



YELLOWSTONE COUNTY BOARD OF PLANNING
CITY OF BILLINGS AND
YELLOWSTONE COUNTY, MONTANA



AGENDA

March 13, 2018 MEETING TIME: 6:00 p.m.
1st Floor Large Conference Room, Miller Building
2825 3rd Avenue North, Billings, Montana 59101

1. **CALL TO ORDER - Planning Board President:** Welcome and Introduction of new and returning Board Members.
2. **APPROVAL OF AGENDA*** - including any additions or deletions to agenda. The agenda for a regular meeting will be closed at 5:00 p.m. three (3) working days prior to the date of the meeting.
3. **MOTION. MEETING MINUTES:** February 27, 2018

Attachments

PlnBMinutes_2018_02_27_DRAFT

4. **PUBLIC COMMENT PERIOD** – As required (3 minute maximum per person). *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's agenda for discussion.*
 - 4a) **Comments on items not on agenda and requests to add items to future agendas**
 - 4b) **Comments on items on the non-public hearing agenda items**
5. **DISCLOSURE OF CONFLICT OF INTEREST:**
6. **DISCLOSURE OF EX PARTE COMMUNICATION:** Ex Parte Communication Binder is available at the Sign-In and Agenda station.
7. **OLD BUSINESS:** There is no Old Business.
8. **NEW BUSINESS:** (Agenda items new to this meeting).
 - a. **Plat Review/Discussion. Silver Creek Estates, 2nd Filing.** City Major Subdivision. Dave Green, Planner II, presenting.

Attachments

Findings of Fact

Proposed Plat

Draft SIA

9. **OTHER BUSINESS:**

- a. **(Standing Item) Long Range Strategic Issues and an overview of future City and County issues and projects.** Staff and Planning Board.

10. **ADJOURNMENT**

FUTURE AGENDA ITEMS FOR TUESDAY, MARCH 27, 2018

- a. **Public Hearing. Motion/Recommendation to City Council. Silver Creek Estates Subdivision, 2nd Filing. City major subdivision.** Dave Green, Planner II, presenting.
- b. **Staff Presentation. Board discussion. City and County Subdivision Review Process and Procedures.** Planning Staff.

Planning Board Meeting I (2nd Tuesday)

3.

Meeting Date: 03/13/2018

Information

Subject

MOTION. MEETING MINUTES: February 27, 2018

Attachments

PlnBMinutes_2018_02_27_DRAFT

CITY/COUNTY PLANNING BOARD

"Serving Billings, Broadview and Yellowstone County"

FEBRUARY 27, 2018

Draft-To be approved by a motion on March 13, 2018

1. Call the Meeting to Order

In the absence of President Tunncliff, Vice President Woody Woods called the meeting to order at 6:00 p.m. on Tuesday, February 27, 2018, in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North, Billings, Montana.

Introduction of Planning Board Members and Planning Department Staff

Vice President Woods called for introductions of the members of the Planning Board and staff. He introduced and welcomed Yellowstone County Conservation District representative, Jerry Williams.

Attending Planning staff members: Monica Plecker, Planning Division Manager; Dave Green, Planner II; Tammy Deines, Planning Clerk

Others in Attendance: Craig Dalton, Performance Engineering.

Approval of the February 27, 2018 Agenda

Motion: Board member Goodridge made a motion and it was seconded by Board member Cook to approve the February 27, 2018 meeting agenda as submitted. The agenda was approved with a unanimous voice vote.

Approval of Minutes: February 13, 2018.

Motion

Board member Goodridge made a motion and Board member Boucher seconded the motion to approve the February 13, 2018 meeting minutes as submitted. The motion carried with a unanimous voice vote.

3. **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 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 reported by the Board.

CITY/COUNTY PLANNING BOARD

"Serving Billings, Broadview and Yellowstone County"

7. OLD BUSINESS:

7a. Public Hearing Motion/Recommendation to City Council. Lake Hills Subdivision, 36th Filing. Dave Green, Planner II, presenting.

INTRODUCTION

On January 2, 2018, Performance Engineering and Consulting for Ron S. Hill Living Trust, Sheila Siemion, applied for preliminary major plat approval for Lake Hills Subdivision, 36th Filing. The proposed subdivision re-plats 19 lots originally platted in the Lake Hills Subdivision, 15th and 16th Filings, into 28 lots. The subject property is located on both sides of Gleneagles Boulevard, south of Cherry Hills Road and includes part of Lake Hills Drive, northwest of the Lake Hills Golf Course in the Heights. The property is zoned Residential-9600 (R-96) and single family homes are proposed. The Yellowstone County Board of Planning will review the plat at this meeting and conduct a public hearing on February 27, 2018.

RECOMMENDATION

Staff recommends that the Planning Board recommend conditional approval of the preliminary plat of Lake Hill Subdivision, 36th Filing to the City Council, and adopt the Findings of Fact as presented in the staff report.

PROPOSED CONDITIONS OF APPROVAL

Planning staff recommends the following conditions of approval:

1. To provide for the installation of private utilities, prior to final plat approval the applicant will coordinate with private utility providers for any needed easements and show them on the final plat as requested by the private utility companies.
2. To minimize impacts on local services, centralized mail delivery site(s) shall be coordinated and identified prior to final plat approval. A letter from USPS shall be provided for verification.
3. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
4. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Discussion

President Tunncliff called for discussion and questions from the members of the Board. There was none.

