

Attachment A

Staff Analysis and Recommendation

County Planning, County Public Works, County Legal staff and Billings Fire Department have reviewed the request for a variance from Yellowstone County Subdivision Regulations Section 4.6.A.6, Major and subsequent minor subdivisions shall have at least two means of vehicular access unless granted by variance.

The applicant is proposing to develop a commercial condominium dry storage subdivision with only one full access from Stillwater Drive into and out of the subdivision. Yellowstone County subdivision regulations require two ways in and out of a major subdivision, the applicant is not proposing another full ingress / egress for the subdivision. In a separate variance request they are asking for an Emergency Access Road, see Attachment B.

Staff has reviewed the proposed subdivision and the variance request for one way into and out of the subdivision. The subdivision is proposed to be commercial condominium dry storage with 232 units. Yellowstone County subdivision regulations do not distinguish between uses within a subdivision but require two full accesses into a major subdivision, Section 4.6.A.6. The purpose of the 2 ingress / egress points from a major subdivision is for safety reasons. Should one of the ingress / egress points be blocked there is a second way in and out of the subdivision.

On the east side of this proposed subdivision is a county dedicated road, Rosebud Drive, that has not been built but is a 60-foot-wide right of way. This road would connect to South 80th Street West. This road would provide a 2nd way in and out of the subdivision and there are no grade issues that would prevent it from being used. This road was dedicated to the county in 1972.

Staff has seen an increase in the request for only one way in and out, this is becoming a concern with future safety for those in the subdivision and connectivity.

Attached is an email from County Legal regarding the requirement for 2 ways in and out of a major subdivision.

Also attached to this is the agent's variance request and communication with MDT for an emergency access road to King Avenue. Emails that are part of the agent's variance request are addressing only the topic of an emergency access to King Avenue West. MDT does not want a full access because of concerns for access points not having enough separation from existing access points already on King Avenue West in this area. Should the applicant move the access to King Avenue West farther west to get the correct separation from existing access points, MDT would allow a full access

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 purpose of two ways in and out of a subdivision is for safety should one direction be closed for any reason, reduce traffic on one way in and out lowering the possibility of traffic conflicts/accidents, providing emergency vehicles ease of maneuvering in a subdivision.

With only one way in and out, should something happen, blocking the single road it could block exiting the subdivision. There is a 60-foot-wide private road easement on the east edge of the proposed subdivision that may have been investigated to attain access.

There is a dedicated public right of way on the east side of this proposed subdivision, Rosebud Drive. It was dedicated with the original Pike Subdivision in 1972. This road could be built to a county paved road standard and provide the required second way in and out of the subdivision.

The granting of this variance would be detrimental to public health, safety, or general welfare or injurious to other adjoining properties. Should the one way in and out of the subdivision become impassable for any reason it could trap people within the subdivision with no second way in or out.

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. The land is currently used for farming and it basically flat. There is no physical hardship of the land.

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

The variance requested for this proposed subdivision 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 County Zoning and will have no affect on zoning. The request for one way in and out is not a zoning issue, it is a health and safety issue.

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

The alternate option proposed is an emergency access road (EAR). An EAR is not a full access and is only intended for fire emergency vehicle access. Should the one access from still water become impassable an EAR would not be an optional 2nd way in and out.

Staff and the Planning Board is recommending denial of the proposed variance to the Board of County Commissioners.

Dear Mr. Miller:

Shop World 3 is a major, commercial subdivision. From the east, the land is accessed by Rosebud Drive. Rosebud Drive is a public, unconstructed road that runs into 80th Street West. From the north, the land is accessed from Stillwater Drive. Stillwater Drive is a public, constructed road. From the West, the land is accessed from 82nd Street West. 82nd Street West is a public, unconstructed road. There is a small gully where 82nd Street West is supposed to be located. From the south, the land is accessed from King Avenue West. King Avenue West is a public, constructed road. The developer of Shop World 3 has requested the County abandon 82nd Street West where it abuts the subdivision and a portion of Rosebud Drive.

As a major subdivision, Shop World 3 needs two accesses. See Regulations below. The developer of Shop World 3 requested a variance from the requirement of two accesses. The developer intended to have an access from Stillwater Drive and King Avenue West. The Montana Department of Transportation that manages King Avenue West would not provide the developer with permission to place the access on to King Avenue West where the developer wanted to place it because it would be too close to an existing access. To have the separation with the existing access, the developer would have to construct the access in the gully where 82nd Street was supposed to be located. It would be expensive to construct the access in the gully.

