN 17.36.605 (2) (a)
 "NO FACILITIES REQUIRING WATER SUPPLY, WASTEWATER
 DISPOSAL, OR SOLID WASTE DISPOSAL MAY BE
 CONSTRUCTED ON THESE PARCELS."
 ACCESS TO TRACT SEVEN OF CERTIFICATE OF SURVEY
 NO. 1759 IS PROVIDED THROUGH AN EASEMENT DOCUMENT
 ON FILE AT THE YELLOWSTONE CLERK AND RECORDERS
 OFFICE UNDER DOCUMENT NO. 3790655.

CURVE DATA	RADIUS	LENGTH	CHORD
C-1	311.81	147.16'	145.00'
C-2	1600.00'	262.78'	262.78'
C-3	1600.00'	213.03'	213.03'
C-4	1600.00'	109.30'	109.30'
C-5	1600.00'	155.27'	155.27'
C-6	800.00'	131.33'	131.33'
C-7	800.00'	115.69'	115.69'
C-8	800.00'	97.08'	97.08'
C-9	450.00'	172.73'	171.67'
C-10	200.00'	103.26'	103.26'
C-11	200.00'	125.63'	125.63'
C-12	200.00'	125.63'	125.63'
C-13	200.00'	30.07'	30.07'
C-14	650.00'	208.64'	208.64'
C-15	650.00'	208.64'	208.64'
C-16	650.00'	48.28'	48.28'
C-17	650.00'	58.52'	58.52'
C-18	650.00'	118.33'	118.33'
C-19	650.00'	136.19'	136.19'
C-20	650.00'	146.26'	146.26'
C-21	650.00'	89.89'	89.89'
C-22	650.00'	146.26'	146.26'
C-23	650.00'	146.26'	146.26'
C-24	650.00'	146.26'	146.26'
C-25	650.00'	146.26'	146.26'
C-26	650.00'	146.26'	146.26'
C-27	650.00'	146.26'	146.26'
C-28	650.00'	146.26'	146.26'
C-29	650.00'	146.26'	146.26'
C-30	650.00'	257.32'	255.91'

TR 1 TR 2 TR 3 TR 4 TR 5 TR 6 TR 1A TR 1B TR 1C TR 1D TR 1E TR 1F TR 1G TR 1H TR 1I TR 1J TR 1K TR 1L TR 1M TR 1N TR 1O TR 1P TR 1Q TR 1R TR 1S TR 1T TR 1U TR 1V TR 1W TR 1X TR 1Y TR 1Z

County Variance 285 – Proposed Findings of the 7 criteria

The Board of Adjustment shall make the following determinations prior to granting a variance:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special circumstances existing on this property that would create a hardship. The subject property is relatively flat and there are no physical obstacles that would prevent the owner from keeping the lot area at 1.76 acres with the easement for the common facilities on the east ½ acre. There is no inherent hardship with this land that is not applicable to other subdivisions in the area.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

There have been few lot area variances of record in this area of the county, and none as small as the proposed lot of ½ acre. None have been proposed for the purpose of separating a lot just for use of common facilities for a new subdivision. A literal interpretation of the required lot area – 1 acre minimum - does not deprive the applicant of rights commonly enjoyed by other tracts in the same district.

- 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

The variance will confer on the applicant a special privilege that other properties in this area do not enjoy. No similar variances have been submitted or approved and no similar sized lots in an A-S zone have been proposed. A subdivision variance for lot area was approved for a conservation subdivision – Greensleeves Estates. This variance allowed variable lot sizes throughout the subdivision in exchange for a permanent conservation easement on a large area of the remaining land.

- 4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

The variance is not in harmony with the general purpose and intent of the zoning regulations and the growth policy. Minimum lot area requirements in the A-S zone provide for public safety by ensuring separation of buildings on adjoining land, preserve the enjoyment of property by adjoining owners and diminish the overcrowding of land.

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending denial of variance and compliance with the required minimum lot area.

- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

Staff is not recommending approval of the variance, so there is no time limit for meeting variance conditions.