CITY/COUNTY PLANNING BOARD

“Serving Billings, Broadview and Yellowstone County”

Public Hearing

President Tunnickliff opened the public hearing and asked if there is anyone wishing to speak in favor or against Lake Hills Subdivision, 36th Filing. There was none.

President Tunnickliff asked the applicant’s representative, Craig Dalton, Performance Engineering if he had further comment, and he had no further comments.

President Tunnickliff closed the Public Hearing and called for a motion.

Motion

Board member Goodridge made a motion and it was seconded by Board member Cook r that the Planning Board recommend conditional approval of the preliminary plat of Lake Hill Subdivision, 36th Filing to the City Council, and adopt the Findings of Fact as presented in the staff report. The motion carried with a unanimous voice vote.

8. NEW BUSINESS: There is no new business.

OTHER BUSINESS/ANNOUNCEMENTS

- a. Standing Item. Long Range Strategic Issues and an overview of future City and County issues and projects.** There were no items.
- b. “Project ReCode”:** Division Manager Plecker gave an update and said the working groups met this month. Staff is in the process of interviewing the consultants through the RFP process.

ADJOURNMENT: 6:10 p.m.

DRAFT-To be approved by a motion on March 2018



YELLOWSTONE COUNTY BOARD OF PLANNING
CITY OF BILLINGS AND
YELLOWSTONE COUNTY, MONTANA



Planning Board Meeting I (2nd Tuesday)

8. a.

Meeting Date: 03/13/2018

Information

INTRODUCTION

On February 1, 2018, KLJ Engineering for Boyer Land, LLC, applied for preliminary major plat approval for Silver Creek Estates Subdivision, 2nd Filing. The proposed subdivision would create 68 lots from a single lot. The subject property is generally located on the east side of 50th Street West and south of Rimrock Road. The property is zoned Residential 7000, (R-70), and Residential 6000 (R-60). The land is farmland at this time. The Yellowstone County Board of Planning will review the plat at this meeting and conduct a public hearing on March 27, 2018.

RECOMMENDATION

Staff recommends that the Planning Board recommend conditional approval of the preliminary plat of Silver Creek Estates Subdivision, 2nd Filing to the City Council, and adopt the Findings of Fact as presented in the staff report.

PROPOSED CONDITIONS OF APPROVAL

Planning staff recommends the following conditions of approval:

1. To minimize the effects on local services and ensure public safety, prior to final plat approval and prior to installation of any infrastructure the applicant will provide the City of Billings Engineering Division with installation and maintenance plans for the water, sewer and stormwater systems for review and approval.
2. To provide for the installation of private utilities, prior to final plat approval the applicant will coordinate with private utility providers for any needed easements and show them on the final plat as requested by the private utility companies.
3. To provide for proper addressing, prior to final plat approval the applicant will provide street names for the two streets running north and south between Silver Creek Trail and Blue Mountain Trail on the proposed plat.
4. To ensure public health and safety and provide for the maintenance and continued use of the High Ditch by the City of Billings for drainage purposes, prior to final plat approval a ditch easement agreement between Boyer Land LLC and High Ditch Company (District) shall name the City of Billings as a third party. The easement agreement shall:
 - State the District grants the City first right of refusal to accept transfer of ownership of the District's facilities and title, if applicable.
 - Include language pertaining to the property owners within the subdivision to continue to meet the Subdivision Improvements Agreement pertaining to the ditch.
 - Allow the City to utilize the easement for the public good and not restrict it to stormwater collection

and discharge.

- Include easement boundaries as approved by the District. The easement document must be either written or reviewed by an attorney familiar with property law and transfers.

5. To ensure understanding of the use of the High Ditch easement, prior to final plat approval the applicant in the SIA under the heading VIII. Irrigation shall outline the requirements of the easement document for the High Ditch and how it is used and the City of Billings involvement with the ditch.

6. To minimize impacts on local services, prior to final plat approval centralized mail delivery site(s) shall be coordinated and identified and a letter from USPS shall be provided for verification.

7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

No variance has been requested.

PROCEDURAL HISTORY

- A pre-application meeting was held on October 26, 2017 to discuss the proposal.
- The preliminary plat application was submitted to the Planning Division on February 1, 2018.
- A departmental review meeting was conducted on February 15, 2018.
- The preliminary plat was resubmitted with revisions based on department reviews on February 22, 2018.
- The Planning Board will review the plat on March 13, 2018.
- The Planning Board will conduct a public hearing on March 27, 2018, and forward a recommendation to the City Council.
- The City Council will consider the preliminary plat on April 23, 2018.
- The 60 working-day preliminary plat review period ends April 27, 2018.

PLAT INFORMATION

General location:	East side of 50th Street West and south of Rimrock Road
Legal Description:	Lot 1, Block 3A, Silver Creek Estates, Amended
Subdivider/Owner:	Boyer Land, LLC
Engineer and Surveyor:	KLJ Engineering
Existing Zoning:	R-70 and R-60
Existing land use:	Vacant Land
Proposed land use:	Residential
Gross and Net area:	27.4 acres / 23.0 acres
Proposed number of lots:	68

Lot size: Max: 110,000 square feet
Min.: 11,000 square feet

Parkland requirements: Parkland dedication was previously met.