The County may grant reasonable variances from the design and improvement standards when strict compliance would result in undue hardship and the result would not affect public health and safety. The County is supposed to consider five factors when it decides whether to grant a variance. See Regulations below. The developer is not limited to accesses on to Stillwater Drive and King Avenue West. The developer has the option to use Rosebud Drive to access Shop World 3. The developer would likely have to reconfigure the layout of Shop World 3 to change the accesses. This though could be done without undue hardship on the developer. The developer needs to explain why it cannot use Stillwater Drive and Rosebud Drive for its accesses and how much it would cost to construct the access on King Avenue West a sufficient distance from the existing access for the Department to grant the access. The developer needs to address the five factors in its request.

If you have any questions, concerns or comments; please contact me.

Sincerely yours,

Mark English
Deputy Yellowstone County Attorney
August 26, 2022

Section 4.6 Streets and Roads.

A. Road Network Performance Standards: When evaluating a subdivision's road network, subdividers and reviewing agencies shall take into consideration the following criteria. These criteria were developed to ensure that all new lots are provided access that is safe, convenient and effective for future lot owners. The proposed road network shall also enable emergency service providers to protect life and property under severe emergency situations.

6. Major and subsequent minor subdivisions shall have at least two means of vehicular access unless granted by a variance.

B. Streets and Roads, General: The arrangement, type, extent, width, grade, and location of all streets shall be designed with consideration to any adopted area plans including, but not limited to, the Growth Policy and Transportation Plan, and must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

5. **Second Access:** To facilitate traffic movement, the provision of emergency services, and the placement of utility easements, all major subdivisions and subsequent minor subdivisions shall provide at least two means of vehicular access built to the standards of this Chapter and designed to ensure public health and safety.

Exceptions to the requirement to provide at least two means of vehicular access may be made for major and subsequent minor subdivisions may only be granted through a variance to these regulations.

Provision of a second means of vehicular access may be required for any subdivision when deemed necessary for public health, safety and welfare.

Section 11.1 Variances (76-3-506, MCA).

The Board of County Commissioners may grant reasonable variances from the design and improvement standards of these Regulations when strict compliance would result in undue hardship and the result would not affect public health and safety. The granting of a variance shall not have the effect of nullifying the intent and purpose of these Regulations. The governing body may not approve a variance that would permit structures within the 100-year floodplain, as defined in 76-5-101, MCA.

A. Requesting a Variance. The subdivider shall include with the submission of the preliminary plat a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, to be processed concurrently with the preliminary plat. Information addressing each of the following findings shall accompany the application to be approved by the governing body. The governing body shall weigh the following criteria in determining undue hardship:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
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;
3. The variance will not result in an increase in taxpayer burden;
4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations; and
5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

B. In granting variances, the governing body may require conditions of approval that will, in their judgment, secure the objectives of these Regulations.

C. When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

D. An application for a variance is not necessary where Planned Neighborhood Developments are proposed, as modifications to the standards and requirements of these Regulations may be approved by the governing body.