- 7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.**

The granting of this variance would not allow a use that is not allowed in the zoning district. Accessory uses of land for common facilities is an allowed use in the A-S zoning district.

Variance 285- Fire Rock Subdivision
Applicant Letter, Site Plan

APPLICATION FORM

COUNTY VARIANCE County Variance # 285 - Project # 02-17-00013

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the Yellowstone County Unified Zoning Regulations.

TAX ID # D00406 COUNTY COMMISSIONER DISTRICT # 3

Legal Description of Property: LOT 7 BLOCK 1, FIRE ROCK SUBDIVISION

Address or General Location (If unknown, contact County Public Works): SOUTH OF 64 th. and GRAND AV.

Zoning Classification: AG-SUBURBAN

Size of Parcel (Area & Dimensions): 0.56 AC. 122' N-S AND 190' E-W

Covenants or Deed Restrictions on Property: Yes _____ No X

If yes, please attach to application

Variance Requested: FROM A MINIMUM LOT SIZE OF ONE ACRE TO A LOT SIZE 0.56 AC. FOR LOT 7 ONLY.

Facts of Hardship: LOT 7 HAS A LARGE STORMWATER DETENTION POND AND A 30,000 GAL. DRY HYDRANT. BOTH OF THESE FEATURES PRESENT LEGAL LIABILITY TO THE OWNERS OF LOT 8.

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): LEVI J. & BARBARA L. BRITTON
(Recorded Owner)
7623 N. LEOPARD AV. BILLINGS, MT. 59106
(Address)
406-690-6633
(Phone Number) (email)

Agent(s): D. & J. SURVEYING
(Name)
1116 DOROTHY LN. BILLINGS, MT. 59105
(Address)
406-248-2812
(Phone Number) (email)



I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: _____ Date: 1/23/17

(Recorded Owner)
Barbara L. Britton 1/23/17


**D. & J. SURVEYING
1116 DOROTHY LANE
BILLINGS, MT. 59105
PH. 248-2812**

02/08/17

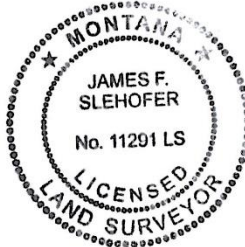
TO THE CHAIRPERSON OF THE BOARD OF ADJUSTMENTS,

THE REASON FOR THE APPLICATION FOR THE VARIANCE FROM A MINIMUM LOT SIZE OF ONE ACRE TO ONE HALF ACRE IS A PORTION OF LOT 8, BLOCK ONE, OF FIRE ROCK SUBDIVISION HAS A 30,000 GALLON DRY HYDRANT AND A STORM WATER DETENTION POND ON IT. THE EXISTENCE OF THOSE TWO FEATURES COULD PRESENT A LEGAL LIABILITY TO THE OWNER OF LOT 8. THEREFOR WE ARE ASKING FOR THE VARIANCE TO SPLIT LOT 8 AND CREATE A LOT 7, LOT 7 BEING 0.56 ACRES IN SIZE AND LOT 8 1.20 ACRES IN SIZE.
THANK YOU IN ADVANCE.

SINCERELY YOURS,



JAMES F. SLEHOFER PLS. 11294 LS
FOR LEVI J. AND BARBARA L. BRITTON



THIS CERTIFICATE OF SERVICE WAS FIRST ISSUED BY THE COMPTROLLER'S OFFICE AND IS ACCEPTABLE AS TO FORM.