Attachments

Findings of Fact
Proposed Plat
Draft SIA

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Silver Creek Estates Subdivision, 2nd Filing. 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 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 is used for agriculture and the High Ditch runs along the southern boundary. There is another ditch just above the northern boundary of the subdivision, called the Cove Ditch. The proposed subdivision will not have an impact on existing agricultural areas because it was previously platted and this proposed subdivision will re-plat the land. There is no anticipated negative effect on agricultural irrigation facilities or agriculture from this proposal.

2. Effect on local services

- a. **Utilities** – Water service will be provided by the City of Billings. There are existing water lines located in Silver Creek Trail, east of the proposed subdivision. There is another existing water main in Gold Creek Trail near the north east corner of the proposed subdivision. New water services shall be installed in the streets and there will be a stub into each proposed lot for future homes to connect into the water line. Proposed water mainline installation will be reviewed and approved by City of Billings Engineering prior to installation (**Condition #1**).

Sanitary sewer service will be provided by connecting to an existing sewer main located in Silver Creek Trail, east of the proposed subdivision. There is another existing sewer main in Gold Creek Trail near the north east corner of the proposed subdivision. There is also one in 50th Street West located near the south east corner of the proposed subdivision. New sewer services shall be installed in the streets and there will be a stub into each proposed lot for future homes to connect into the sewer line. Proposed sewer mainline installation will be reviewed and approved by City of Billings Engineering prior to installation (**Condition #1**).

MDU will provide gas services, and Northwestern Energy will provide electric services to the subdivision. Both utilities are asking for easements along the front property line. Easements shall be shown on the face of the final plat that are acceptable to these utility providers (**Condition #2**).

- b. **Storm water** – The applicant is proposing to collect storm water and direct it with the use of streets, gutters and storm drains to get it to detention facilities within the subdivision. The proposed systems will be required to be outlined in a

Stormwater Management report submitted to the City of Billings Engineering Department for review and approval. The detention ponds proposed in the subdivision shall be maintained by the Home Owner Association (HOA). There will be an Operation and Maintenance manual prepared by the applicants' agent that will be reviewed and approved by the City of Billings Engineering Department. The applicant will provide an easement over the entire drainage system with the City of Billings as the benefitted party. Should the HOA fail to maintain the drainage system the city would have the right to repair the system and create an SID in the subdivision to cover the cost of the repair (**Condition #1**). This is referred to in the SIA under V. Storm Drainage. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** – The proposed subdivision will have access from Gold Creek Trail and Silver Creek Trail from the original filing of Silver Creek Estates Subdivision. Blue Mountain Trail and two other new streets yet to be named shall provide access to all lots within the proposed subdivision (**Condition #3**). Gold Creek Trail will connect to 50th Street West. This filing will connect to the original filing which provides access on Elk Ridge Trail and Silver Creek Trail out to 46th Street West. All new streets will be within a 56-foot-wide right-of-way built to a 34-foot width from back of curb to back of curb. The applicant is responsible for a portion of the construction of 50th Street West and will work with City of Billings Engineering to build their required portion from Gold Creek Trail to the north boundary of the Silver Creek Estates Subdivision. The subdivision is required to construct boulevard sidewalks. Sidewalks will be installed with the development of each lot. The applicant will install all required sidewalks and ramps at the intersections of the subdivision. The applicant will also build a sidewalk on the north edge of lot 27 at the time of street construction that connects to the future 50th Street West.
- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. This property is serviced by Fire Station #7 which is located at 1501 54th Street West. The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** – School District #2 provides educational services from elementary through high school. School District #2 Administration states that Boulder Elementary School, Ben Steele Middle School, and West High School will serve the children in this subdivision. School District #2 Administration indicated that Boulder Elementary is under capacity with Ben Steele Middle School and West High School both over maximum capacity at this time.

- g. **Parks and Recreation** – Parkland dedication requirements for this subdivision were met with the previous filing of the original Silver Creek Estates Subdivision. The Parks Maintenance District (PMD) will be expanded to include the new lots within this subdivision.
- h. **Irrigation Ditches** – This proposed subdivision has two ditches near it, one on the north and one on the south. The one to the north, Cove Ditch, is not within this filings boundaries. The ditch to the south, High Ditch, is within this filings boundaries. On the face of the plat, the applicant is showing an existing 10-foot-wide easement for maintenance along the north edge of the High Ditch. The easement document number is 3749073. The applicant is providing an additional 10 feet to that easement for a total of a 20-foot-wide maintenance easement. A new easement document for the entire 20-foot easement shall be submitted with the final plat. In that easement document, the applicant will show that the easement is for the benefit of the High Ditch Company for maintenance. An agreement for the use of this ditch by the City of Billings for stormwater management is currently in place with the High Ditch Company. The easement document will also include language that will provide, in the future, for the City of Billings to be able to continue use of the ditch for drainage purposes should the High Ditch determine to no longer maintain ownership of the ditch (**Condition #4**). This information shall also be addressed in the SIA (**Condition #5**).
- i. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has requested central delivery site with boxes to serve the new houses. It is recommended as a condition of approval that the developer obtain a letter from the USPS approving the location of the new centralized mail box site(s) prior to final plat approval (**Condition #6**).

3. Effect on the natural environment

The subject property has been planned for urban development since its original platting in August of 2015. This land has been used for active farming in the recent past. The subject property is farm land and is not a significant habitat for wildlife. Montana Fish Wildlife and Parks indicates there is some antelope and deer grazing that takes place but not a significant amount. During development, storm water pollution prevention best management practices are required to be used and monitored to prevent erosion on exposed ground. Overall, the effect on the natural environment should be minimal.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a paragraph 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. This subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

There will be no impacts to public health, safety and welfare as a result of this subdivision. The subdivision is located in an area with no known natural hazards.