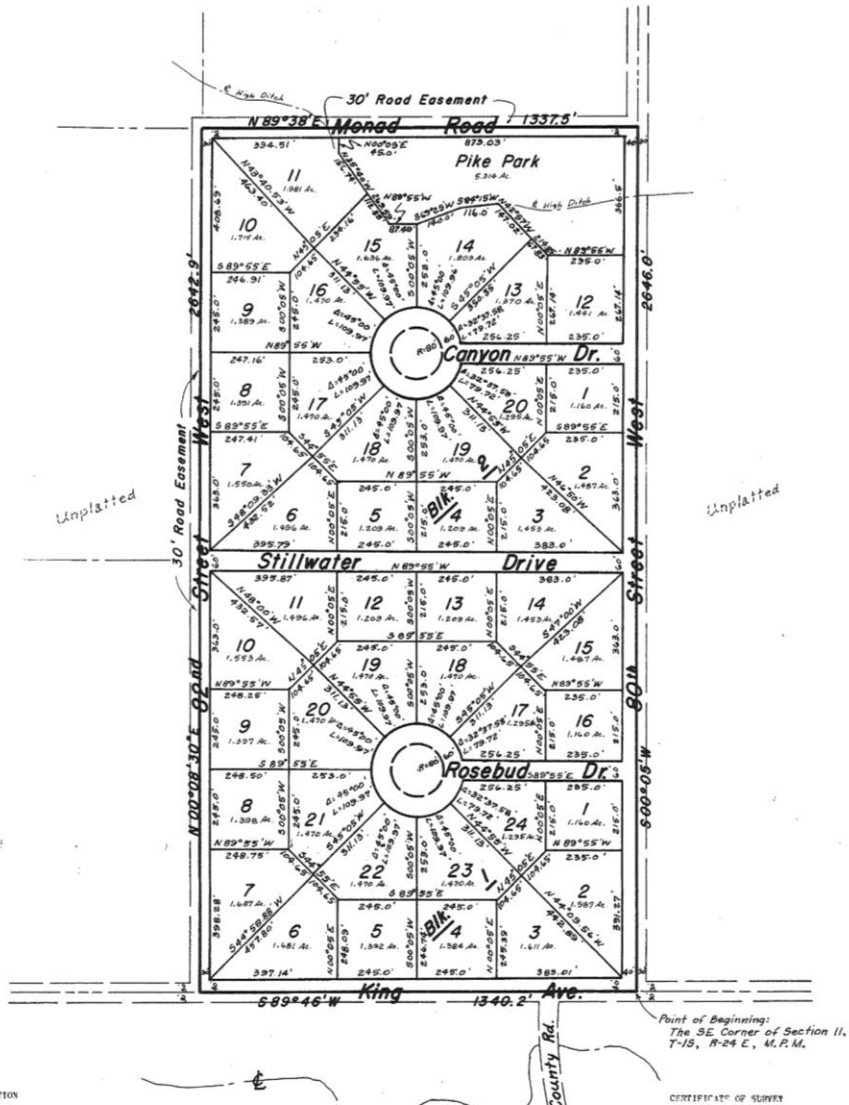
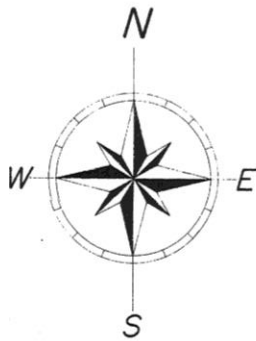
PLAT OF
PIKE SUBDIVISION
 LOCATED IN THE E $\frac{1}{2}$ SE $\frac{1}{4}$ OF SECTION 11, T-1S, R-24E, M.P.M.
 YELLOWSTONE COUNTY, MONTANA

PLAT & SURVEY BY: SAGE ENGINEERS & LAND PLANNERS, INC.

SCALE: 1"=200'

DECEMBER, 1972

FOR: MRS. ROBERTA PIKE



CERTIFICATE OF COPIATION

CERTIFICATE OF SURVEY

Variance Request #1 – Two Access Requirement

A variance from Section 4.6.A(6) requiring Major subdivisions to have at least two means of vehicular access.

4.6 Streets and Roads

4.6.A Road Network Performance Standards:

(6) Major and Subsequent minor subdivisions shall have at least two means of vehicular access unless granted by a variance.

Per MCA 76-3-506: Strict compliance with these regulations will cause undue hardship for the applicant:

A variance is being pursued to relieve the applicant from the requirement to have at least two means of vehicular access for the proposed major subdivision. The sole access being proposed off Stillwater Drive will provide safe, adequate, access to the proposed commercial buildings for all future users. The secondary access being proposed off King Ave. W. is for emergency access only and is not necessary to accommodate the 43 total trips per day anticipated with the proposed subdivision. Strict compliance with these regulations would cause undue hardship for the applicant. A single access point is more than enough to accommodate the 43 estimated daily trip count associated with the proposed subdivision use. Additionally, two primary access points for a commercial subdivision does not align with other developments of a similar nature in the area. Lastly, the topography of the site and location of natural features dictate that the southern access off King Ave. W. only be used for emergencies and not regular use. It would cause undue hardship to the applicant requiring them to break from development trends associated with the proposed use and mandating them to provide an additional access point that is in contradiction to the topography for the site.

1. The granting of this variance does not result in a threat to public safety, health, or welfare, and is not injurious to persons or property.

There does not appear to be any concern regarding public safety, health, or welfare by granting this variance, nor would it be injurious to persons or property. This is not known to cause a threat to public safety, health, or welfare, nor is it injurious to persons or property. Safe, adequate, access to the proposed commercial units is best provided via the access off Stillwater Drive

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.

