



YELLOWSTONE COUNTY BOARD OF PLANNING

CITY OF BILLINGS AND
YELLOWSTONE COUNTY, MONTANA



AGENDA

APRIL 12, 2022 MEETING TIME: 6:00 p.m.
1st Floor Large Conference Room, Miller Building
2825 3rd Avenue North, Billings, Montana 59101

NOTICE TO THE PUBLIC

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook: <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
 - Email: deinest@billingsmt.gov
- Call in during the Public Comment periods as indicated on the agenda:
 - Citizens may call in during specific Public Comment periods at **406.237.6165**. All callers will be placed in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be limited to 3 minutes of testimony as is customary. Future delivery methods may be explored as best practice is learned.

****In the event a quorum of the Council is present, no City-related decisions will be made during this meeting or event.**

- Please direct questions to Tammy Deines, Planning Clerk at deinest@billingsmt.gov or 406-247-8610. Thank you!

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: MARCH 22, 2022**
Attachments
2022_03_22_PLNB_Minutes_DRAFT.pdf
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.
 - a. **PUBLIC HEARINGS/PUBLIC HEARING PARTICIPATION GUIDELINES.** The County Planning Board welcomes public input on matters brought before the Board. To ensure a fair and effective public comment process, we ask that you consider the following guidelines when presenting your comments: Address the Planning Board directly. You must state your name and address before commenting. This is an opportunity to explain how you will be affected by the decision and why that is an important consequence. By state law, the Planning Board must consider only certain criteria when reviewing subdivisions (76-3-608(a), MCA). Please see the attached guidelines for the criterion. Thank you for participating!
8. **NEW BUSINESS:** (Agenda items new to this meeting).
 - a. Plat Review. Board Discussion. Southern Sky Estates Subdivision, County Major Subdivision. Bryce

Kirschenmann, Applicant. Rob Neihart, PE, Performance Engineering, agent. Hunter Kelly, Planner I, presenting.

Attachments

Preliminary Plat
Subdivision Improvement Agreement
Findings of Fact

- b. Plat Review. Board Discussion. Lipp Sub, 2nd Filing, County Major Subdivision. Jerry Lee Brey, Applicant. Marshall Phil, BlueLine Engineering, Agent. Dave Green, Planner II, presenting.

Attachments

Findings of Fact
Proposed Plat
SIA Draft
Attachment A, Variance

- c. Plat review. Board Discussion Creekside Estates 2nd Filing, County Major Subdivision, John Poukish, Applicant. Anna Vickers, IMEG, Agent. Dave Green, Planner II, presenting.

Attachments

Findings of Fact
Proposed Plat
SIA Draft
Attachment A, Variance

9. **OTHER BUSINESS:**

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

10. **ADJOURNMENT**

FUTURE AGENDA ITEMS FOR TUESDAY, APRIL 26, 2022

- a. Public Hearing. Motion/Recommendation to BOCC. Southern Sky Estates Subdivision, County Major Subdivision. Bryce Kirschenmann, Applicant. Rob Neihart, PE, Performance Engineering, agent. Hunter Kelly, Planner I, presenting.
- b. Public Hearing. Motion/Recommendation to BOCC. Lipp Sub, 2nd Filing, County Major Subdivision. Jerry Lee Brey, Applicant. Marshall Phil, BlueLine Engineering, Agent. Dave Green, Planner II, presenting.
- c. Public Hearing. Motion/Recommendation to BOCC. Creekside Estates 2nd Filing, County Major Subdivision, John Poukish, Applicant. Anna Vickers, IMEG, Agent. Dave Green, Planner II, presenting.

Planning Board Meeting I (2nd Tuesday)

3.

Meeting Date: 04/12/2022

Information

Subject

MOTION. MEETING MINUTES: MARCH 22, 2022

Attachments

2022_03_22_PLNB_Minutes_DRAFT.pdf

CITY/COUNTY PLANNING BOARD

“Serving Billings, Broadview and Yellowstone County”

Board Attendance Roster: Please note: “E” stands for excused absence, “A” stands for un-excused absence, “1” stands for present.
BYLAWS, YELLOWSTONE COUNTY BOARD OF PLANNING, (Amended. May 25, 2004)
Section 4. Absences and Removal A. Each member shall inform the Planning Director at least one day before the meeting of his/her inability to attend a Board or Committee meeting. Such an absence shall be considered an excused absence. If any Board member accrues three (3) or more consecutive unexcused absences from regular meetings, notice of which has been given at his/her usual place of work or residence, or by announcement at a meeting attended by him/her, the President may call such absences to the attention of the Board which may then recommend to the appointing authority that such member be asked to resign and that another person be appointed to serve out the unexpired term. Schedule: (** denotes a Wednesday meeting)

	Position	01/11/2022	01/25/2022	02/08/2022	02/22/2022	03/08/2022	03/22/2022	04/12/2022	04/26/2022	05/10/2022	05/24/2022	06/14/2022	06/28/2022	07/12/2022	07/26/2022	08/09/2022	08/23/2022	09/13/2022	10/27/2022	10/25/2022	10/26/2022	11/08/2022	11/22/2022	12/13/2022
Teresa Larsen	Mayor/Billings Ward I	1	1	-	-	-	1																	
Roger Gravggaard	Mayor/Billings Ward II	1	1	-	-	-	1																	
Dennie Stephenson	Mayor/Billings Ward III	1	1	-	-	-	1																	
Vacant	Mayor/Billings Ward IV	1	1	-	-	-	-																	
Jon Thompson	Mayor/Billings Ward V	1	E	-	-	-	E																	
Troy Boucher	YC District 1	1	1	-	-	-	E																	
Dennis Cook	YC District 2	1	1	-	-	-	1																	
Vacant	YC District 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vacant	YC District 4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Woody Woods	YC District 5	1	1	-	-	-	1																	
Vacant	YC District 6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Jarett Hillius	YC District 7	1	E	-	-	-	1																	
Vacant	Y County Cons. District	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Scott Reiter	Ex-Officio SD2	1	E	-	-	-	1																	

CITY/COUNTY PLANNING BOARD

"Serving Billings, Broadview and Yellowstone County"

MARCH 22, 2022

DRAFT- To be approved by a motion on April 12, 2022

PUBLIC HEARINGS/PUBLIC HEARING PARTICIPATION GUIDELINES.

As legally advertised, The Yellowstone County Board of Planning met on January 25, 2022 in the Miller Building 1st Floor Conference Room.

Citizens are invited to:

→Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>

→View the meeting live online at Facebook: <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260>

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Call the Meeting to Order

President Cook called the meeting to order at 6:00 p.m. on Tuesday, March 22, 2022.

Introduction of Planning Board Members and Planning Department Staff

President Cook called for introductions of the members of the Planning Board and staff.

Participating Planning staff members: Wyeth Friday, Director, PCSD; Monica Plecker, Planning Division Manager; Scott Walker, Transportation Coordinator; Tammy Deines, Planning Clerk

Others in Attendance: There were no members of the public in attendance.

Approval of the March 22, 2022 Agenda

Agenda Item 8b. *Transportation Plan updates* will be moved forward on this agenda. Board member Hillius moved and Board member Stephenson seconded to amend and approve the agenda.. The motion carried unanimously.

CITY/COUNTY PLANNING BOARD

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Approval of Minutes: January 25, 2022

Motion

Board member Woods moved and Board member Larsen seconded the motion to approve the January 25, 2022 meeting minutes as submitted. The motion carried with a unanimous voice vote.

Public Comment: President Cook asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public might 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.

Disclosure of Outside (Ex Parte) Communication or Conflicts of Interest– Board Members and Planning Staff. There were no disclosures of outside communication or conflicts of interest.

7. OLD BUSINESS:

7a. Motion. Planning Board recommendation for Bicycle Pedestrian Advisory Committee, (BPAC), Planning Board Representative. Monica Plecker, Planning Division Manager.

Applicants: Stephanie Donovan, Rachel Cox, Dave Coppock. Recommendation letters were provided in the agenda packet. The Planning Board is responsible for appointing a candidate for the BPAC. Board member Larsen recommended David Coppock as she feels he would be an asset to the Board and the community.

Discussion

President Cook called for discussion. Board member Larsen recommended David Coppock to serve as Planning Board representative for the Bicycle Pedestrian Advisory Committee. She said she has met David and he has a strong interest in the community.

Motion

Board member Larsen made a motion and Board member Gravgaard for applicant Dave Coppock to serve as BPAC Planning Board representative.

The motion carried with a unanimous voice vote.

8. NEW BUSINESS

8b. Transportation Staff Updates. Planning Board Discussion. Scott Walker, Transportation Coordinator, presenting. Scott mentioned that a TIP amendment will be brought forward to this Board in the near future as there have been some funding amendments.

CITY/COUNTY PLANNING BOARD

"Serving Billings, Broadview and Yellowstone County"

Billings Bypass Corridor Study

Study Goals & Objectives Plan for future growth resulting from the new roadway and corresponding connectivity on the northwest portion of the Billings Bypass; Facilitate actionable public and stakeholder involvement; Develop a guidance document that integrates existing infrastructure plans and future development plans

Next Steps: Draft Billings Bypass Corridor Study, Public Open House #2, Final Billings Bypass Corridor Study

Billings/Yellowstone County Community Transportation Safety Plan

- ❖ **Team:** CTSP Lead-Billings-Yellowstone County MPO, Lora Mattox, Scott Walker, Wyeth Friday, Elyse Monat
- ❖ **Consultant:** DOWL. Lisa Olmsted, Doug Enderson, Hannah Olson

Vision Statement

The Billings community will achieve zero fatalities and serious injuries through a culture of safety for all travelers

Goal

Based on a 5-year rolling average, to reduce fatalities and serious injuries by 20% from 57 to 46 by the end of 2024

CTSP Development Process

(In Process) Define Strategies and Actions, Identify Resources/Partners, Collect Public Input
(Final Plan) Develop Document, Confirm Commitments

Implementation & Reporting: Assign Champions and Teams, Implement Strategies. Report Progress

Emphasis Areas

Impaired Driving, Inattentive Driving, Lack of Restraint Use, Speed Related.
Attention to: Young Drivers

- ❖ **Public Participation:** www.BillingsCTSP.com

Board member Gravgaard commented on the timeliness of this study due to the public interest in traffic and public safety. The Billings-Yellowstone County Metropolitan Planning Organization (MPO) is hosting an open house to collect public input for the Billings Community Transportation Safety Plan (CTSP) Update. The next public meeting and open house is Wednesday, March 23, 2022 from 5:00 p.m. to 6:30 p.m. at the Billings Community and Senior Center, 360 North 23rd Street.

Billings Safe Routes to School Plan Update

❖ **Data Collection:**

- Completed site audits at all 22 elementary schools at either arrival or dismissal
- Spoke with principals at 21 of 22 schools
- Surveyed the streets within ½-mile of each school for barriers and opportunities to encourage walking and biking
- Had online web map for community to give input
- Existing GIS data

❖ **Next Steps:**

- School Walk/Bike Route Maps
- Project Selection and Prioritization
- Draft Plan document

Discussion

Board member Larsen asked regarding the plan's recommendation for infrastructure. Scott Walker said this will include sidewalks, pedestrian crossings, and traffic lights. Wyeth Friday commented that the data collection was well done and it included input from students, teachers, and crossing guards.

2023 Long Range Transportation Plan

This plan encapsulates all transportation and transit needs for the MPO. A member of the Planning Board is encouraged to participate on the Oversight Committee for this project to follow it through from the point of conception.

- ❖ RFP - Complete
- ❖ Consultant Selection – Complete
- ❖ Consultant Contract – Pending

8a. Staff Presentation. Planning Board Discussion. Planned Neighborhood Development. PND 101 Session. Monica Plecker, Planning Division Manager. This evening's presentation is to review and provide an overview to the Board on how PNDs under the zoning regulations work and how the open space requirement in PNDs is different from the subdivision parkland requirements.

What is a PND? A Planned Neighborhood Development is a new zoning tool incentivizing master planning efforts for newly annexed property to provide predictability for City Council, City Service Providers and the Public. Parcels greater than 10 acres require a mix of zones to build neighborhoods that are walkable, sociable, and resilient.

- PNDs are designed to be concurrent with annexation, allows phasing if requested of annexation but adoption of full zoning plan in advance.
- A PND provides more detail on new neighborhood infrastructure (streets/roads) and achieves a mix of uses

PND Types: Neighborhood, Mixed Residential, Mixed Use, Town Center (County Only)

Neighborhood PND –focuses on “living” spaces

Mixed Residential PND-introduces commercial uses with limitations

Town Center- County. Potentially Lockwood.