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 City of Billings 2016 Growth Policy, the 2014 Billings Urban Area Long Range Transportation Plan, and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. City of Billings 2016 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. **Essential Investments (relating public and private expenditures to public values):** Infill development and development near existing City infrastructure may be the most cost effective (p. 6).
- b. **Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods):** Neighborhoods that are safe and attractive and provide essential services are much desired (p.8).
- c. **Mobility and Access (transportation choices in places where goods and services are accessible to all):** Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings (p. 9).

2. 2014 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2014 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision lies within the jurisdiction of the BABTMP. The nearest identified bike trail is along the Cove Ditch to the north of the subject property. No new improvements will be required with this subdivision to meet the Trail Plan recommendations.

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.]

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and conforms to 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 located in R-70 and R-60 zoning. All development shall comply with the standards set forth in Section 27-308, BMCC. Final zoning compliance will be determined at the time of the building permit.

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.]

Easements for utilities will be shown on the final plat as requested by all utility providers.

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.]

Access to the subdivision will be from Silver Creek Trail and Golden Creek Trail through the original filing of Silver Creek Estates Subdivision. The proposed plat does provide legal and physical access to each lot.

CONCLUSIONS OF FINDING OF FACT

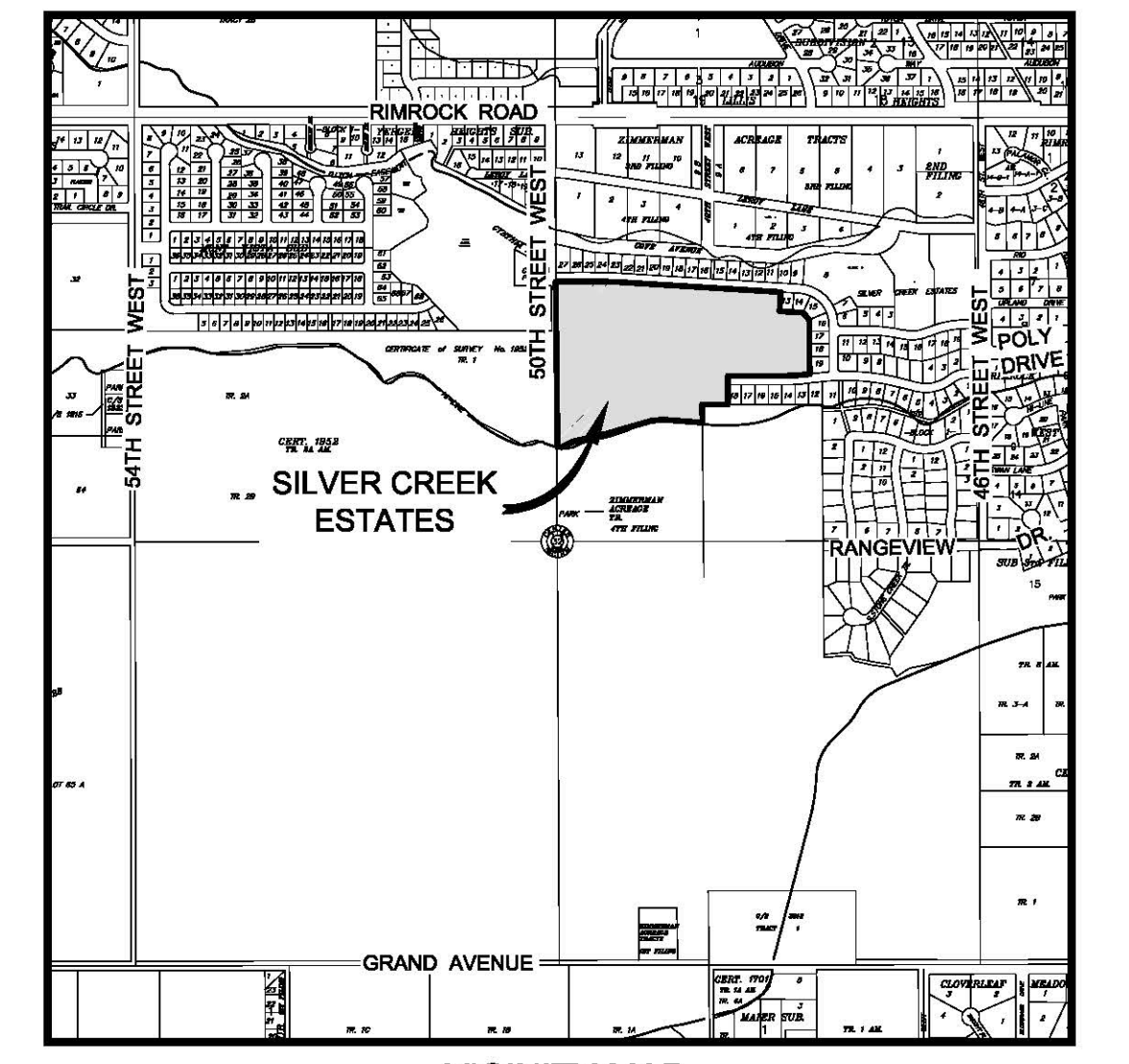
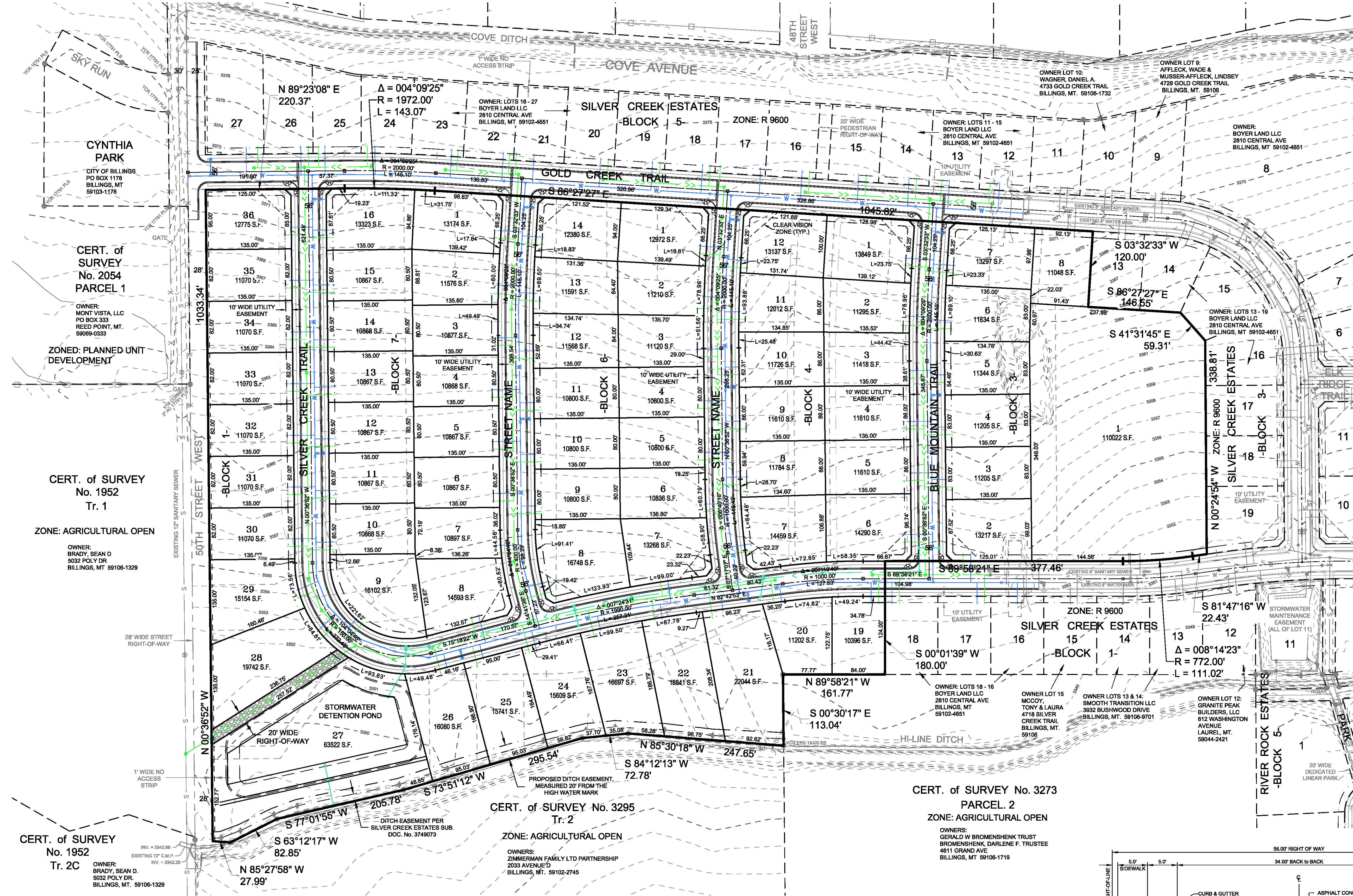
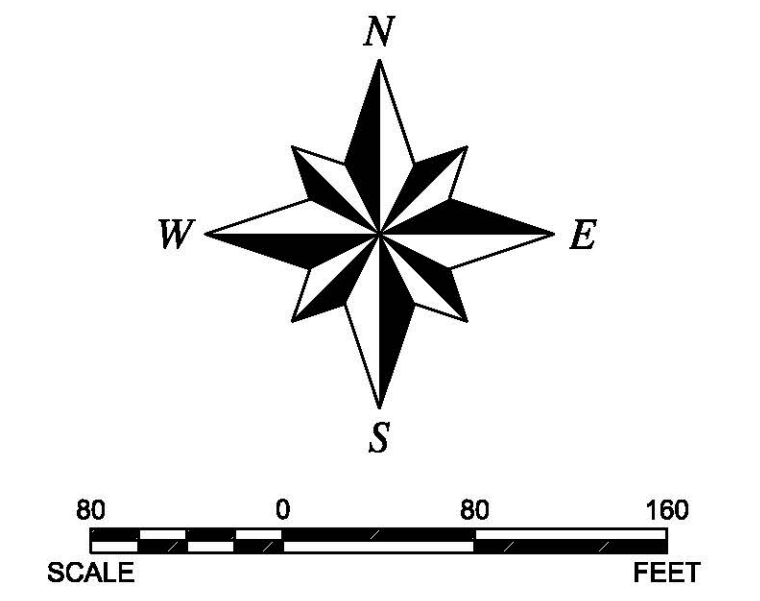
- The preliminary plat of Silver Creek Estates Subdivision, 2nd Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the 2014 Transportation Map or BABTMP Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

Staff recommends that the Planning Board recommend conditional approval of the preliminary plat of Silver Creek Estates Subdivision, 2nd Filing to the City Council, and adopt the Findings of Fact as presented in the staff report.