The conditions upon which this variance is based are unique in that the proposed subdivision is served by two roads, Stillwater Drive to the North and King Ave. W to the South. The particular shape of the site and existing roads to the North and to the South dictate that only one approach be used as the Montana Department of Transportation (MDT) requires 500' separation between approaches. MDT has authorized the location of the second approach off King Ave. W. pending the access remain locked and be used for emergency access only. The unique site topography also mandates that Stillwater Drive be used as the sole, primary, access for the proposed subdivision as grading and drainage trend from North to South on the property. These conditions do not apply generally to other property.

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

This variance request will not result in an increase in taxpayer burden. There will not be an increase to public costs whatsoever by granting this variance.

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

The property is unzoned so the granting of this variance will not place the subdivision in nonconformance with any adopted zoning regulations.

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

The sole access off of Stillwater Drive is not only equally effective at providing ingress and egress options to future users of the subdivision as two access would be, but preferred due to the unique topographic conditions of the site. The estimated 43 daily trips align with the single access being proposed and do not contradict the intent of the subdivision regulations of Yellowstone County.

Anna M. Vickers

From: Shawn M. Thorson
Sent: Friday, July 1, 2022 5:30 PM
To: Anna M. Vickers
Subject: Fwd: MDT Approach Permit

Thank You,
Shawn Thorson

From: Kirkemo, Zach <zkirkemo@mt.gov>
Sent: Monday, June 6, 2022 9:18:11 AM
To: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: MDT Approach Permit

External Email: Treat links and attachments with caution.

Shawn,

MDT is willing to allow the approach at the proposed location as long as the access remains emergency-only. If this approach is proposed to change to full access in the future, additional discussion will need to occur prior to that happening. The approach permit will state that is approved for emergency-access only.

MDT would like written confirmation from the County or local EMS that this access will be approved as an emergency-only access and will be gated.

Thanks,

Zach Kirkemo
MDT Billings District Traffic Engineer
(406) 657-0240
zkirkemo@mt.gov

From: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Sent: Thursday, June 2, 2022 1:04 PM
To: Kirkemo, Zach <zkirkemo@mt.gov>
Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] RE: MDT Approach Permit

Good Afternoon Zach,

Just circling back to see if there has been any discussion regarding the approach after my comments below?

Shawn Thorson, P.E.
Civil Project Engineer



[\[imegcorp.com\]](#)

IMEG Corp.
175 N 27th Street Suite 1312 Billings, MT 59101
(406) 414-7768 single reach
(307) 620-0130 mobile
Shawn.M.Thorson@imegcorp.com

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From: Shawn M. Thorson
Sent: Monday, May 16, 2022 9:57 AM
To: Kirkemo, Zach <zkirkemo@mt.gov>
Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: MDT Approach Permit

Hi Zach,

Thanks for the response. If we move the access to the west, we could be getting into the drainage to the west of the project. Even though this area is not delineated as wetland, there is wetland vegetation here, that we want to avoid. We are looking to have stormwater treatment on the SW corner of the development and discharge into this drainage. The stormwater can not go on the SE corner, as it would be discharged into 8043 King's back yard.

With this development, we are required to have two access points. We have one on Stillwater. Having two approaches on Stillwater does not provide the second point as if Stillwater were blocked, access to the subdivision would be cut off.

I understand that MDT has a minimum distance for approaches, however with this being an emergency access only, there will be minimal traffic (if any) from this approach. We are also constrained with the existing topography.

If you'd like to get together for a discussion or have a phone call, we can. Please let us know if you have any questions.

Shawn Thorson, P.E.
Civil Project Engineer



[\[imegcorp.com\]](#)

IMEG Corp.
175 N 27th Street Suite 1312 Billings, MT 59101
(406) 414-7768 single reach
(307) 620-0130 mobile
Shawn.M.Thorson@imegcorp.com

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From: Kirkemo, Zach <zkirkemo@mt.gov>
Sent: Monday, May 16, 2022 8:58 AM
To: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>

Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: MDT Approach Permit

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Shawn,

MDT is concerned about the proximity of the proposed approach to the existing approach at 8043 King Ave W. We understand why the approach was relocated with the large cut there, however MDT would like to review other options for the emergency access location.

Can the approach be realigned to the west instead of to the east? Or can the emergency access be located off Stillwater Ave?

Thanks,

Zach Kirkemo
MDT Billings District Traffic Engineer
(406) 657-0240
zkirkemo@mt.gov

From: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Sent: Tuesday, May 10, 2022 3:05 PM
To: Kirkemo, Zach <zkirkemo@mt.gov>
Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] RE: MDT Approach Permit

Zach,

Attached is the signed application for the site.

Let me know if you need anything else.

