

FINDINGS OF FACT

The City/County Planning staff has prepared the Findings of Fact for The Nines 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 is currently used for agricultural purposes and about 78.3 acres of agricultural land would be taken out of production when this proposed subdivision is built out. Perimeter ditches and drains shall remain in place and not be altered by the subdivider or subsequent owners. The subdivision should not affect agricultural water users' facilities but it will take land out of agricultural production.

2. Effect on local services

- a. **Water and Sewer** – This subdivision is not near any services provided by a municipality. The applicant is proposing to install multi-user water supply wells for this subdivision that will serve the proposed lots. It will be designed to meet the requirements of Section 4.9 of the Yellowstone County Subdivision Regulations (YCSR). It will also meet the requirements set out by MDEQ for a community water system. There will be a Home Owners Association (HOA) created to maintain the community water system. This is outlined in the SIA under section VI Utilities. Some community as well as individual septic systems are proposed for this subdivision. Locations and design of the septic systems will be reviewed and approved by the Montana Department of Environmental Quality (MDEQ) prior to final plat approval. This is outlined in the SIA under section VI Utilities.
- b. **Streets and roads** – The proposed subdivision is located on the east side of South 64th Street West just north of Hesper Road. South 64th Street West is a paved county road. The applicant will be building paved roads within the subdivision. All rights-of-way will be 60 feet wide with the exception the proposed Crooked Stick Lane, it will be a 70-foot right-of-way. All streets shall be built to county road standards with drainage swales on both sides. All roads will be public roads dedicated to the county. An RSID-M will be created for maintenance of these roads prior to final plat approval. **(Condition #1)** The RSID-M for the roads will be expanded with each phase to provide maintenance for the newly constructed roads.

This developer is providing a right-of-way for 60th Street West on the eastern edge of this proposed subdivision. In the SIA it states that it will be a 70-foot-wide right-of-way as is required for a residential collector street. 60th Street West is also shown on the plat as a paved street within a 70-foot right-of-way. The SIA also states that “All Streets shall be

built to grade with a satisfactory engineered subbase, base course, and asphalt surface”. Staff is interpreting this to include 60th Street West.

Details of the proposed construction of the streets is outlined in the SIA under **XII Phasing Improvements**. Each phase will construct additional roads and infrastructure for the proposed development.

A Traffic Impact Study (TIS) was completed with this proposed development. The TIS is being reviewed by County Public Works. Impacts to surrounding roads and intersections will be evaluated and any concerns raised by the TIS will be addressed with the county at the time of development.

Sidewalks are proposed along several streets within the subdivision as outlined in the SIA under III Transportation B. The roads within the subdivision that are proposed to have sidewalks are; South 64th Street West, The south side of Crooked Stick Lane, the north side of Amen Corner Lane and the east side of Medinah Loop and Amen Corner Lane. Sidewalks will be installed along the frontages that are park or public spaces by the developer with each phase.

- c. **Fire and Police Services** – The property is within the Billings Urban Fire Service Area (BUFSA). It is the subdivider’s responsibility to ensure provisions of a water source and adequate access to the proposed lots for emergency service’s needs. There is a 30,000-gallon dry hydrant within ½ driving mile of the proposed subdivision within Dewitt Subdivision. Proposed Phase I will use the 30,000-gallon dry hydrant tank in the DeWitt Subdivision across South 64th Street West. The applicant will be required to expand the RSID-M for maintenance of that system to Phase 1 of The Nines Subdivision. **(Condition #2)** Phase II will require the applicant to construct a 30,000-gallon dry hydrant system that will service the proposed Phase II and III of this subdivision. At the time of its construction the applicant will be required to create an RSID-M to provide maintenance for the new system. **(Condition #3)**

The Yellowstone County Sheriff’s Department will provide law enforcement services to this subdivision.

- 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** – The management of storm water runoff shall be designed to satisfy storm water management requirements and specifications of MDEQ and Yellowstone County. The applicant is proposing to use the standard county road cross section with road side swales and natural percolation to handle the storm water requirements.
- f. **School facilities** – The proposed subdivision is located in Elder Grove School District for elementary and middle school. Students in the subdivision will go to West High School

in Billings School District #2. Elder Grove School responded that they have minimal capacity for additional students in elementary and they are over capacity in the middle school. Staff did not receive comments from West High School. Some previous subdivisions have received a response from West that indicated they were over capacity.