PRELIMINARY PLAT OF SILVER CREEK ESTATES, SECOND FILING

BEING LOT 1, BLOCK 3A, SILVER CREEK ESTATES, AMENDED
LOCATED IN THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 25 EAST, P.M.M.
YELLOWSTONE COUNTY, MONTANA
PREPARED FOR : BOYER LAND, LLC
JANUARY, 2018
SCALE: 1" = 80'



SITE DATA

NUMBER OF LOTS	68
MAXIMUM LOT AREA	110,022 S.F.
MINIMUM LOT AREA	10,800 S.F.
AREA OF PARKLAND	PARKLAND REQUIREMENTS MET WITH PREVIOUS FILINGS
LINEAR FEET OF STREETS	3,638
GROSS AREA	27.423 ACRES
NET AREA	23.071 ACRES
EXISTING ZONING	R 9600 & R 7000
PROPOSED ZONING	R 9600 & R 7000
EXISTING LAND USE	AGRICULTURAL
PROPOSED LAND USE	RESIDENTIAL

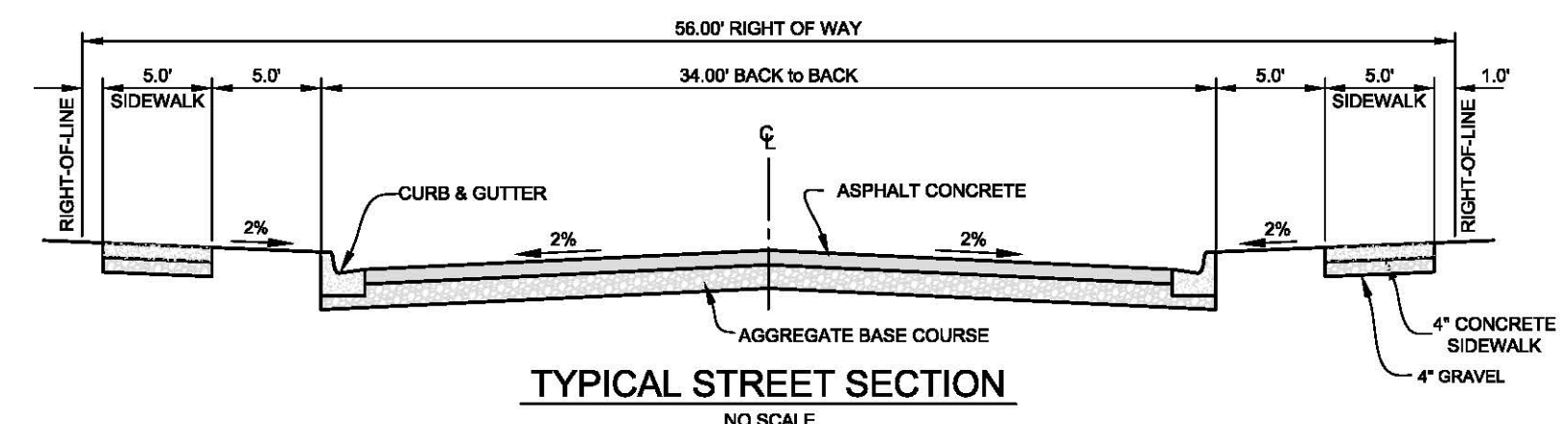
CERT. of SURVEY No. 2054 PARCEL 1
OWNER: MONT VISTA, LLC
ZONED: PLANNED UNIT DEVELOPMENT

CERT. of SURVEY Tr. 1
ZONE: AGRICULTURAL OPEN
OWNER: BRADY, SEAN D.
5032 POLY DR.
BILLINGS, MT 59106-1329

CERT. of SURVEY Tr. 2C
OWNER: BRADY, SEAN D.
5032 POLY DR.
BILLINGS, MT. 59106-1329

CERT. of SURVEY No. 3295 Tr. 2
ZONE: AGRICULTURAL OPEN
OWNERS: ZIMMERMAN FAMILY LTD PARTNERSHIP
2033 AVENUE D
BILLINGS, MT. 59102-2745

CERT. of SURVEY No. 3273 PARCEL 2
ZONE: AGRICULTURAL OPEN
OWNERS: GERALD W BROMENSHENK TRUST
BROMENSHENK, DARLENE F. TRUSTEE
4611 GRAND AVE
BILLINGS, MT 59106-1719



SUBDIVISION IMPROVEMENTS AGREEMENT
Silver Creek Estates, 2nd Filing
(City of Billings, Montana)

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SUBDIVISION IMPROVEMENTS AGREEMENT
Silver Creek Estates, 2nd Filing

This agreement is made and entered into this this _____ day of _____, 20____, by and between *Boyer Land, LLC* whose address for the purpose of this agreement is **2810 Central Ave, Unit C, Billings, MT 59102**, hereinafter referred to as “Subdivider”, and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, at a regular meeting conducted on _____ day of _____, 20____, the Board of Planning recommended conditional approval of a preliminary plat of Silver Creek Estates, 2nd Filing; and

WHEREAS, at a regular meeting conducted on _____ day of _____, 20____, the City Council conditionally approved a preliminary plat of Silver Creek Estates, 2nd Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to Silver Creek Estates, Amended upon filing of the final plat thereof in the office of Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

A. No variances from the City Subdivision Regulations are requested or contemplated for this subdivision.

II. CONDITIONS THAT RUN WITH THE LAND

A. Lot owners shall construct portions of required sidewalk fronting their properties at the time of lot development.

B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there

is damage to commercial crops and/or a threat to public health and safety.