DATE: 11/15/2016

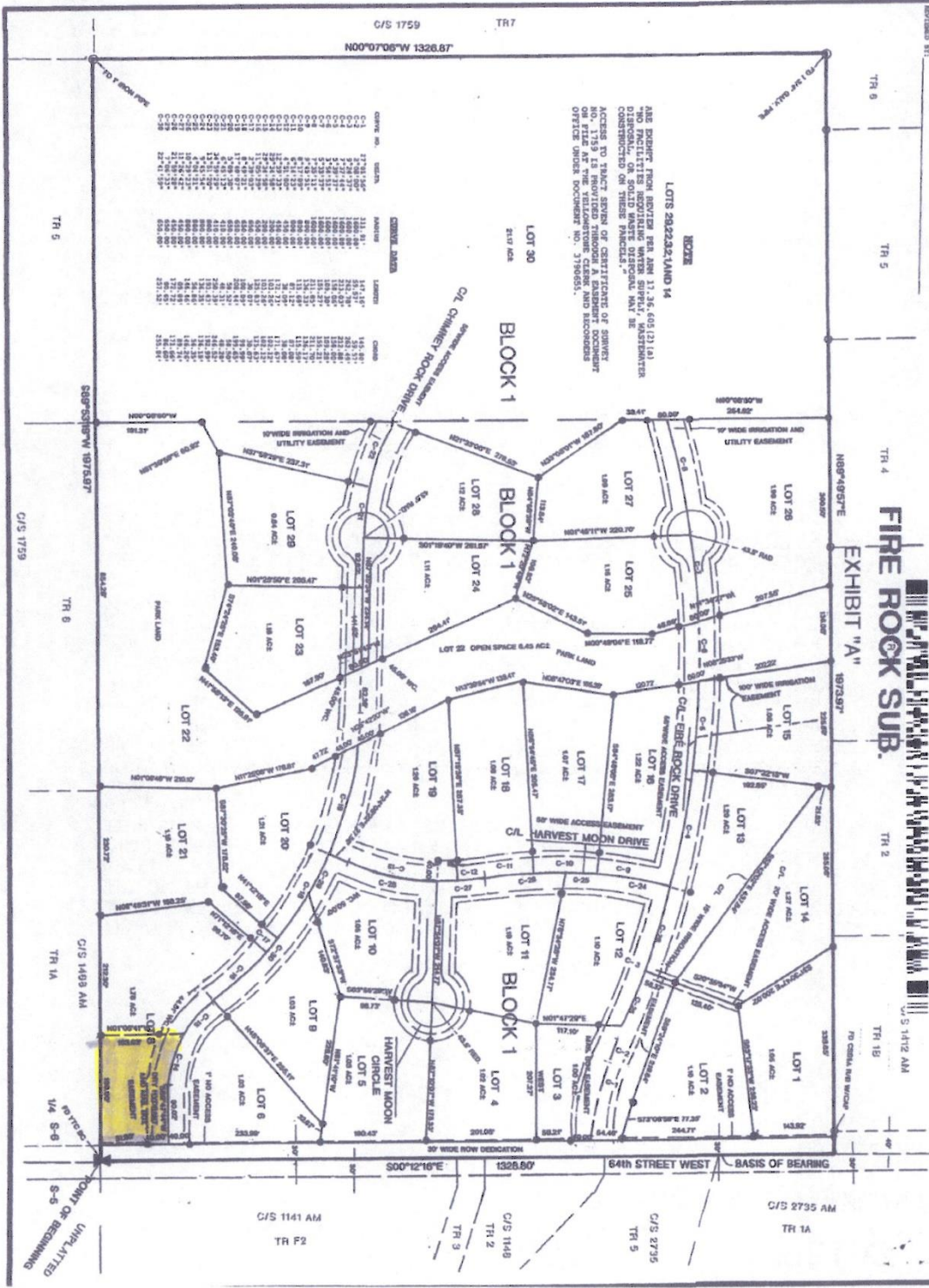
C/S 1412 11/15/2016 09:22 AM Pages: 2 of 2 Fees: 24.00