PND’s Choice vs. Requirement

Flexible but General Layout Requirements
Location of CMU Districts
General layout of PND Districts

Parkland Requirements-All PNDs must provide open space to ensure the walkability, sociability and safety of residents and visitors. 2% net minimum requirement. Parkland must be developed or preserved depending on type.

Types of Open Space chosen by the Developer: Plaza, Square, Parklets, Green, Natural Area
Relationship to subdivision parkland requirements

Not all PNDs will require future subdivision as development may occur through Master Site Plan approval.

Discussion

Board member Woods commented that the idea of the PND was to allow multiple uses and help developers. He feels that this tool will be utilized more in the future. Ms. Plecker said that this allows City Council to take a more active part in approval of these types of projects, and there is more of a general acceptance of developing an area with a combination of districts. In response to question by Board member Stephenson, Ms. Plecker explained that developers cannot do cash-in-lieu of parkland with a Planned Neighborhood Development project. The Parks and Recreation may come into play with parkland that is five acres or more. She said there may be challenges to work through with future applications but the experienced gained managing applications will help staff forward text amendments if needed. Board member Woods pointed out there are multiple review periods set for the new zoning code to ensure the document is kept up to date.

8c. Planning Board Discussion. Housing Issues Update. Wyeth Friday, Director, PCSD

In January 2022, a City Council Initiative was passed to develop a Housing Strategy using community engagement and the local housing home front to address the current housing supply in the community. Recent multiple listings had 88 available properties for sale with the average home price in the \$350,000 range which is a considerable increase. There have been major challenges with general and specialized labor needs.

A small housing summit was held in February 2022 with participants Big Sky Economic Development, Beartooth RC & D who conducted a recent Regional Housing Study. The Downtown Housing Group is looking towards supportive developments in the downtown area. Representatives from St Vincent and Billings Clinic are participating in considerations for housing in the hospital corridor. Director Friday offered to share the Beartooth C & D Regional Housing Study with the Planning Board. President Cook commented that the issues from the realtors’ side are focused on workforce housing but a balance is needed to address different ranges of income. He said out of state developers are purchasing large commercial spaces in anticipation of converting them to housing. The lack of labor in is hurting the construction industry. President Cook said the key is working together. He stressed that this is a nationwide issue. He is hopeful that this will improve in time.

CITY/COUNTY PLANNING BOARD

"Serving Billings, Broadview and Yellowstone County"

8d. Planning Board discussion. Darell Tunnicliff Memorial Tree. Director Friday said the Board expressed interest in participating in the Parks Department memorial program by purchasing a tree and plaque as a memorial for Darell Tunnicliff. Director Friday said he reached out to the Parks Director and the City Forrester regarding the location of tree and asked for consideration of locating the tree near a sidewalk. The Planning Division will match up to half the cost of the tree and the remainder will be paid through contributions from members of the Planning Board. Board member Woods said he will contribute the funds needed for the plaque. Planning Clerk Tammy Deines will help with the contributions. Director Friday said he will coordinate with Darrel's family and Robbin Tunnicliff as to the type of tree.

9. OTHER BUSINESS

a. (Standing Item). Long Range Strategic Issues and an overview of future City and County issues and projects.

A1. Announcement: The Billings-Yellowstone County Metropolitan Planning Organization (MPO) is hosting an open house to collect public input for the Billings Community Transportation Safety Plan (CTSP) Update.

Public Open House: Wednesday, March 23rd, 2022, from 5:00 p.m. to 6:30 p.m. Billings Community and Senior Center, 360 North 23rd Street

The public will be presented with areas of focus, based on a review of local crash data, and offered the opportunity to provide input and ideas to support the development of safety programming. Public input is a critical step in the CTSP process and will help determine specific actions and steps toward achieving the Billings community's transportation safety vision of having zero deaths and serious injuries on Billings' roads, as defined in the updated 2022 CTSP document.

A2. Division Manager Plecker said a mapping and zoning boundary discussion at BOCC Monday, March 28 2:00 pm. Planning Board President Dennis Cook and Board member Woody Woods and Vice President Theresa Larsen may attend.

A3. The next Planning Board meeting is scheduled for Tuesday, April 12, 2022. Three County major subdivision applications will be presented by staff for plat review and Board discussions.

ADJOURNMENT 7:55 PM

DRAFT—TO BE APPROVED BY A MOTION- April 12, 2022

--Tamara L Deines, Planning Clerk

Planning Board

Date: 04/12/2022
Title: Southern Sky Estates Subdivision - County Major
Presented by: Hunter Kelly, Planner 1
Department: Planning & Community Services
Presentation: Yes

Information

RECOMMENDATION

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

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2022, Performance Engineering submitted to the Planning Division an application for Southern Sky Estates Subdivision, Preliminary Major Plat. The purpose of this subdivision is to create 29 lots with a mix of commercial and residential uses. Lots 13 through 29 of the Subdivision are intended to be developed with commercial condominiums. Only these lots shall be able to be developed as individual buildings with separate units to be leased or sold. Should Lots 1 through 12 within the Subdivision be developed with commercial condominiums, they shall be done so in accordance with the Yellowstone County Subdivision Regulation's procedures for platting. The property is generally located south of Danford Road and east of South 60th Street West. The land is outside the zoning jurisdictional boundary.

VARIANCES REQUESTED

The subdivider has not requested a variance from Yellowstone County Subdivision Regulations.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To protect public health and safety, prior to final plat approval, the applicant will receive approval from the MDEQ for the proposed water systems, septic systems and the proposed storm water management.
2. To protect public health and safety and provide for future dry hydrant maintenance, prior to final plat approval, the applicant will provide installation and tank specifications to Laurel Fire Department, prior to installation, for review and approval. The subdivision shall install a 30,000-gallon water storage tank with dry hydrant according to the specification of the Laurel Fire Department. The 30,000-gallon water storage tank with a dry hydrant shall be constructed by the Developer on Park 1 as shown on the preliminary plat. When installed the applicant will have the system tested and signed off by the Laurel Fire Department. The applicant will create an RSID for the new dry hydrant system for the subdivision.
3. To protect public health and safety and provide for future road maintenance, prior to final plat approval, the applicant will create an RSID for the new public roads within the subdivision. All temporary street names will have permanent names determined and identified on the Final Plat
4. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS for preferred mail delivery box type. The applicant will coordinate the locations and provide the correct amount of space for safely delivering the mail to the residents.
5. To minimize effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be completed by the County Weed Department.
6. 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.
7. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, including laws regarding moving houses onto or off the property, and the laws and Administrative Rules of the State of Montana.

PROCEDURAL HISTORY

- Pre-application meeting October 28, 2021
- Preliminary plat application submitted to Planning Division March 1, 2022
- Preliminary Plat to Planning Board April 12, 2022
- Planning Board Public Hearing April 26, 2022
- Preliminary plat to Yellowstone County Board of County Commissioners May 17, 2022
- 60 working-day preliminary plat review period ends May 23, 2022.

PLAT INFORMATION

General location: South side of Danford Road and east of South 60th Street West
Legal Description: Certificate of Survey 2422, Parcel 1, Section 32, Township 1S, Range 25E
Owner/Subdivider: KE Construction
Engineer/Surveyor: Performance Engineering, LLC
Existing Zoning: None
Existing land use: Agriculture
Proposed land use: Residential and Commercial
Gross and Net area: 83.88 acres / 68.96 acres
Proposed number of lots: 29
 Max. lot size: 13.027 acres
 Min. lot size: 1.194 acres
Parkland requirements: 2.86 Acres / 4.31 Acres provided

STAKEHOLDERS

A public hearing is scheduled for April 26, 2022. The Planning Division has received no public comments or questions regarding the proposed subdivision at the time this staff report was made.

ALTERNATIVES

In accordance with state law, the Board of County Commissioners has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends on May 23, 2022. Montana Code Annotated and County subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The County may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 working day review period, the Board is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FISCAL EFFECTS

The preliminary plat of this subdivision will have no financial impact on the Planning Division.

SUMMARY

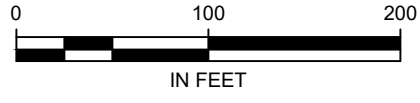
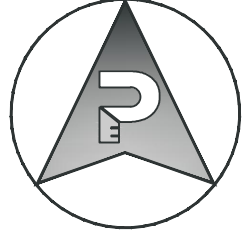
One of the purposes of the County's subdivision review process is to identify potential negative effects of property being subdivided. Negative effects that are identified become the subdivider's responsibility to mitigate. Various County departments, private service/utility providers and the affected school district/s, have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be minimal impacts from this proposed subdivision.

Attachments

Preliminary Plat
Subdivision Improvement Agreement
Findings of Fact

PRELIMINARY PLAT OF SOUTHERN SKY ESTATES SUBDIVISION

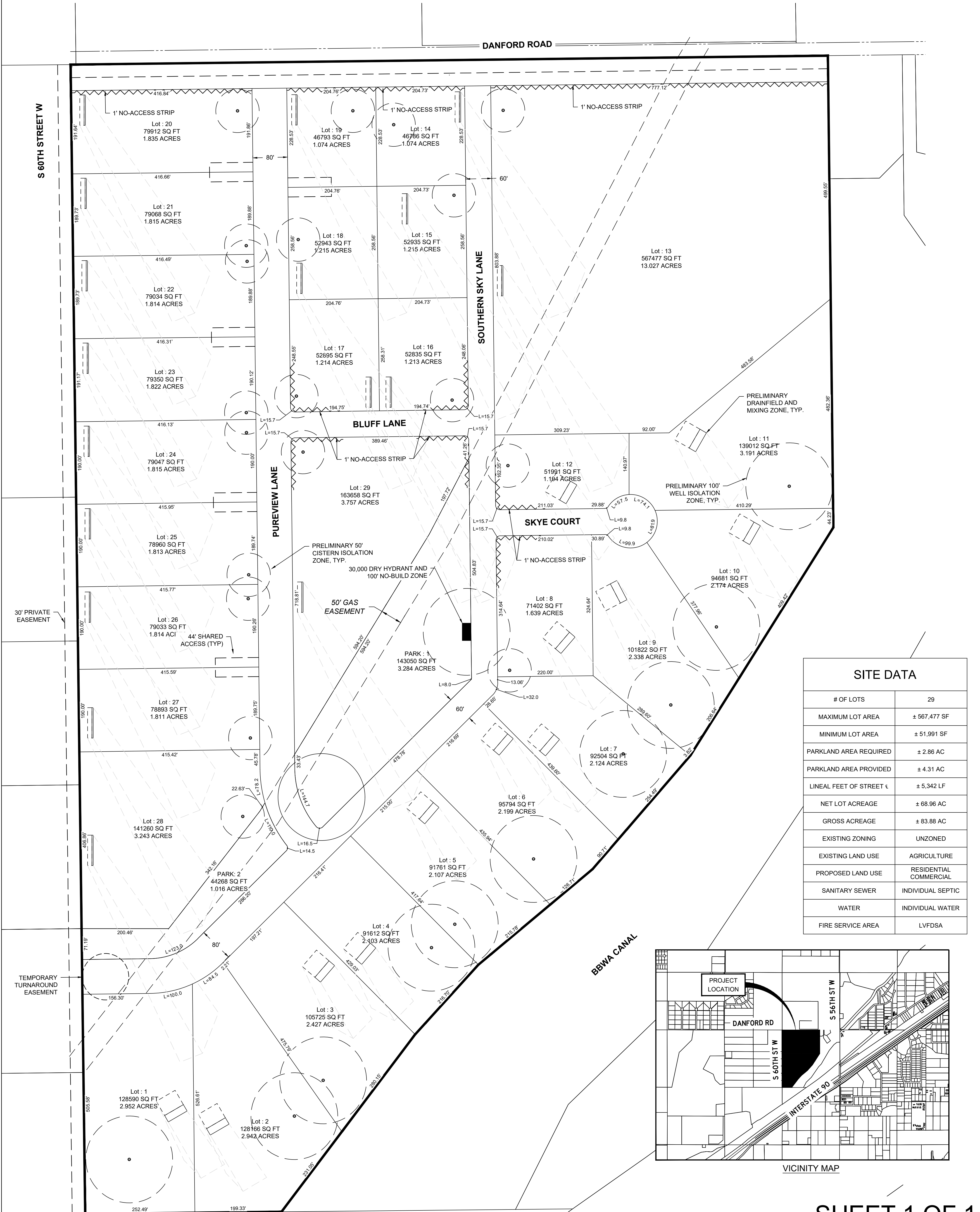
BEING LOCATED ON PARCEL 1 OF COS 2422 IN SECTION 32, TOWNSHIP 01 SOUTH, RANGE 25 EAST, P.M.M., YELLOWSTONE COUNTY, MONTANA