- C. A geotechnical report was prepared by Rimrock Engineering in February 2014 that studied and made recommendations for the construction of Silver Creek Estates. Additional evaluation and clarification was provided in a letter from Rimrock Engineering on April 27, 2015 related to foundation construction adjacent to storm water detention ponds. Copies of the geotechnical report may be obtained from the City Building Division.
- D. No water rights are transferred to the lot owners within this subdivision. Irrigation ditches existing on the perimeter of the subdivision are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall only be altered by Subdivider or subsequent owners to construct the following improvements: Storm water discharge pipe(s) into the High Ditch based on an existing agreement with the ditch company; trail/sidewalk crossing with ditch culverts; minor grading to re-shape, clean or maintain ditch if needed and related erosion control measures.
- E. There is attached hereto a Waiver of Right to Protest creation of the special improvement district or districts. Said Waiver is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be recorded with the final plat, shall run with the land, and shall constitute the guarantee by the Subdivider and lot owner(s) of property within the subdivision. Said Waiver is effective upon filing and is not conditioned on completion of conditions set forth in this Agreement. The Subdivider and owner(s) specifically agree that they are waiving valuable rights and do so voluntarily.
- F. The Subdivider and lot owners acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Section 28-201, BMCC and the Billings Stormwater Management Manual.
- G. Lot owners should be aware that Best Management Practices for stormwater control are required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- H. Ditch easements as shown on the plat for the High Ditch shall be kept free of structures, including fences. The easement shall also be kept free of yard waste, grass clippings, and other debris.
- I. Lot owners should be aware that the High Ditch and the Cove Ditch are natural drainage ways and may overtop in large storm events. Precaution should be taken to protect properties abutting these ditches.

- J. It is possible for stormwater detention ponds within the subdivision to overtop their banks in large storm events. To protect homes adjacent to the ponds, lots shall be graded during home construction to direct water away from buildings. Adjacent to the ponds, top of foundations, top of basement window well elevations and any other building components vulnerable to flood water shall be held high enough to prevent flooding of home due to overflow of the ponds.

III. TRANSPORTATION

A. Streets

1. **Silver Creek Trail, Blue Mountain Trail, Gold Creek Trail and two other Streets within the Subdivision Boundary (names yet to be determined)** will be constructed within a 56-foot right-of-way using standard curb and gutter and full-width pavement (34 feet back of curb to back of curb) and will be dedicated to the City.
2. **50th Street West** is currently undeveloped and planned to be a local street. It is to be located within a 56-foot right-of-way centered on the west line of the southeast quarter of Section 32, Township 1 North, Range 25 East. A 28-foot half width was dedicated for this right-of-way with prior filing of Silver Creek Estates. The east half of 50th Street West and a portion of the pavement on the west half, for a total pavement width of 30-feet, shall be constructed from the intersection of Gold Creek Trail to the north boundary line of Silver Creek Estates. The Subdivider shall construct this portion of road to grade with a satisfactory sub-base, base course, standard curb and gutter, asphalt surface and tapers as needed. The east half of 50th Street West from the intersection of Gold Creek Trail to the south boundary of the Silver Creek Estates is not to be constructed at this time, but is included in the Waiver of Right to Protest.
3. **Cove Avenue:** Cove Avenue is a possible future local street, and may include a standard width of 34-feet back of curb to back of curb, standard curb and gutters and standard boulevard sidewalks. The south half of Cove Avenue along the frontage with Silver Creek Estate is not to be constructed at this time, but is included in the Waiver of Right to Protest.

A. Sidewalks

All sidewalks on internal streets shall be installed at the time of home construction. Sidewalk shall be 5-foot wide with a 5-foot wide boulevard between the walk and curb. The Subdivider shall construct sidewalk at each street intersection that require pedestrian ramps at the time of street construction. The Subdivider shall also construct sidewalk adjacent to the proposed stormwater detention pond on Lot 27 at the time of street construction.

B. Street Lighting

Construction or installation of street lights within the public right-of-ways is not

required now, but street lights are included in the Waiver of Right to Protest to provide for future installation if needed. A maintenance district for street lights will be formed in the future, if required.

C. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices in accordance with the plans and specification submitted to and approved by the City Engineering Division.

D. Access

Elk Ridge Trail and Silver Creek Trail will provide access to the subdivision from 46th Street West. All lots will be accessed by the internal local streets.

Access between lots and public rights-of-way is prohibited along the 1-foot wide No Access Strip shown on the plat, along 50th Street West and a portion of Gold Creek Trail near its intersection with 50th Street West.