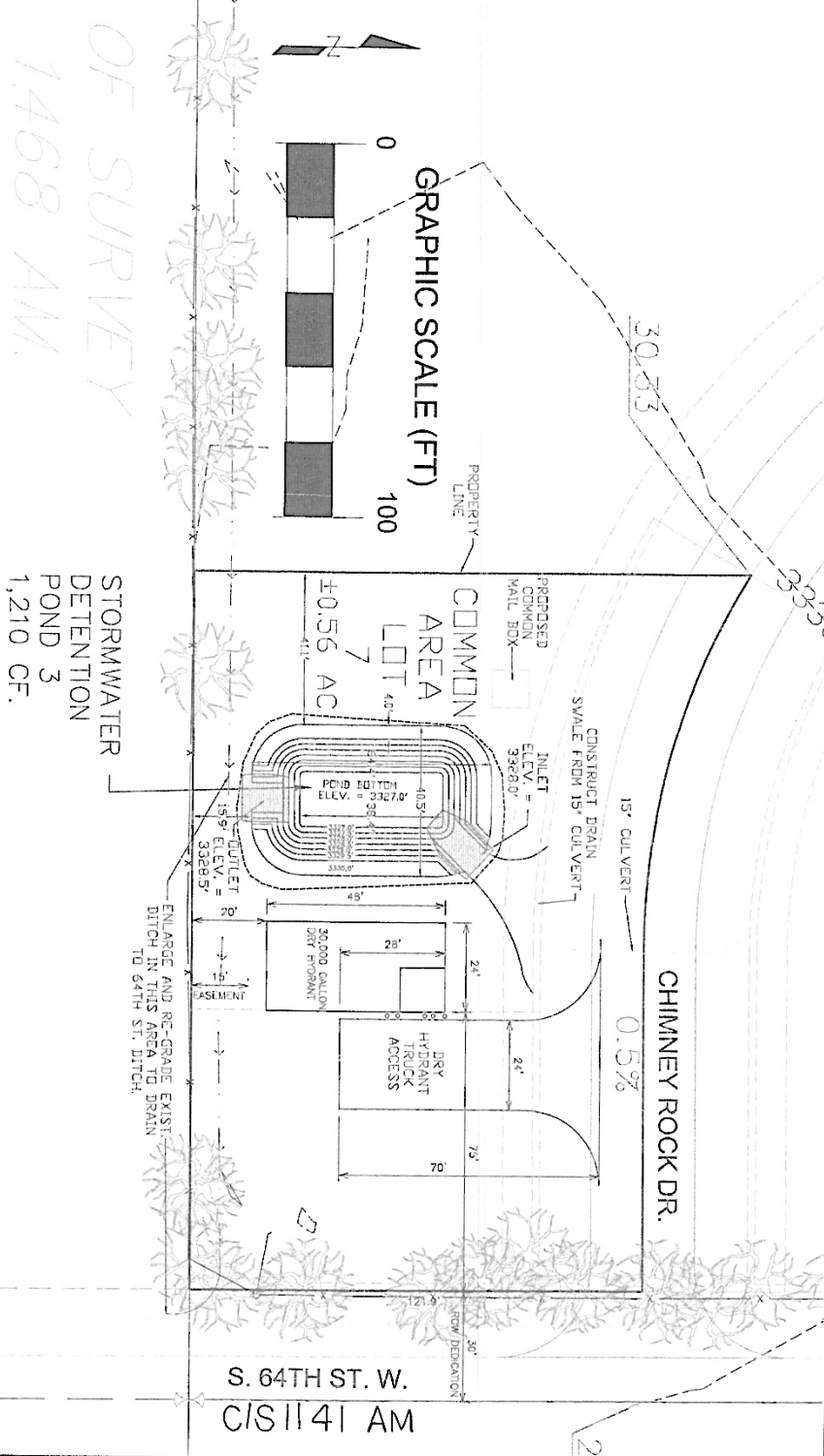
C/S 1412 AM

EASE
Jeff Marlin Clerk & Recorder, Yelloustone MT
3796193

FIRE ROCK SUB.

EXHIBIT "A"





OF SURVEY
1468 AM.

DESIGN: DAC	NO. DATE	LOT 7 COMMON AREA FIRE PROTECTION AND STORM RETENTION PLAN		TREASURE STATE ENGINEERING 6303 GOLDEN WEST TERRACE BILLINGS, MT 59106 (406) 539-3171 EMAIL: GERRIT@TSENGINEERING.COM A PROFESSIONAL ENGINEERING CORPORATION	FIRE ROCK SUBDIVISION TRACTS 8, 9 AND 10, COS NO. 1759 S6, T1S, R2E YELLOWSTONE COUNTY, MONTANA	EX-1 1 OF 1
CHECKED: JAS	REVISIONS					
APPROVED: DAC	DATE					