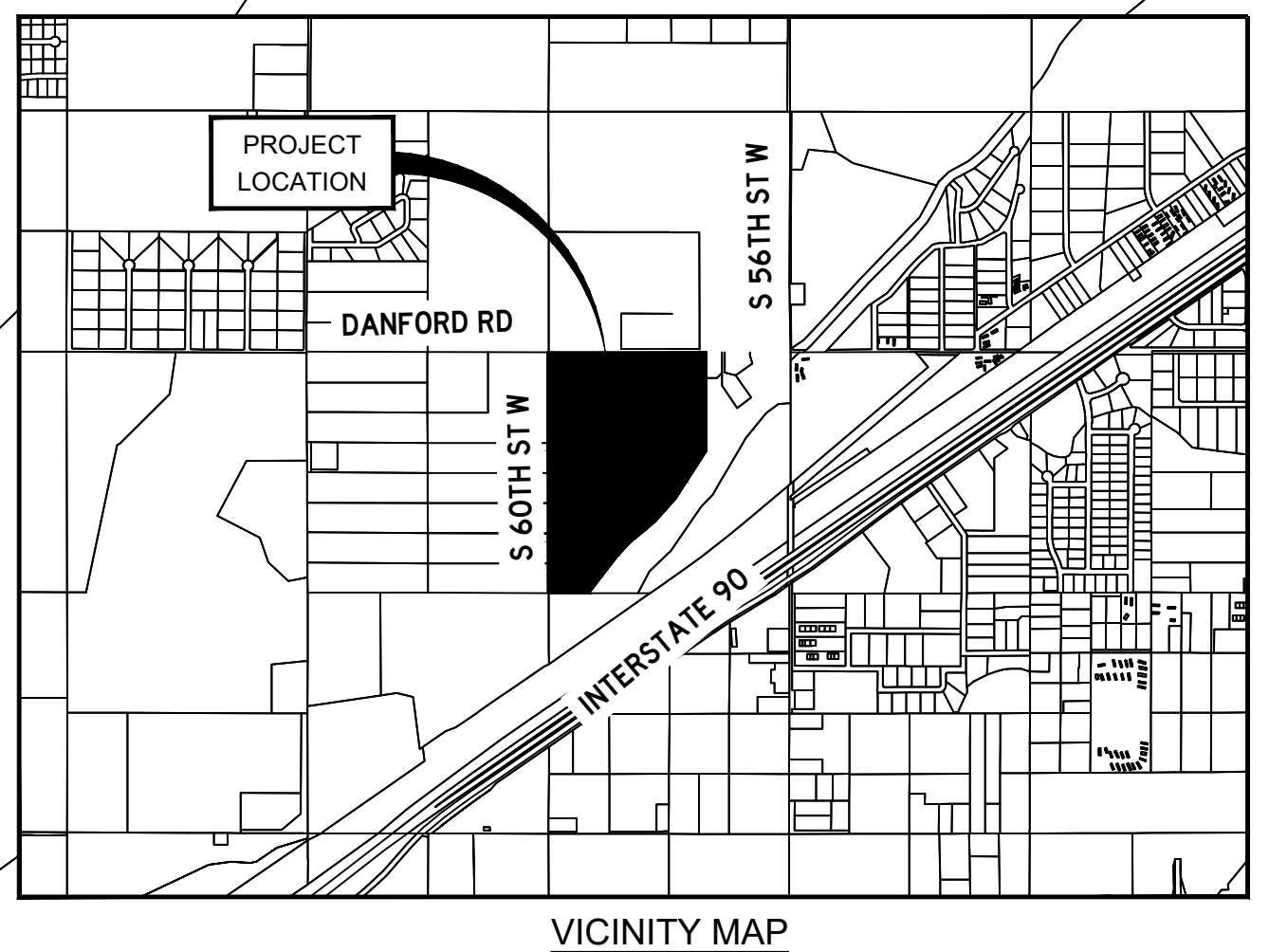
PREPARED FOR : KE CONSTRUCTION

PREPARED BY : PERFORMANCE ENGINEERING, LLC

DATE: MARCH 2022



SITE DATA	
# OF LOTS	29
MAXIMUM LOT AREA	± 567,477 SF
MINIMUM LOT AREA	± 51,991 SF
PARKLAND AREA REQUIRED	± 2.86 AC
PARKLAND AREA PROVIDED	± 4.31 AC
LINEAL FEET OF STREET	± 5,342 LF
NET LOT ACREAGE	± 68.96 AC
GROSS ACREAGE	± 83.88 AC
EXISTING ZONING	UNZONED
EXISTING LAND USE	AGRICULTURE
PROPOSED LAND USE	RESIDENTIAL COMMERCIAL
SANITARY SEWER	INDIVIDUAL SEPTIC
WATER	INDIVIDUAL WATER
FIRE SERVICE AREA	LVFDSA



**SUBDIVISION IMPROVEMENTS AGREEMENT
SOUTHERN SKY ESTATES SUBDIVISION
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(Yellowstone County)**

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SUBDIVISION IMPROVEMENTS AGREEMENT

Southern Sky Estates Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *MAE Investments LLC*, whose address for the purpose of this agreement is **P.O. Box 81565, Billings, MT 59108**, hereinafter referred to as “Subdivider,” and **YELLOWSTONE COUNTY, Montana**, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Southern Sky Estates Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Southern Sky Estates Subdivision*; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to *Southern Sky Estates Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, 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

Subdivider has requested, and the County hereby grants, the following variances by the Board of County Commissioners from the strict interpretation of the County’s Subdivision Regulations (Chapter 11, Yellowstone County Subdivision Regulations):

1. No variances requested.

II. CONDITIONS THAT RUN WITH THE LAND

- A.** 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.

- B.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- C.** Individual well water rights will be transferred to the lot owners.
- D.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference 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 filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned by the completion of the conditions set forth in the Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- E.** Culverts and associated drainage swales shall not be filled in or altered by the Subdivider or subsequent lot owners.
- F.** When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- G.** Future maintenance of all public (or common) improvements shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.
- H.** Lot owners or their agent will obtain an Access Permit from County Public Works prior to any construction on any lot within the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or their agent removing what has been installed and locating the access in an approved location at the lot owner's expense.

III. TRANSPORTATION

A. Streets

Right-of-Way Widths: All internal streets within Southern Sky Estates Subdivision are public roadways and have a minimum right-of-way width of 60 feet. Pureview Lane is classified as a collector road, for which 80 feet of right-of-way is dedicated. Additionally, Southern Sky Lane south of its intersection with Pureview Lane is also dedicated as a collector road with an 80-foot right-of-way width. An additional 30 feet of right-of-way has been dedicated adjacent to the property on the north side (Danford Road) as part of Southern Sky Estates Subdivision providing a total right-of-way width of 90 feet.

Pavements Widths and Surface Types: All streets shall be built to grade with a satisfactory engineered subbase, base course, and asphalt surface. All internal roads shall have a minimum pavement width of 24 feet with 2-foot gravel shoulders. The engineer designed cross-sections of said streets shall be submitted to the Yellowstone County Public Works Department.

Other Required Street Improvements: Drainage ditches shall be constructed adjacent to the roadways in accordance with Yellowstone County Public Works standards and DEQ requirements to convey stormwater. Culverts shall be provided to convey stormwater across roadways and driveways *as called for in the construction drawings and Certificate of Subdivision Approval from Montana Department of Environmental Quality.*

B. Sidewalks

There are no sidewalks within the Subdivision.

C. Traffic Control Devices

Traffic Control Devices: Subdivider shall furnish the necessary traffic control devices within and adjacent to the subdivision as required by the County. Traffic control devices shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and County standards.

Street Name Signs: Subdivider shall furnish and install street name signs for streets within the subdivision, or located immediately adjacent thereto, in accordance with the specifications of the County Publics Works and Fire Departments.

D. Access

Access to Southern Sky Estates Subdivision shall be provided by two primary access points off Danford Road. A 60-foot minimum right-of-way shall be dedicated to the public by Subdivider for all internal streets unless otherwise called for (Southern Sky Lane and Pureview Lane).

No Access strips shall be provided along the frontages of Danford Road with exception to the primary access points depicted on the Plat.

E. Billings Area Bikeways and Trail Master Plan (BABTMP)

There is a proposed long-range bike lane on Danford Road in the BABTMP; however there is no trail or bike lane proposed within the Subdivision.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply in place to allow for fire suppression requirements. Prior to the construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.),

fire apparatus access roads and water supply requirements shall be provided in accordance with the Laurel Volunteer Fire Department Service Area (LVFDSA).

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.
- The subdivision shall install a 30,000-gallon water storage tank with dry hydrant according to the specification of the LVFDSA. No structure is to be constructed within 100 feet of the Fire Department Connection (FDC) point at the dry hydrant. The system design shall be reviewed and approved by the LVFDSA prior to construction of the system. Tank and dry hydrant are to be inspected, acceptance tested, and approved by the LVFDSA prior to any building construction occurring on the lots served by the system. The tank and dry hydrant require the formation of a new RSID for maintenance thereof. The new RSID will consist of all proposed lots within the Subdivision.
- Said 30,000-gallon water storage tank with dry hydrant shall be constructed by the Developer on Park 1 as shown on the final plat.

The above requirements do not alter or effect the current minimum subdivision requirements for apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by the Montana Department of Environmental Quality (MDEQ), or its designee.

VI. UTILITIES

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by the MDEQ, or its designee.

- The Subdivision shall be supplied by individual wells and/or cisterns on the respective lots.
- A MDEQ and DNRC approval letters will be submitted with the final plat.

B. Septic System

In accordance with Section 4.8 of the Yellowstone County Subdivision Regulations, all sanitary sewer systems must obtain approval by the MDEQ, or its designee.

The subdivision will use individual on-lot wastewater disposal systems as approved by MDEQ. These systems shall be located and installed as shown on the site layout approved by MDEQ submitted with the final plat. Lot owners will be responsible for the construction of individual septic tanks, dosing tanks, and drainfields.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will be located within the public right-of-way and utility easements shown on the plat.

All power, natural gas, telephone, and cable (where said utilities are available and existing to the subdivision) shall be installed prior to street paving. Extension of private utilities into each lot shall be the responsibility of the individual lot owners. The location of all such off-site facilities within the existing public rights-of-way shall be subject to approval of the County Public Works Department and shall be installed underground. The Subdivider shall coordinate installation with various utility companies.

VII. PARKS/OPEN SPACE

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Per 10.2(A) of the Yellowstone County Subdivision Regulations:

- Lots 0.50 acres or less, 11% dedication: $0.00 \text{ acres} \times 11\% = 0.00 \text{ acres}$
- Lots 0.50 – 1.0 acres, 7.5% dedication: $0.00 \text{ acres} \times 7.5\% = 0.00 \text{ acres}$
- Lots 1.0 acres – 3.0 acres, 5% dedication: $45.74 \text{ acres} \times 5\% = 2.28 \text{ acres}$
- Lots greater than 3.0 acres, 2.5% dedication: $23.22 \text{ acres} \times 2.5\% = 0.58 \text{ acres}$

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Based on proposed lot sizes, required parkland dedication is 2.86 acres, Subdivider is proposing to dedicate Park 1 and Park 2, which total 4.31 acres, as private parkland open space to be retained by the Subdivision HOA. Maintenance of the open space parkland will be provided by the Subdivision HOA.

VIII. IRRIGATION

Subdivider agrees there will be no irrigation water available to landowners in this Subdivision. No water shares will be transferred to the individual lot owners. Irrigation of individual lots can be conducted by lot owners utilizing the water service (individual well or cistern) constructed each lot. Access to the existing ditches and drains on the perimeter of the property for maintenance and operation shall remain. Any modification to the ditches or drains shall be agreed upon by the respective ditch and drain owners.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weeds List shall be controlled on all properties in the subdivision.

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.
- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

X. SOILS/GEOTECHNICAL STUDY

A geotechnical study is not required by the Yellowstone County Subdivision Regulations as part of this plat. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitation for proposed construction on the lots, which may require a geotechnical survey prior to construction.

XI. PHASING OF IMPROVEMENTS

There will be no phasing of the required improvements.

XII. CONDOMINIUM

Lots 13 through 29 of the Subdivision, inclusive, are being contemplated as being developed with condominiums. Only these lots shall be able to be developed as individual buildings with separate units to be leased or sold. Should Lots 1 through 12 within the Subdivision be developed with condominiums, they shall be done so in accordance with the Yellowstone County Subdivision Regulation's procedures for platting.