E. Billings Area Bikeway and Trail Master Plan

The Billings Area Bike and Trail Master Plan identifies the High Ditch as a designated bike route. River Rock Estates previously granted a 20-foot wide linear park for trail construction along the south side of the ditch. For continuity, it is expected the trail will continue along the south side of the ditch, which is outside of the boundaries of the subdivision. Therefore, no additional right-of-way is granted with the subdivision for this trail. A 20-foot wide right-of-way will be granted adjacent to the north side of Lot 27. This right-of-way will be used for future construction of a shared use path connecting Silver Creek Trail to 50th Street West. The shared use path is not to be constructed at this time, but is included in the Waiver of Right to Protest. The right-of-way will also be used for utilities. The right-of-way shall be landscaped by the Subdivider in conjunction with the stormwater detention pond landscaping on Lot 27 and maintained by the Home Owner's Association.

F. Public Transit

The subdivision does not require improvements to provide public transit service.

G. Offsite Traffic Impacts

From a traffic study originally prepared for Silver Creek Estates, motor vehicle traffic generated by Silver Creek Estates was estimated to have an aggregate impact of \$35,500 on nearby major intersections, including Rimrock Road & 46th Street West (\$11,500), Rimrock Road and Shiloh Road (\$12,000), and Shiloh Road and Poly Drive (\$12,000). This amended subdivision, will result in a minor decrease in traffic in comparison to the original subdivision, due to a decrease in housing density. Therefore, the original aggregate impact assessed for Silver Creek Estates will be used for Silver Creek Estates, 2nd Filing, without further traffic analysis.

A portion of the impact fee was paid with development of Silver Creek Estates, Phase 1, in the amounts of \$5,080 for improvements to the intersection of Rimrock Road and 46th Street West and \$5,270 for improvements to the intersection Shiloh Road and Poly Drive. The remaining balance of \$25,150 shall be made prior to approval of a Private Contract for public improvements (water, sewer, streets) serving Silver Creek Estates, 2nd Filing.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials, fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

Any roads extending beyond 150' in length that ends in a dead end shall have an approved turn around at its termination.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval prior to final plat approval.

Stormwater detention ponds shall be landscaped in conjunction with the private contract improvements. The Homeowner's Association shall maintain the storm drain ponds in accordance with the Operation and Maintenance plan approved by the City. If the Homeowner's Association stops maintaining the ponds, the City reserves the right to create a maintenance district throughout the subdivision to maintain the ponds.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications. The appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

It is acknowledged that all fees stated above are subject to the Franchise Fee in effect at the time of payment.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

The subdivision will be served by water main extensions from existing water mains located in Silver Creek Trail, east of the subdivision and Gold Creek Trail, near the northeast corner of the subdivision. Water main extensions are to be designed and constructed in accordance with City design standards in place at the time of design and as approved by the City Engineering Division.

B. Sanitary Sewer

The subdivision will be served by sewer main extensions from existing sewer mains located in Silver Creek Trail, east of the subdivision, Gold Creek Trail near the northeast corner of the subdivision and 50th Street West, near the southeast corner of the subdivision. Sewer main extensions are to be designed and constructed in accordance with City design standards in place at the time of design and as approved by the City Engineering Division.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical, power, and cable television lines shall be the responsibility of Subdivider. Any line located within public right-of-way shall be subject to approval of the City Engineering Division. All easements required for the location of these utilities are as shown on the plat.

VII. PARKS/OPEN SPACE

Park land requirements were satisfied at the time of filing of Silver Creek Estates, via a combination of park creation and cash in lieu contributions. Silver Creek Estates, 2nd Filing will provide a net decrease in the area of land subdivided into residential lots. Therefore, no additional park creation or cash in-lieu contributions are required.

The Subdivider shall expand the Park Maintenance District (PMD) created for the River Rock Park, to include the lots in Silver Creek Estates, Amended. This shall be done upon final plat recordation if the PMD has been established by that time. Additionally, park improvements on the 3.66 acres of parkland previously dedicated for Silver Creek Estates within River Rock Park shall be funded by the creation of a Special Improvement District (SID). The SID shall be created when building permits have been issued for a total of 130 dwelling units in Silver Creek Estates and/or Silver Creek Estates, 2nd Filing and shall include all lots therein. Alternately, if significant interest is expressed by lot owners prior to the issuance of 130 building permits, the City Parks Department may proceed with creation of the SID prior to the issuance of 130 permits.

VIII. IRRIGATION

The Cove Ditch located north of the subdivision and the High Ditch running along the south side of the subdivision are for the irrigation service to other properties. These ditches shall remain in place and shall not be altered by the Subdivider or subsequent owners, except as identified in this agreement or otherwise approved by ditch owners. Existing ditch easements shall be preserved. No structures, including fences shall be erected within the ditch easements shown on the plat, and the easement area should be kept free of yard waste, grass clippings, and other debris

A Storm Water Pollution Prevention Plan will be required for the proposed construction, and such plan shall incorporate provisions for protection of the irrigation ditches from runoff, sediment, and chemical contamination.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical report was prepared by Rimrock Engineering in February 2014 that studied and made recommendations for the construction of Silver Creek Estates Subdivision. Additional evaluation and clarification was provided in a letter from Rimrock Engineering on April 27, 2015 related to foundation construction adjacent to

storm water detention ponds. Copies of the geotechnical report may be obtained from the City Building Division office.

X. PHASING OF IMPROVEMENTS

No phasing is proposed with Silver Creek Estates, 2nd Filing.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- C. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
- E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER” Boyer Land, LLC

By: _____

It's: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2018, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of **Boyer Land, LLC**, who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Silver Creek Estates, 2nd Filing

“SUBDIVIDER” Boyer Land, LLC

By: _____

It's: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2018, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of **Boyer Land, LLC**, who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year hereinabove written.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____