- g. **Parks and recreation** – This subdivision is required to provide parkland dedication for the 88 lots. The applicant would be required to provide 3.7 acres of land for parkland. The applicant will be providing 9.7 acres of private parkland. This parkland will be in the ownership of the HOA and will be maintained by them. The parks will be developed with the phases which includes planting of grass and irrigation systems to keep them in good condition. The applicant will provide HOA documents with the final plat that will include language outlining the homeowners’ responsibilities to take care of the parks within the subdivision. **(Condition #4)** The Yellowstone County Parks Board stated they are satisfied with the proposed private parkland.
- h. **Historic features** – No known historical or cultural assets exist on the site.
- i. **Irrigation** - Residential irrigation will be available through a secondary water source provided by the Big Ditch Company. The subdivider will be installing a secondary water system within the subdivision for the purpose of watering lawns and the common areas in the subdivision. This system will be maintained by the HOA.
- j. **Mail Delivery** – Centralized mail boxes are proposed for use within the subdivision. The applicant will coordinate the placement and layout of these centralized mailboxes with the USPS. **(Condition #5)**
- k. **Phasing** – The applicant is proposing to develop this subdivision in phases. Phase I includes Lots 1 through 13 and Lot 27 in Block 1; Lots 1 through 20 in Block 2; Lots 1 through 3 in Block 3; and Lots 1 through 15 and Lots 40 through 41 in Block 4, 54 Lots in total.

Phase II includes Lots 14 through 20 in Block 1; Lots 4 through 8 in Block 3; Lots 16 through 25 in Block 4; and Lot 1 in Block 5, 23 lots in total.

Phase III includes Lots 21 through 26 in Block 1 and Lots 26 through 39 in Block 4, 20 lots in total.

Recent legislation in the state of Montana requires that developers proposing to do phasing in the subdivision are required to set a date when they plan to proceed with each phase. This developer has provided proposed dates for phase 2 and 3. Phase 2 is proposed to begin in April 2023, and Phase 3 is proposed to begin in April 2025.

At these two dates the applicant is required to go through a public hearing to open the phases. At that public hearing there is the possibility of additional conditions of approval being added to the original conditions of approval. Should the applicant not meet these date they must propose new dates, at a public hearing, for the phases to begin.

Specifics of the proposed phasing and what improvements and contributions will be installed with each phase is identified in the SIA under the heading X. Phasing Improvements.

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 #6)**

MDEQ will review and approve the new proposed septic systems and storm water management facilities to ensure any impacts of the development are mitigated.

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

4. Effects on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Montana Fish, Wildlife, and Parks (FWP) responded to a request for review and comment on the proposed subdivision. It is suggested that future homeowners should be made aware that unless they take steps to deter animals such as fencing their yards they may experience damage problems. A paragraph 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 septic systems and public water supply will be reviewed and approved by MDEQ prior to final plat approval. Fire and emergency services are provided for this proposed subdivision. Effects on public health and safety should be minimal.

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 was required for this subdivision. Because this property has historically been farmed there are no known wildlife habitat areas that would be disturbed by the development. The state historic office replied that there are no known cultural or historic artifacts or structures known to exist on the site. Stormwater runoff would change with the development but the applicant will be required by MDEQ to mitigate those issues with the use of detention ponds and collection systems.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy Update, 2014 Billings Urban Area Long Range Transportation Plan, and the 2017 Billings Area Bikeway and Trails Master Plan Update? (Section 3.2 (H)(4), YCSR)

1. **West Billings Plan** – The proposed subdivision is in an area of billings that is outside of zoning. The immediate surrounding property is developed for residential uses or is proposed for residential uses. The Future Land Utilization Map from the West Billings Plan shows the area where this subdivision is proposed as a Residential Development area.

2. Yellowstone County 2008 Growth Policy

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

This subdivision will create 88 lots of varying sizes for single family residences, consistent with the immediately surrounding neighborhood and other proposed uses in the area.

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

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

- **Goal: More housing and business choices within each neighborhood. (p. 6)**

The proposed subdivision will create 88 additional lots in this area for housing.

3. 2014 Billings Urban Area Long Range Transportation Plan

The subject property is within the boundary of the study area of the Transportation Plan. South 64th Street West is identified as a principle arterial street. There is adequate road dedication for the proposed street type along the west edge of the proposed subdivision. New lots will be served by internal streets; the appropriate amount of right-of-way is being provided with this plat.

4. 2017 Billings Area Bikeway and Trail Master Plan Update (BABTMP)

The subject property is within the jurisdiction of the BABTMP. There is a proposed long-range bike lane along South 64th Street West. This subdivision will not be required to install any bike lanes along South 64th Street West. There are no bike lanes identified within the proposed subdivision.

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 shall receive approval from MDEQ for the proposal to make use of a community water well systems, individual and community septic systems for the new lots.

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.

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 private utility companies. The submitted SIA states private utilities shall be installed in the street right of ways and within private utility easements where possible. Each lot will be responsible to extend private utilities into the lot upon lot development. Applicant will coordinate with private utility companies to provide needed easements within the proposed subdivision. (**Condition #7**)

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 subdivision from South 64th Street West and from new internal streets.

CONCLUSIONS OF FINDINGS OF FACT

- The Nines Subdivision does not create adverse impacts that warrant denial of the subdivision.
- Impacts to agriculture, agriculture water user facilities, local services, public health and safety, the natural environment, and wildlife should be minimal. Impacts identified can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to parts of 4 different plans, the West Billings Plan, 2008 Yellowstone County Growth Policy, 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 The Nines Subdivision and adoption of the Findings of Fact as presented in the staff report. Staff is recommending denial of the requested variance.