XIII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be designed and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the State of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped,

record drawings, along with all required post-construction certification per Section 4.6.C of the Yellowstone County Subdivision Regulations.

(In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations.

XIV. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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.
- G.** Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

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

“SUBDIVIDER”

MAE Investments, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of *MAE Investments, LLC* who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

This agreement is hereby approved and accepted by Yellowstone County, this ____ day of _____, 20__.

“COUNTY”
COUNTY OF YELLOWSTONE
MONTANA

County of Yellowstone
Board of County Commissioners

By: _____
Chairman

Commissioner

Commissioner

Attest: _____
County Clerk and Recorder

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, _____, _____, and _____, known to me to be the Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

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 Rural Special Improvement Districts (RSID's), for a period of no more than twenty years from the recording of this waiver, which Yellowstone County may require.

This Waiver and Agreement is independent from all the 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 describe as follows:

Southern Sky Estates Subdivision

Signed and dated this ____ day of _____, 20__

MAE Investments, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of *MAE Investments, LLC* who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

FINDINGS OF FACT

The City-County Planning Division Staff has prepared the Findings of Fact for Southern Sky Estates Subdivision. These findings are based on the preliminary plat application and supplemental documents addressing 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 and 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 vacant land that is not used for crop production or any current residential purposes. There are no water rights or shares for water to the proposed lots. This proposed subdivision will have minimal impact on water users' facilities. BBWA Creek runs along the south-east facing property line.

2. Effect on local services

a. **Water and Septic** – The applicant is proposing to have individual wells and/or cisterns for each lot in this proposed subdivision. The systems will meet the standards set forth in Section 4.9 YCSR, Montana Administrative Rules, Title 17, Chapter 36. They will be required to receive MDEQ and DNRC approval for any water system prior to final plat. **(Condition #1)**

The applicant is proposing to have septic systems for each lot in this proposed subdivision. The systems will meet the standards set forth in Section 4.8 YCSR, Montana Administrative Rules, Title 17, Chapter 36. They will be required to receive MDEQ approval for any septic systems prior to final plat. **(Condition #1)**

The maintenance and operation of water and septic systems will be the responsibility of the property owners.

b. **Streets and roads** – The proposed subdivision will be building several roads. All internal streets within Southern Sky Estates Subdivision are public roadways and will have a minimum right-of-way width of 60 feet. Pureview Lane is classified as a collector road, for which 80 feet of right-of-way is dedicated. Additionally, Southern Sky Lane south of its intersection with Pureview Lane is also dedicated as a collector road with an 80-foot right-of-way width. An additional 30 feet of right-of-way has been dedicated adjacent to the property on the north side (Danford Road) as part of Southern Sky Estates Subdivision providing a total right-of way width of 90 feet. **(Condition #3)**

c. **Fire and Police services** – The property is within Laurel Fire Department jurisdiction. The applicant will be building a 30,000 gallon underground dry hydrant system, which shall be reviewed and approved by the Laurel Fire Department prior to construction. Tank and dry hydrant are to be inspected, acceptance tested, and approved

by the LAUREL FIRE DEPARTMENT prior to any building construction occurring on the lots served by the system. The tank and dry hydrant require the formation of a new RSID for maintenance thereof. The new RSID will consist of all proposed lots within the Subdivision. (**Conditions #2**)

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** – Storm water drainage for new lots shall satisfy Section 4.7, Yellowstone County Subdivision Regulations and the requirements of MDEQ.

f. **School facilities** – The proposed subdivision is located within School District #2. Canyon Creek and West High School. No comment has been received from the School district o probable impacts at the time of this report.

g. **Parks and recreation** – This proposed subdivision is required to provide parkland. Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Per 10.2(A) of the Yellowstone County Subdivision Regulations, a minimum of 2.86 acres of parkland will be required, with 4.31 acres proposed. This parkland will be private to the subdivision and maintained by a Subdivision HOA.

h. **Postal Service** – The proposed lots are large and may or may not be subdivided in the future. Future lot owners will coordinate with the USPS to determine what type of box is to be used and for its location to ensure safety for the mail delivery person. (**Condition #4**)

i. **Historic features** – No known historic or cultural assets exist on the site.

j. **Phasing of Development** - The applicant is not proposing to develop this subdivision in phases.

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. Prior to final plat approval, the applicant will apply for and obtain a weed management plan with the County Weed Department. That plan will be submitted with final plat approval. (**Condition #5**)

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. A paragraph in the 'Conditions that Run with the Land' section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential

landscaping.

5. Effects on public health and safety

Plans and designs for the water and septic system will be reviewed and approved by MDEQ prior to final plat approval to ensure public health and safety.

Fire and emergency services are provided for this proposed subdivision from Laurel Fire Department and the Yellowstone County Sheriff's department. See section 2.C for specific provisions of fire protection service.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603 MCA) (Chapter 9, YCSR)

An environmental assessment was required and provided for this subdivision according to Yellowstone County Subdivision Regulations, Section 9.2.A, the proposed subdivision is a Major Subdivision. The Environmental Impact Analysis indicated there are no significant environmental impacts created from this proposal.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. Yellowstone County - 2008 Growth Policy

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

- Goal: Controlled weed populations. (p. 9)

The developer shall complete a weed management plan and shall provide a re-vegetation plan for any ground disturbed by development.

2. 2018 Billings Urban Area Long Range Transportation Plan

This subdivision is within the 2018 Billings Urban Area Long Range Transportation Plan. The proposed Pureview road is designated as a collector road in the Billings Urban Area Long Range Transportation Plan.

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

There is a proposed long-range bike lane on Danford Road in the BBTMP; however there is no trail or bike lane proposed within the Subdivision.

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

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

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

The subdivider must meet the requirements the Yellowstone City-County Health Department prior to final approval. MDEQ requirements apply to all lots that are less than 20 acres in size.

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

The proposed subdivision is outside the zoning jurisdictional boundary.

Lots 13 through 29 of the Subdivision, inclusive, are intended to be developed with commercial condominiums. Only these lots shall be able to be developed as individual buildings with separate units to be leased or sold. Should Lots 1 through 12 within the Subdivision be developed with commercial condominiums, they shall be done so in accordance with the Yellowstone County Subdivision Regulation's procedures for platting.

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

Utilities will be located within the public right-of-way and utility easements shown on the plat. Should the private utility companies require additional easements and hookups the applicant will be required to coordinate the easements needed with the private utility companies.

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

Access to Southern Sky Estates Subdivision shall be provided by two primary access points off Danford Road. A 60-foot minimum right-of-way shall be dedicated to the public by Subdivider for all internal streets unless otherwise called for (Southern Sky Lane and Pureview Lane). No Access strips shall be provided along the frontages of Danford Road with exception to the primary access points depicted on the Plat.

CONCLUSIONS OF FINDINGS OF FACT

- This 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, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

RECOMMENDATION

The Planning Division recommends the Planning Board recommends the Board of County Commissioners conditionally approve the preliminary plat of Southern Sky Estates Subdivision and adopt the Findings of Fact as presented in the staff report.

Planning Board

Date: 04/12/2022
Title: Lipp Subdivision, 2nd Filing - Preliminary Major Plat
Presented by: David Green
Department: Planning & Community Services
Presentation: Yes

Information

RECOMMENDATION

Staff proposes the Planning Board recommend to the Board of County Commissioners the preliminary plat of Lipp Subdivision, 2nd Filing be conditionally approval, the Findings of Fact as presented in the staff report be adopted and the variance request be denied.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2022, Blueline Engineering, agent for Jerry Brey, applied for preliminary major plat approval for Lipp Subdivision, 2nd Filing. The proposed subdivision creates 13 lots for Commercial development. The subject property is generally located on the southwest corner of 88th Street West and Lipp Road. This parcel of land is outside of zoning and is surrounded by various uses that include commercial, residential and farming. The Planning Board will review the plat at this meeting and a conduct a public hearing on April 26, 2022.

VARIANCES REQUESTED

The applicant has requested a variance from Section 4.14.C.2. of the Yellowstone County Subdivision Regulations, which outlines the requirement for a 30,000-gallon dry hydrant in a major subdivision. The specific request is to use an existing nearby hydrant in the Brey Subdivision rather than installing one for this development. Staff is recommending denial of the variance request. Further explanation and analysis can be found in Attachment A. If the variance is denied, the Subdivision Improvement Agreement will be required to update Section I. Variances.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To protect public health and safety, prior to final plat approval, the applicant will receive approval from the MDEQ for the proposed water systems, septic systems and the proposed storm water management. Further, to ensure future lot owners are aware of the water and sanitary restrictions on some lots, the SIA, under Conditions That Run With the Land shall include language to inform lot purchasers of these restrictions.
2. To protect public health and safety and provide for future road maintenance, prior to final plat approval, the applicant will obtain access permits from MDT. They will create an RSID for the new public roads within the subdivision with the ability to expand with each new phase.
3. To protect public health and safety with proper fire suppression, prior to final plat approval, the applicant will submit construction drawings of the dry hydrant system to Laurel Fire Department for review and approval. Once installed the applicant will request Laurel Fire Department to test the system to ensure it works correctly and get a sign off from Laurel Fire Department. The applicant will also create an RSID for the dry hydrant system that is expandable with each new phase.
4. To minimize the effects on local service, prior to final plat approval, the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.
5. To minimize effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be completed by the County Weed Department.
6. 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.
7. 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.

PROCEDURAL HISTORY

- Pre-application meeting February 10, 2022
- Preliminary plat application submitted to Planning Division on March 1, 2022
- Departmental review meeting March 17, 2022
- Preliminary plat resubmittal March 24, 2022
- Planning Board plat review April 12, 2022
- Planning Board public hearing April 26, 2022

- Preliminary plat to Board of County Commissioners May 17, 2022
- 60 working-day preliminary plat review period ends May 23, 2022

PLAT INFORMATION

General location: South of Lipp Road and west of 88th Street West

Legal Description: Section 10, Township 01 South, Range 24 East, N2NE, including Lipp Subdivision 1st Filing

Owner/Subdivider: Jerry Brey

Engineer and Surveyor: Blueline Engineering

Existing Zoning: Outside zoning

Existing land use: Vacant grazing land

Proposed land use: Commercial

Gross and Net area: 75.549 acres 73.093 acres

Proposed number of lots: 13

Lot size: Max: 41.875 acres
Min.: 0.862 acres

Parkland requirements: No parkland dedication is required with a subdivision that is proposed to have only commercial uses, Section 10.8 C. YCSR.

STAKEHOLDERS

There are no stakeholder responses at this time. Stakeholder input will be received at a public hearing scheduled for this subdivision on April 26, 2022.

ALTERNATIVES

In accordance with state law, the Board of County Commissioners has 60 working days to act upon this major preliminary plan. The 60 working day review period for the proposed subdivision ends on May 23, 2022. State and County subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The County may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 working day review period, the Board of County Commissioners is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plan

FISCAL EFFECTS

This plat will have no fiscal impacts on the City/County Planning Division.

SUMMARY

One of the purposes of the County's subdivision review process is to identify potential negative effects of property being subdivided. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various County departments, private service/utility providers and the affected school district(s), have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be some impacts from this proposed subdivision.

Attachments

- Findings of Fact
- Proposed Plat
- SIA Draft
- Attachment A, Variance

FINDINGS OF FACT

The City-County Planning Division Staff has prepared the Findings of Fact for Lipp Subdivision, 2nd Filing. These findings are based on the preliminary plat application and supplemental documents addressing 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 and 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 grazing / fallow purposes. Historically it has been irrigated from the Cove Ditch. There are no water rights or shares that will be available for the future property owners in this subdivision. Any surrounding ditches will be left in place with access to them for maintenance purposes. This proposed subdivision will have minimal impact on water users' facilities.

2. Effect on local services

a. **Water** – The applicant is proposing this subdivision will have individual cisterns for each lot. They will be installed meeting the requirements outlined in Section 4.9 of the Yellowstone County Subdivision Regulations and the DEQ. The operation and maintenance of the cistern will be the responsibility of the lot owner to maintain.

b. **Septic** - The applicant is proposing each lot will have its own septic system. They will be built in compliance with the requirements outlined in Section 4.8 of the Yellowstone County Subdivision Regulations and the DEQ. Each system will be maintained by the individual lot owner.

Both the proposed water and septic systems will be reviewed and approved by MDEQ with a copy of the approval provided with the final plat. **(Condition #1)**

All private utilities, power, telephone, gas and cable television, if available to the subdivision will be installed in the public right of way or easements identified on the plat.

c. **Streets and roads** – Roads within the subdivision will be built in 60-foot-wide right of ways with a 24-foot paved surface and 2-foot-wide shoulders on each side. Drainage ditches will be installed along the sides as required by MDEQ for stormwater management. Arnie Avenue and 89th Street West are classified as local streets. Lipp Road and 88th Street West, south of Lipp Road, are state controlled roads. The applicant will be required to obtain access permits from the state for Arnie Avenue. There is already an access for 89th Street West. The applicant will be required to create an RSID for maintenance of roads within the subdivision. **(Condition #2)**

Lot 1 still have three businesses on it. The applicant is proposing to provide access to the east side of the lot with a 30-foot-wide access easement. The building on the north west side of the lot will have access of 89th Street West.

d. **Fire and Police services** – The property is within the Laurel Fire Department firefighting area. Subdivision regulations require that major subdivisions have a 30,000-gallon dry hydrant system for the subdivision. There is a 20,000-gallon dry hydrant located in the subdivision north of this proposed subdivision in Brey Subdivision. The applicant has submitted a variance request to use this dry hydrant for the Lipp Subdivision 2nd Filing. Laurel Fire Department sent comment concerning the use of the 20,000-gallon tank in Brey Subdivision, it is in Molt Fire Department jurisdiction. Laurel does not have any way of checking it to ensure it functions or funds to maintain or repair it if needs maintenance or repair. It is recommended to require the applicant install a 30,000-gallon tank with this filing of Lipp Subdivision, built to Laurel Fire Department standards. **(Condition #3)**

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

e. **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.

f. **Storm water drainage** – Proposed Storm water drainage shall be submitted to the MDEQ for review and approval prior to final plat. All proposed stormwater systems shall meet the requirements of Section 4.7 of Yellowstone County Subdivision Regulation's and the requirements of MDEQ. **(Condition #1)**

g. **School facilities** – The proposed subdivision is located within Elder Grove School District for K through 8. West High School will provide education for students in 9 through 12, School Districts #2. Elder Grove has additional capacity for students, West High School is currently over capacity.

h. **Parks and recreation** – This proposed subdivision is not required to provide parkland. Commercial subdivisions are not required to provide parkland. YCSR Section 10.8 C.

i. **Postal Service** – The applicant will coordinate with the USPS to provide areas for Central Box Units for the subdivision and enough area for the postal delivery person to safely deliver the mail. **(Condition #4)**

j. **Historic features** – No known historic or cultural assets exist on the site.

k. **Phasing of Development** - The applicant is not proposing to develop this subdivision in phases.

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. As required by County Subdivision Regulations Section 4.15 all county subdivisions are required to apply for and obtain a weed management plan with the County Weed Department. That plan will be submitted with final plat approval. **(Condition #5)**

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. A paragraph in the 'Conditions that Run with the Land' section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential landscaping.

5. Effects on public health and safety

Plans and designs for the water and septic system will be reviewed and approved by MDEQ prior to final plat approval to ensure public health and safety.

Fire and emergency services are provided for this proposed subdivision from Laurel Fire Department and the Yellowstone County Sheriff's department.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603 MCA) (Chapter 9, YCSR)

An environmental assessment was required for this subdivision. Because the current use of the land is for farming / grazing purposes the natural habitat has been disrupted long ago. There are no known endangered species on the land. Impact to habitat should be minimal.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. Yellowstone County - 2008 Growth Policy

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

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

There is existing commercial development on the land and there are lots across Lipp Road that are developed as commercial uses and along 88th Street West north of this subdivision.

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

This proposal is consistent with the type of development in the surrounding area.

- Goal: Controlled weed populations. (p. 9)

The developer shall complete a weed management plan and shall provide a re-vegetation plan as required by County Subdivision Regulations.

2. 2018 Billings Urban Area Long Range Transportation Plan

The subject property maintains the road study area of the Transportation Plan. As proposed, the internal streets are neighborhood streets associated with this subdivision.

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

This subdivision is outside the BABTMP boundaries for trails. They will not be required to build any trail as part of the development.

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

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

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

The subdivider must receive approval from the MDEQ prior to final approval. New parcels, without existing septic systems, are subject to MDEQ review.

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

The proposed subdivision is outside County Zoning Jurisdiction. There are no Yellowstone County zoning regulations on the subject property.

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

Should the private utility companies require easements the applicant will be required to coordinate the easements needed with the private utility companies.

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

Legal and physical access will be provided for the new proposed lots from South 64th Street West and the proposed internal streets to each lot.

CONCLUSIONS OF FINDINGS OF FACT

- This 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, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.

- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

RECOMMENDATION

The Planning Division recommends conditional approval of Lipp Subdivision, 2nd Filing preliminary plat to the Planning Board and adopt the Findings of Fact as presented in the staff report, the SIA, Waiver and denial of the variance. The Planning Board recommendation will be forwarded to the Board of County Commissioners.

Return to:
BlueLine Engineering LLC
321 S 24th St W, Suite 3
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT
Lipp Subdivision, 2nd Filing
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(Yellowstone County)

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SUBDIVISION IMPROVEMENTS AGREEMENT

Lipp Subdivision, 2nd Filing

This agreement is made and entered into this ____ day of _____, 2022, by and between Jerry L. Brey, whose address for the purpose of this agreement is **8905 Lipp Road; Billings, MT 59106**, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Lipp Subdivision, 2nd Filing*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2022, the Board of Planning recommended conditional approval of a preliminary plat of *Lipp Subdivision, 2nd Filing*, and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2022, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Lipp Subdivision, 2nd Filing*, and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to *Lipp Subdivision, 2nd Filing*, upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, 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.** A variance has been requested from the conditions of Section 4.14, C, 2 of the Yellowstone County Subdivision Regulations. The minimum 30,000 gallon underground storage tank requirements will be waived for Lipp Subdivision, 2nd Filing. There is an existing 20,000 gallon tank to the north in Brey Subdivision. Future Filings of Lipp Subdivision will be required to install storage tanks at the time of subdivision and will follow regulation in place at that time.

II. CONDITIONS THAT RUN WITH THE LAND

- A.** 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.
- B.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- C.** No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- D.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference 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 filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- E.** Culverts and associated drainage swales shall not be filled in or altered by the Subdivider or subsequent lot owners.
- F.** When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way at no cost to the County and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- G.** Future maintenance of all public improvements shall be done through an RSID created as part of this subdivision.
- H.** Lot owners or their agent will obtain an Access Permit from County Public Works prior to any construction on any lot within the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or

their agent removing what has been installed and location the access in an approved location at the owners expense.

III. TRANSPORTATION

The Subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

A. Streets

1. The subdivision will connect to Lipp Road and S 89th Street West, which are classified as Rural Principal Arterials.
2. All roads within the subdivision shall be built to grade with a satisfactory subbase, base course and asphalt surface. The design cross-section shall be a 24-foot asphalt width street with 2-foot wide gravel shoulders. An RSID will be created for future maintenance of all public (or common) constructed improvements prior to final plat approval.
3. All internal roads shall have 60-foot wide dedications.

B. Traffic Control Devices

1. Street name and stop signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the Yellowstone County Public Works Departments. A stop sign will be placed at the intersection of Arnie Avenue and South 88th Street West and at Lipp Road and South 89th Street West.
2. No traffic signals are anticipated within this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the Yellowstone County Public Works Department.

C. Access

Access to the subdivision is provided from the internal, Public Roads, South 89th Street West and Arnie Avenue, and all new lots will be accessed from those internal streets. A 1-foot wide No Access Strip has been shown on the plat along Lipp Road and South 88th Street West and at the intersection of South 89th St West with Arnie Avenue. Lot 1, Block 2 has one approach to service the three buildings. An access easement has been provided detailing use and maintenance of the common driveway.

D. Billings Area Bikeways & Trail Master Plan (BABTMP)

This subdivision is outside of the BABTMP. No lane striping is proposed at this time.

IV. EMERGENCY SERVICE

Fire protection will be provided by the Laurel City Fire Department. An existing 20,000-gallon water storage tank/dry hydrant can be found to the north in Brey Subdivision north of Lot 1, Block 3. The dry hydrant system was installed by a previous project and was inspected and approved by the Laurel Fire Department. Maintenance of the dry hydrant is provided by the Brey Subdivision Homeowner's Association. Proportional reimbursement for the joint use of a dry hydrant system will be provided. The proportional reimbursement shall be determined based on the ratio of the number of lots in the subsequent subdivision to the total lots served by the fill site multiplied by the total cost of the water supply improvement. No further improvements are required at this time. Future filings of Lipp Subdivision will be subject to the Yellowstone County Subdivision Regulations in place at that time.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by the Montana Department of Environmental Quality (MDEQ), or its designee.

VI. UTILITIES

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by the MDEQ, or its designee.

Individual cisterns will be permitted for all lots within the subdivision.

B. Septic System

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, all proposed sanitary sewer systems must obtain approval by the MDEQ, or its designee.

The proposed septic systems are all individual systems. An approval letter from the MDEQ will be submitted with the final plat. There is an existing approval for the septic system on Lot 1, Block 2.

C. Power, Telephone, Gas, and Cable Television

The private utilities shall be installed within the provided easements. 8-foot wide utility easements have been shown on the plat adjacent to all streets within the subdivision per the request of the utility companies.

VII. PARKS/OPEN SPACE

According to 76-3-621(3)(a-e) MCA there is no parkland requirement for this subdivision as all of the lots are non-residential.

VIII. IRRIGATION

Cove Ditch is located generally to the northwest of the proposed subdivision. The property was historically irrigated using this water. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners unless otherwise noted herein. No water rights will be transferred to the lot owners. All water shares associated with the property will be held by the Subdivider.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.
- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

X. SOILS/GEOTECHNICAL STUDY

A geotechnical study is not required for the subdivision.

XI. CONDOMINIUM AND TOWNHOMES

The approval of this subdivision of land expressly contemplated the construction of condominiums, townhomes, or townhouses.

- XII.** Lot 1, Block 2 of this subdivision has been created with this intent. A Declaration of Unit Ownership will be filed with the Clerk and Recorder. Other Lots within the subdivision will have the ability to complete a Condominium in the future. **FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. 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 designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the state of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

(In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations. If using a security, describe the method in this section)

XIII. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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 in 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.

- G.** Subdivider agrees to create any required RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

Attachment A

Staff Analysis and Recommendation

County Planning, County Public Works, County Legal staff and Laurel Fire Department have reviewed the request for a variance from Yellowstone County Subdivision Regulations Section 4.14.C. 2, Major, Commercial, and Subsequent Minor Subdivision. The subdivider shall provide a minimum of one of the following mechanisms for fire suppression. An approved, single, minimum thirty thousand (30,000) gallon underground water storage tank for fire suppression.

The variance request is for this subdivision to use a 20,000-gallon dry hydrant system in the Brey Subdivision to the north.

Laurel Fire Department has stated they are not supportive of the variance. The dry hydrant in the Brey Subdivision to the north is within the Molt Fire Department jurisdiction and the Laurel Fire Department has no control over its functioning and maintenance.

This is the comment from Laurel Fire Department received by the Planning Department:

A little more insight and concern is that the dry hydrant located on the north side of Lipp Road is in Molt Fire Department area. Not Laurel's. Therefore, they are the ones who regulate the agreements and requirements for that hydrant. My understanding is the plan for the second phase of the new subdivision was to install the 30,000-gallon dry hydrant. We would like to see that included in the first phase with our direction and standards applied.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance would present the issue of Laurel Fire Department using a dry hydrant tank in Molt Fire Departments district with no control on the functioning and maintenance of the tank. This would leave the Laurel Fire Department with unknowns, not knowing if the tank functions properly and not way to obtain funds to make repairs on the tank. In this scenario, Laurel Fire Department may respond to a fire and not have access to water to fight the fire.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There are no surrounding physical conditions that would result in an undue hardship to the developer.

3. The variance will not result in an increase in taxpayer burden.

The variance will not increase taxpayer burden.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

Approval of this variance will not place this subdivision in nonconformance of adopted zoning regulations or the growth policy. This subdivision is outside of the Yellowstone County Zoned area.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The alternate option for the required 30,000-gallon dry hydrant system is the use of a 20,000-gallon dry hydrant system in the subdivision north of Lipp Road. That dry hydrant tank is in the Molt Fire Department jurisdiction. Laurel is not able to maintain it or test to see if it functions for fire suppression. With those unknowns Laurel Fire Department requires a 30,000-gallon dry hydrant tank within the proposed subdivision built to the Laurel Fire Departments specifications.

Therefore, staff is recommending denial of the proposed variance and recommends that the Planning Board recommend denial to the Board of County Commissioners.

Applicant Variance Request

A. Request for Variance of Section 4.14.C.2 of Yellowstone County Subdivision Regulations

Major, Commercial, and Subsequent Minor Subdivisions. The subdivider shall provide a minimum of one of the following mechanisms for fire suppression: An approved, single, minimum thirty thousand (30,000) gallon underground water storage tank with approved dry hydrant type fittings located not more than one-half (1/2) road mile from the furthest structure in the subdivision. If an approved existing underground water storage tank is located within one-half (1/2) road mile from the furthest structure of the proposed subdivision, it may be used to meet this requirement. In either case, the dry hydrant shall be constructed to the standards set forth by this Section,”

The variance is to lower the minimum 30,000-gallon underground storage tank to 20,000 gallons. There exists a 20,000-gallon dry hydrant tank in Brey Subdivision directly north owned by the developer.

1. The granting of this variance will not create public health, safety, or general welfare concerns nor will it be injurious to adjoining properties. This phase of subdivision will add only 15 small commercial lots for rent. The next filing of Lipp Subdivision will trigger the installation of a new 30,000-gallon dry hydrant tank, following subdivision regulations.
2. It would be a hardship to require the construction of the 30,000- gallon dry hydrant tank at this time when only a third of the total eventual lots within Lipp Subdivision are being created, while a 20,000-gallon tank exists across the street.
3. There will be no increased burden on taxpayers from this variance. The tank we request to utilize already exists.
4. The variance will not result in nonconformance to zoning. The whole subdivision is outside of zoning jurisdiction.
5. The existing dry hydrant tank will provide fire suppression.

Planning Board

Date: 04/12/2022
Title: Creekside Estates Subdivision, 2nd Filing - Preliminary Major Plat
Presented by: David Green
Department: Planning & Community Services
Presentation: Yes

Information

RECOMMENDATION

Staff recommends the Board of County Commissioners conditionally approve the preliminary plat of Creekside Estates Subdivision, adopt the Findings of Fact as presented in the staff report and approve the requested variance.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2022, the Planning Division received an application for major preliminary plat approval for the proposed Creekside Estates Subdivision, 2nd Filing. The property is generally located on the northeast corner of the intersection of Grand Avenue and 62nd Street West. This subdivision would create 8 lots from a 17.55-acre parcel of land. The applicant is proposing to develop a residential subdivision, the land is zoned Rural Residential 1 (RR1). The land was historically used as farmland.

VARIANCES REQUESTED

A variance is being requested for this subdivision. The applicant has requested a variance from Yellowstone County Subdivision Regulations Section 4.14.C. 2, Major, Commercial, and Subsequent Minor Subdivision. The regulations require that the subdivider shall provide an approved, single, minimum thirty thousand (30,000) gallon underground water storage tank for fire suppression. Per the regulations, developers are able to use tanks located within 1/2 road mile. When a County subdivision is within one half (1/2) road mile of a pressurized municipal hydrant the developer shall pay a fee in lieu of hydrant installation to the Fire Department serving the proposed subdivision. This development is further than 1/2 road mile, it is .58 road miles, therefore the variance is requesting that the distance of 1/2 road mile be waived to allow use of the pressurized hydrant .58 miles away. If the variance is approved the required fee to the Billings Fire Department shall be paid. Staff is recommending approval of the variance requests. Further explanation and analysis can be found in Attachment A.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To protect public health and safety, prior to final plat approval, the applicant will receive approval from the MDEQ for the proposed water systems, septic systems and the proposed storm water management. Further, to ensure future lot owners are aware of the water and sanitary restrictions on lots 7 & 8, the SIA, under Conditions That Run With the Land shall include language to inform lot purchasers of these restrictions.
2. To protect public health and safety and meet County Public Works requirements for driveway separations, prior to final plat approval, the applicant will show they can meet those requirements for accesses from the cul-de-sac off of Grand Avenue.
3. To ensure the correct users on the private driveways proposed in this subdivision, prior to final plat approval, the applicant will provide easement documents listing the two lots that have use of those easements.
4. To protect public health and safety with proper fire suppression, prior to final plat approval, the applicant will submit construction drawings to Billings Fire Department for review and approval, this includes the area for the fire departments to access the tank and the tank construction. Once installed the applicant will request Billings Fire Department test the system to ensure it works correctly and get a sign off from Billings Fire Department. The applicant will also create a public easement where the tank is installed and an RSID for the dry hydrant system.
5. To protect public health and safety and to meet Yellowstone County Resolution No. 19-53, prior to final plat approval, should the variance request be granted, the applicant will provide a reimbursement to the county for the use of a municipal pressurized fire hydrant.
6. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.
7. To minimize effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be completed by the County Weed Department.
8. To ensure future home construction on the lots meets the requirements of County Zoning, prior to final plat approval the applicant will add language in the SIA under Conditions That Run With The Land that informs lot purchasers of the requirement to obtain a zoning compliance permit before construction begins on the lot.
9. 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.

10. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, including laws regarding moving houses onto or off the property, and the laws and Administrative Rules of the State of Montana.

PROCEDURAL HISTORY

- Pre-application meeting June 16, 2021
- Initial completeness review submitted November 11, 2021
- Subsequent completeness review submitted February 1, 2022
- Preliminary plat application submitted to Planning Division March 1, 2022
- Departmental review meeting March 17, 2022
- Preliminary plat resubmitted March 26, 2022
- Planning Board plat review April 12, 2022
- Planning Board public hearing April 26, 2022
- Preliminary plat to Yellowstone County Board of County Commissioners May 17, 2022
- 60 working-day preliminary plat review period ends May 23, 2022

PLAT INFORMATION

General location:	Northeast corner of the intersection of Grand Avenue and 62nd Street West
Legal Description:	Lot 104A, Sunnycove Fruit Farm
Owner/Subdivider:	John Poukish
Engineer/Surveyor:	IMEG / Territorial-Landworks, Inc.
Existing Zoning:	Rural Residential 1 (RR1)
Existing land use:	Former Farmland
Proposed land use:	Residential
Gross and Net area:	17.55 acres / 16.99 acres
Proposed number of lots:	8
Max. lot size:	3.59 acres
Min. lot size:	1.17 acres
Parkland requirements:	The requirement for this subdivision is 0.68 acres. The applicant is proposing a private park of 1.6 acres, maintained by the HOA.

STAKEHOLDERS

There are no stakeholder responses at this time. Stakeholder input will be received at a public hearing scheduled for this subdivision on April 26, 2022.

ALTERNATIVES

In accordance with state law, the Board of County Commissioners has 60 working days to act upon this major preliminary plan. The 60 working day review period for the proposed subdivision ends on May 23, 2022. State and County subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The County may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 working day review period, the Board of County Commissioners is required to:

1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plan

FISCAL EFFECTS

This plat will have no fiscal impacts on the City/County Planning Division.

SUMMARY

One of the purposes of the County's subdivision review process is to identify potential negative effects of property being subdivided. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various County departments, private service/utility providers and the affected school district(s), have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be some impacts from this proposed subdivision.

Attachments

Findings of Fact

Proposed Plat

SIA Draft

Attachment A, Variance

FINDINGS OF FACT

The City-County Planning Division Staff has prepared the Findings of Fact for Creekside Estates Subdivision, 2nd Filing. These findings are based on the preliminary plat application and supplemental documents addressing 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 and 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 was used for agricultural purposes. The Birely Drain is along the west edge of the proposed subdivision. In the SIA under the heading Irrigation, it states no water rights or shares are being transferred to the property owners within the proposed subdivision. In the SIA under Conditions that run with the land it states perimeter ditches and drains shall remain in place and shall not be altered by the subdivider or subsequent owners.

2. Effect on local services

a. **Water and Septic** – This subdivision will be served by individual wells located on each lot, with the exception of Lots 7 and 8. Lots 7 and 8 will have sanitary restrictions on them and will not be part of the DEQ COSA with the rest of the lots. The proposed water system will be in accordance with Section 4.9 of the Yellowstone County Subdivision Regulations and will need to be reviewed and approved by MDEQ. The applicant will provide a copy of the MDEQ approval for the water system at the time of final plat. **(Condition #1)** The maintenance and operation of each well will be the responsibility of the lot owner.

Each lot is proposed will have a septic system on the lot within the proposed subdivision, with the exception of Lots 7 and 8. Lots 7 and 8 will have sanitary restrictions on them and will not be part of the DEQ COSA with the rest of the lots. The proposed septic systems be in accordance with Section 4.9 of the Yellowstone County Subdivision Regulations and will be reviewed and approved by MDEQ. The applicant will provide a copy of the MDEQ approval for the septic systems at the time of final plat. **(Condition #1)** The maintenance and operation of each septic system will be the responsibility of the lot owner.

b. **Streets and roads** – There will be a new short dedicated cul-de-sac off Grand Avenue for access to lots 5 through 8. From the cul-de-sac there will be a shared driveway that provides access to lots 5 and 6. Lots 7 and 8 will take access directly off the proposed cul-de-sac. The applicant will be required to meet the regulations that outline the minimum distance between driveways allowed from a cul-de-sac. **(Condition #2)** Lots 1 through 4 will take access off Creek Crossing Road on the north end of the subdivision. Lots 3 and 4 will share a driveway from Creek Crossing Road. Lots 1 and 2

will take access directly from Creek Crossing Road. The applicant needs to show the driveways easements and provide easement documents and the two lots that have use of those easements. **(Condition #3)**

c. **Fire and Police services** – The property is within the Billings Urban Service Area (BUFSA). The developer has asked for a variance from the requirement as there is a pressurized hydrant just over ½ road mile at 60 Street West. A major subdivision is required by subdivision regulations to provide a 30,000-gallon dry hydrant system, unless there is a pressurized system within ½ road mile or another 30,000-gallon tank within ½ road mile.

Should the variance request be denied the applicant will install a 30,000-gallon dry hydrant system. The plans shall be reviewed and approved by the Billings Fire Department before installation. Upon completion of the installation the applicant will have the Billings Fire Department test the system to ensure it functions properly. If it is functioning property the Billings Fire Department will provide a sign off stating the system works correctly. **(Condition #4)**

Should the variance be granted the applicant will submit the required cash contribution as outlined in Yellowstone County Resolution No. 19-53. The correct monetary amount to submit will be determined by the applicant and agent and verified by Billing Fire Department. **(Condition #5)**

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** – Storm water drainage shall satisfy Yellowstone County Storm Water Management requirements. A storm water plan shall be reviewed and approved by the MDEQ to ensure the proposed stormwater management will function satisfactorily. **(Condition #1)**

f. **School facilities** – The proposed subdivision is located within School District #2 boundaries. School District #2 will provide educational services for Elementary, Middle and High School students. Meadowlark for elementary, Ben Steele for middle and West for high school. School District #2 responded to the request for information indicating all three of the mentioned schools are over maximum capacity.

g. **Parks and recreation** – The parkland dedication requirement for this subdivision is 0.68 acres. The applicant is proposing a private park of 1.6 acres, maintained by the HOA.

h. **Postal Service** – The applicant will be required to coordinate the location of the central delivery box and provide enough space for the delivery vehicle to pull out of traffic for

safety. **(Condition #6)**

i. **Historic features** – No known historic or cultural assets exist on the site.

j. **Phasing of Development** - The applicant is not proposing to develop this subdivision in phases.

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. Prior to final plat approval, the applicant will apply for and obtain a weed management plan with the County Weed Department. That plan will be submitted with final plat approval. **(Condition #7)**

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. A paragraph in the ‘Conditions that Run with the Land’ section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential landscaping.

5. Effects on public health and safety

Plans and designs for the water and septic system will be reviewed and approved by MDEQ prior to final plat approval to ensure public health and safety.

Fire and emergency services are provided for this proposed subdivision from Billings Fire Department and the Yellowstone County Sheriff’s department.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603 MCA) (Chapter 9, YCSR)

An environmental assessment was not required for this subdivision pursuant Section 9.2 C of the County Subdivision Regulations.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. Yellowstone County - 2008 Growth Policy

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

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

The subdivision is consistent with the type of residential development in the surrounding area.

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

There is residential development east of the subject property and large lot development to the west and north.

- Goal: Controlled weed populations. (p. 9)

The developer shall complete a weed management plan, and shall provide a re-vegetation plan for any ground disturbed by development.

2. 2018 Urban Area Transportation Plan

The subject property maintains the road the study area of the Transportation Plan. As proposed, there is only one local street associated with this subdivision.

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

62nd Street West is identified as a Proposed Long-Range Bike Lane. This development will not be required to build part of the trail as part of the subdivision.

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

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

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

The subdivider must receive approval from the MDEQ prior to final approval. New parcels are subject to MDEQ review.

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

The proposed subdivision is within Rural Residential 1 zoning. Compliance with zoning will be confirmed with the zoning compliance permits the future homeowners will be required to submit prior to construction on the lots. This information will be included in the SIA under the heading Conditions that Run with the Land. **(Condition #8)**

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

Private utilities are to be installed in the public road rights-of-way and the access driveways. Should the private utility companies require additional easements the applicant will be required to coordinate the easements needed with the private utility companies.

H. Does the proposed subdivision provide for Legal and Physical Access to all lots?

[MCA 76-3-608 (3) (d) and Section 3.2 (H) (3) (c) (d), YCSR]

Legal and physical access will be provided for the new proposed lots from Grand Avenue and Creek Crossing Road. The internal access driveways will provide access to internal lots.

CONCLUSIONS OF FINDINGS OF FACT

- This 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, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

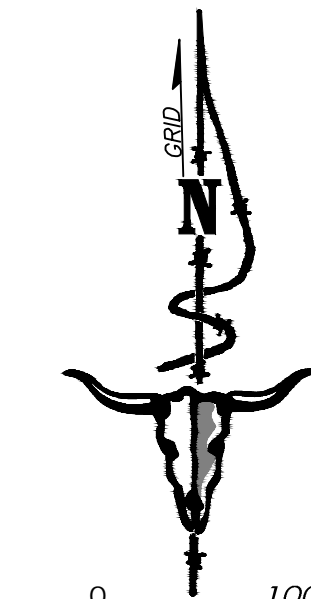
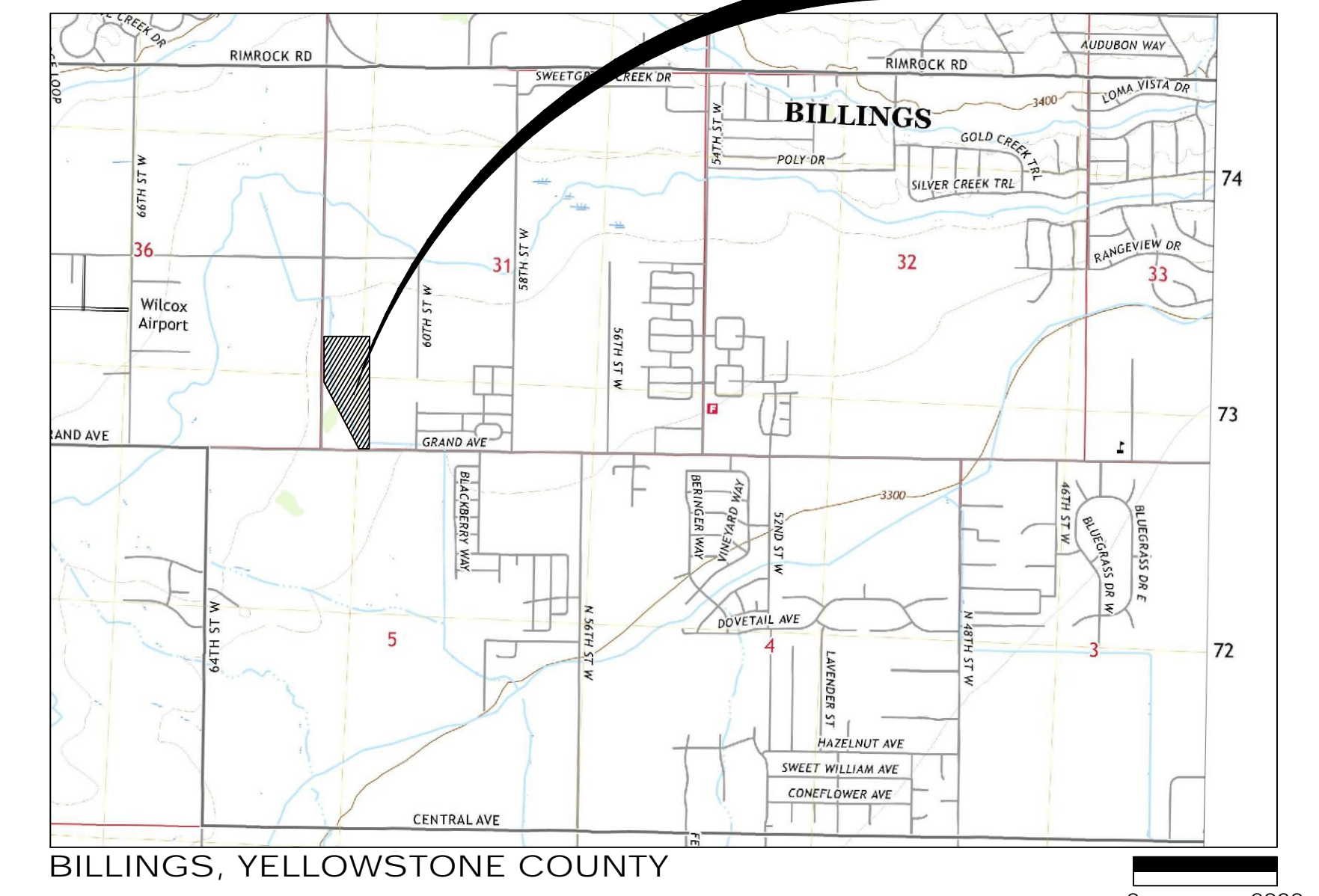
RECOMMENDATION

The Planning Division recommend conditional approval of the preliminary plat of Creekside Estates Subdivision, to the Planning Board, and adopt the Findings of Fact as presented in the staff report, the SIA and Waiver.

PRELIMINARY PLAT OF CREEKSIDE ESTATES SECOND FILING

LOCATED IN SW1/4 OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 25 EAST, P.M.M., YELLOWSTONE COUNTY, MONTANA

VICINITY MAP



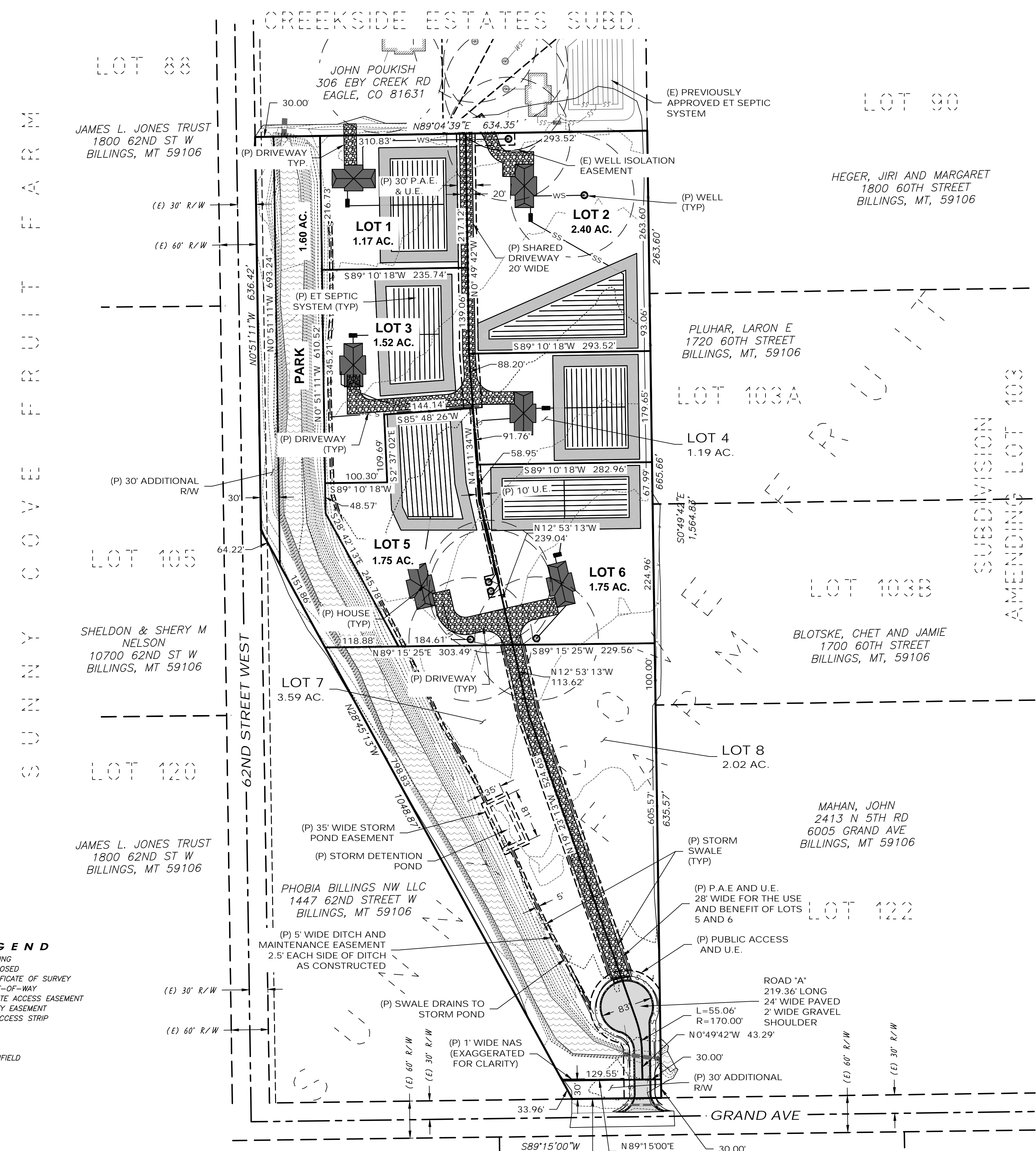
BASIS OF BEARING:
STATE PLANE MONTANA - ZONE 2500
GROUND (TRUE) DISTANCES

RECORD OWNER:
JOHN POUKISH

SUBDIVIDER:
JOHN POUKISH

DATE:
MARCH, 2022

TOTAL SUBDIVISION AREA:
17.55 ACRES (GROSS)



- LEGEND**
- (E) = EXISTING
 - (P) = PROPOSED
 - COS = CERTIFICATE OF SURVEY
 - R/W OR R.O.W. = RIGHT-OF-WAY
 - P.A.E. = PRIVATE ACCESS EASEMENT
 - U.E. = UTILITY EASEMENT
 - NAS = NO ACCESS STRIP
 - ⊙ = WELL
 - ⊠ = DRAINFIELD

NOTES
WATER AND SEWER FACILITIES ARE NOT PERMITTED ON LOTS 7 AND 8.

PERIMETER LEGAL DESCRIPTION
LOT 104A, AMENDED PLAT OF SUNNY COVE FRUIT FARM LOTS 89, 104, & 121, RECORDS OF YELLOWSTONE COUNTY, LOCATED IN THE SW1/4 OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 25 EAST, P.M.M., YELLOWSTONE COUNTY, MONTANA, CONTAINING 17.55 ACRES, MORE OR LESS.

1/4	SEC.	T.	R.
⊠	31	1N	25E

SITE DATA	
NUMBER OF LOTS	8
MAXIMUM LOT AREA	3.59 AC
MINIMUM LOT AREA	1.17 AC
AREA OF PARKLAND	1.60 AC
LINEAR FEET OF STREETS	219.36 FEET
NET ACREAGE	16.99 AC
GROSS ACREAGE	17.55 AC
EXISTING ZONING	N/A
PROPOSED ZONING	N/A
EXISTING LAND USE	RURAL RESIDENTIAL
PROPOSED LAND USE	RURAL RESIDENTIAL

**SHEET 1 OF 1
CREEKSIDE ESTATES SECOND FILING
(A SUBDIVISION OF YELLOWSTONE COUNTY)**

SUBDIVISION IMPROVEMENTS AGREEMENT

Creekside Estates , Second Filing

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Creekside Estates, Second Filing

This agreement is made and entered into this ___ day of _____, 20___, by and between *John Poukish.*, whose address for the purpose of this agreement is PO Box 2697 Avon, CO 81620, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, at a regular meeting conducted on ___ day of _____, 20___, the Board of Planning recommended conditional approval of a preliminary plat of *Creekside Estates, Second Filing*, and

WHEREAS, at a regular meeting conducted on ___ day of _____, 20___, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Creekside Estates, Second Filing*, and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to *Creekside Estates, Second Filing* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, 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. The subdivider is requesting a variance in order to pay the fire department \$30,000 for use of an existing pressurized fire hydrant approximately .58 miles away for fire suppression. This fire hydrant is located at the corner of 60th Street and Grand Avenue.

II. CONDITIONS THAT RUN WITH THE LAND

A. 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.

B. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.

C. No water rights have been transferred to the lot owners. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

- D. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference 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 filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- E. Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.
- F. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted in the West End Flood Study. Lot owners may consider building to floodplain standards.
- G. When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- H. Future maintenance of all public (or common) improvements shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.
- I. Lot owners or their agent will obtain an Access Permit from County Public Works prior to any construction on any lot within the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or their agent removing what has been installed and locating the access in an approved location at the lot owners expense.

III. TRANSPORTATION

The subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

A. Streets

The subdivision will use existing streets, Creek Crossing Road and Grand Avenue. The subdivision will construct one new public road. The proposed new road will be accessed off of Grand Avenue. The proposed road will be 24' of paved asphalt, 2' gravel shoulders, within a 60' right of way and have a cul-de-sac. The proposed road will be approximately 220' long with the cul-de-sac approximately 83' wide.

B. Traffic Control Devices

- The subdivision will have a stop sign where the proposed road meets Grand Avenue.

C. Access

- Access to Lots 1 and 2 will have individual driveways off of Creek Crossing Road.
- Access to Lots 3 and 4 will be through a shared driveway connected to Creek Crossing Road.
- Access to Lots 5 and 6 through a shared driveway connecting to proposed road which will connect to Grand Avenue.
- Access to Lots 7 and 8 will be from individual driveways off of proposed road .

D. Billings Area Bikeways and Trails Master Plan (BABTMP)

- The proposed subdivision is located within the BABTMP. The subdivision will offer no trail services. BABTMP does have a trail at the corner of Grand Avenue and 58th Street West.

IV. EMERGENCY SERVICE

This section should include, but not be limited to the following:

- All driveways are required to be built to emergency access standards. Driveways must be a minimum of 16 feet wide and an additional 2 feet wide cleared drivable vegetation on each side. Driveways exceeding 150 feet in length must provide a turnaround point or hammerhead for emergency vehicles.
- The subdivision will have access to a pressurized fire hydrant located at the corner of 60th Street and Grand Avenue.

V. STORM DRAINAGE

All drainage improvements will comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan will be submitted to and approved by MDEQ, or its designee.

- A stormwater retention pond and swales are displayed on the preliminary plat.

VI. UTILITIES

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations

- Lots 1 through 6 will have individual wells built in accordance with Yellowstone County standards and MDEQ standards.
- Lots 7 and 8 will not have water supply at this time. Restrictions for both lots will be implemented by DEQ. These lots will not be included within the DEQ COSA when issued.

B. Septic System

In accordance with Section 4.8 Yellowstone County Subdivision Regulations

- Lots 1 through 6 will have individual septic systems. These systems will be evapotranspiration septic systems that will be built to Yellowstone County standards and MDEQ standards.
- Lots 7 and 8 will not have sanitary services at this time. Restrictions for both lots will be implemented by DEQ. These lots will not be included within the DEQ COSA when issued.

C. Power, Telephone, Gas, and Cable Television

- Lots 1 through 4 will receive utilities within a 30' utility easement and private access easement. This easement runs south from Creek Crossing Road.
- Lots 5 and 6 have the ability to receive utilities via an extension of the utility

easement for Lots 1 through 4. The utility easement from Lots 1 through 4 is extended via a 10' easement into Lots 5 and 6. Lots 5 and 6 also have a private access and utility easement that is an extension of Road A.

- Lots 7 and 8 are not proposed to be developed at this time.

VII. PARKS/OPEN SPACE

A private park is proposed on the western boundary of the subdivision. The park will be maintained by the homeowners association. The park is approximately 1.60 acres in size, which meets the parkland requirement of .68 acres.

VIII. IRRIGATION

Birely Ditch is located within the proposed private park. Birely Ditch has statutory easement rights to be accessed and maintained 25' on either side of the ditch. These rights will be preserved by this subdivision.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

The weed plan shall include the following and shall be referenced in this SIA:

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.
- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study was not required but owners of the lots are encouraged to perform site-specific geotechnical investigation that is specific to the type of structure contemplated prior to construction.

XI. PHASING OF IMPROVEMENTS

Creekside Estates, Second Filing proposes that all 8 lots be developed in a single phase.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the state of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped,

record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations. If using a security, describe the method in this section.

XIII. LEGAL PROVISIONS

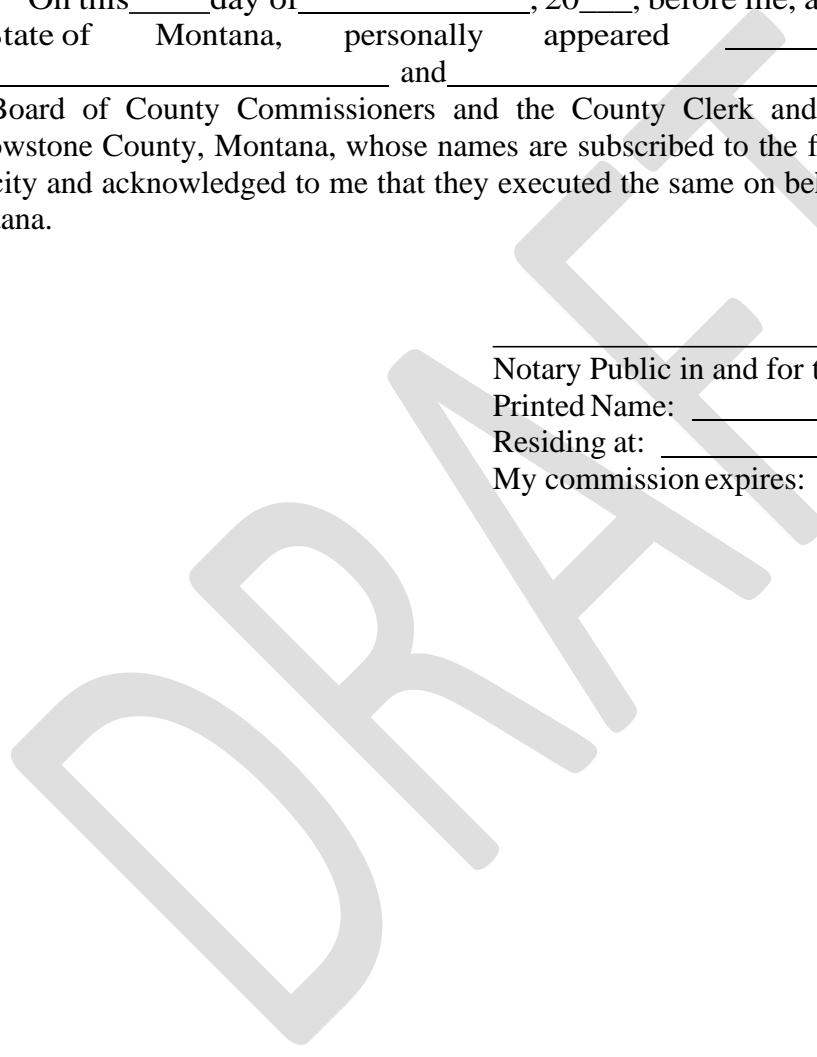
- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions 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.
- G. Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

Attest: _____
County Clerk and Recorder

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

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



IRREVOCABLE STANDBY LETTER OF
CREDIT

DATE: _____

BENEFICIARY:
Yellowstone County
Billings, MT 59101

APPLICANT: John Poukish.
PO Box 2697 Avon, CO 81620

LETTER OF CREDIT NO. _____

EXPIRATION DATE: _____

AT: OUR COUNTERS PRESENTLY LOCATED AT
Lender's address here

AMOUNT: US\$ _____
NOT EXCEEDING: -US- spell out Dollars-

We hereby issue our Irrevocable Standby Letter of Credit available by your draft(s) drawn at sight on us and accompanied by the following documents:

1. Beneficiary's signed statement certifying that John Poukish, has failed to pay for required improvements concerning subdividing Creekside Estates, Second Filing Subdivision in Yellowstone County.
2. Copy of mandatory improvements.
3. The original Letter of Credit

This Letter of Credit shall be deemed extended without amendment for one year from the expiration date, unless thirty (30) days prior to any expiration date we shall notify you by Registered Mail that we elect not to consider this Letter of Credit renewed for any such period.

In any communication with us regarding this Letter of Credit, please make specific reference to our Letter of Credit No. at the top of this letter.

Drafts drawn under this Credit must bear the clause: "Drawn under _____ Bank Irrevocable Standby Letter of Credit No. _____ dated _____." The amount of each drawing must be endorsed on the reverse of this credit by the negotiating bank.

To the extent applicable hereto, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication, No. 500.

We hereby engage with you that draft(s) drawn and/or documents presented and negotiated under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored upon presentation to us.

_____ BANK

By: _____

Attachment A

Staff Analysis and Recommendation

County Planning, County Public Works, County Legal staff have reviewed the request for a variance from Yellowstone County Subdivision Regulations Section 4.14.C. 2, Major, Commercial, and Subsequent Minor Subdivision. The subdivider shall provide a minimum of one of the following mechanisms for fire suppression. An approved, single, minimum thirty thousand (30,000) gallon underground water storage tank for fire suppression.

When a County subdivision is within one half (1/2) road mile of a pressurized municipal hydrant the developer shall pay a fee in lieu of hydrant installation to the Fire Department serving the proposed subdivision.

The variance request is for this subdivision to use a City of Billings pressurized fire hydrant that is .58 miles from the farthest building in the subdivision. Subdivision regulations require the farthest building in the subdivision to be within .5 (1/2) road mile from the pressurized hydrant.

Billings Fire Department has stated they are supportive of the variance. Creekside Subdivision 1st Filing was also granted the same variance. Creekside Subdivision, 1st Filing, is on the north end of Creekside Subdivision, 2nd Filing.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not be detrimental to the adjoining properties. This same variance was granted to the Creekside Subdivision, 1st Filing. The Billings Fire Department has stated they prefer to have a pressurized hydrant for fire suppression needs.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There are no surrounding physical conditions that would result in an undue hardship to the developer. There is a preference from the Billings Fire Department for pressurized fire hydrants over dry hydrant systems.

3. The variance will not result in an increase in taxpayer burden.

The variance will not increase taxpayer burden.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

Approval of this variance will not place this subdivision in nonconformance of adopted zoning regulations or the growth policy.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The alternate option for the required 30,000-gallon dry hydrant system is the use of a municipal pressurized fire hydrant. This hydrant is located at 60th and Grand Avenue. The distance is .58 miles which is just over the subdivision regulation distance of .5 miles.

Therefore, staff is recommending approval of the proposed variance and recommends that the Planning Board recommend approval to the Board of County Commissioners.

**Variance Request
Creekside Estates, Second Filing**

Creekside Estates, Second Filing is a proposed major subdivision in Yellowstone County. The subdivision is proposing to use the existing pressurized hydrant at 60th Street and Grand Avenue in lieu of installing a dry hydrant and will pay a \$30,000 fee to the Billings Fire Department to use this connection. Per Section 4.14 C.3 a subdivision may use an existing pressurized main if within one half mile. The proposed subdivision is a little over a half mile from the existing hydrant. This variance is supported by the Billings Fire Department as adequate fire suppression.

Below we have included the variance facts of hardship in correlation with Section 23-1101.A. Please see our answers in **bold**.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
Granting a variance regarding to use the existing pressurized main will not be detrimental to public health and safety. The fire department has stated in the past that they would prefer to utilize the hydrant if available, as the hydrant is connected to City of Billings services. This type of hydrant requires less monitoring than other fire protection options. This variance will allow the subdivision to have adequate fire protection from an active hydrant already monitored by the fire department.
2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;
Creekside Estates, Second Filing would have to install a dry hydrant or extend City of Billings municipal services in order to meet the fire protection standards. If the subdivider had to do one of these two options, then the subdivision would be unfeasible due to cost. The subdivision is .58 miles away from the existing hydrant, by road. Subdivision regulations allow for .5 miles. Granting this variance will allow for the development and no undue hardship on the owner.
3. The variance will not result in an increase in taxpayer burden;
The subdivision is .58 miles away from the existing hydrant, by road. Subdivision regulations allow for .5 miles. Granting this variance will not increase taxpayer burden as the fee for this hydrant usage will be paid by the owner.
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and
This variance does not place the subdivision in nonconformance with zoning or growth policy regulations.
5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.
The fire department has stated in the past that they would prefer to utilize the hydrant if available, as the hydrant is connected to City of Billings services. This type of hydrant requires less monitoring than other fire protection options. This variance will allow the subdivision to have adequate fire protection from an active hydrant already monitored by the fire department. The subdivision is .58 miles away from the existing hydrant, by road. Subdivision regulations allow for .5 miles. This variance will be equally as effective for fire protection.