Thank you,

Shawn Thorson, P.E.
Civil Project Engineer



[\[imegcorp.com\]](mailto:[imegcorp.com]) [\[nam04.safelinks.protection.outlook.com\]](mailto:[nam04.safelinks.protection.outlook.com])

IMEG Corp.
175 N 27th Street Suite 1312 Billings, MT 59101
(406) 414-7768 single reach
(307) 620-0130 mobile
Shawn.M.Thorson@imegcorp.com

[website \[imegcorp.com\]](http://website.[imegcorp.com]) [\[nam04.safelinks.protection.outlook.com\]](mailto:[nam04.safelinks.protection.outlook.com]) | vCard [\[dynamend.com\]](mailto:[dynamend.com]) [\[nam04.safelinks.protection.outlook.com\]](mailto:[nam04.safelinks.protection.outlook.com]) | map [\[google.com\]](http://google.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:[nam04.safelinks.protection.outlook.com])

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From: Kirkemo, Zach <zkirkemo@mt.gov>
Sent: Monday, May 9, 2022 10:25 AM
To: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: MDT Approach Permit

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Shawn,

A few questions/comments on this:

- Has this received any preliminary approvals from the County? A couple of items I am curious about are:
 - Existing property lines show a possible cul-de-sac which makes me wonder if this was planned to be a residential subdivision?
 - Has the County DES approved the proposed King Ave access being an emergency-only access?
- Will the existing access to 8043 King Ave W be removed as part of this development?
- MDT will need to review the DEQ Circular 8 design report to review to verify stormwater management requirements are met.
- The landowner will need to sign the approach permit application to verify the landowner acknowledges all terms and conditions of the approach permit.

Thanks,

Zach Kirkemo
MDT Billings District Traffic Engineer
(406) 657-0240
zkirkemo@mt.gov

From: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Sent: Tuesday, May 3, 2022 9:36 AM
To: Kirkemo, Zach <zkirkemo@mt.gov>
Cc: Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] MDT Approach Permit

Good Morning Zack,

Attached is an application for an approach permit on King Avenue West between 80th St W and 82nd St W. Please take a look and let me know if you would need any other information? Also, can we submit this to you?

Shawn Thorson, P.E.
Civil Project Engineer



[\[imegcorp.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com)

IMEG Corp.
175 N 27th Street Suite 1312 Billings, MT 59101

(406) 414-7768 single reach
(307) 620-0130 mobile
Shawn.M.Thorson@imegcorp.com

[website \[imegcorp.com\]](http://www.imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com) | vCard [\[dynasend.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com) [\[google.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com) | regional news [\[imegcorp.com\]](mailto:shawn.thorson@imegcorp.com) [\[nam04.safelinks.protection.outlook.com\]](mailto:shawn.thorson@imegcorp.com)

All,

I have spoken with MDT Billings District supervisory personnel as requested. Because there is no residential development planned with this subdivision and the Laurel Fire Department has agreed to the emergency gated access, MDT has chosen to maintain its original position of requiring an approach at this location be emergency-only access in an attempt to maintain some semblance of access control along the King Ave corridor. MDT has already made concessions to its requirements in allowing this location at all. If approved, this would like have been the access used by most customers which is not MDT's desire. MDT's desire is for developments with access to existing County roads to use County roads.

I wish to reiterate the County and landowner that MDT is not opposed to a full access approach on King Ave for this subdivision. The issue is the location of the current approach. A full access approach would only be allowed if the new approach were relocated to the west satisfying the 400' spacing requirement between all approaches for rural highways. This would locate the approach roughly at the midpoint between the driveways for 8043 King Ave W and 8243 King Ave W. If this realignment is ultimately done, MDT would require removal of the newly-built approach and restoring the disturbed area to its original state.

MDT doesn't believe the State should have to concede access management requirements and sacrifice the safety of the travelling public in order to reduce the developer's cost. MDT would support the County if the County denied the variance request and imposed the approach relocation requirements stated above.

Respectfully,

Zach Kirkemo
MDT Billings District Traffic Engineer
(406) 657-0240
zkirkemo@mt.gov

From: Tim Miller <tmiller@yellowstonecountymt.gov>
Sent: Tuesday, August 23, 2022 9:16 AM
To: Kirkemo, Zach <zkirkemo@mt.gov>; Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>;
Pleckner, Monica <pleckerm@billingsmt.gov>; Green, Dave <[greend@billingsmt.gov](mailto:green@billingsmt.gov)>
Cc: Anna M. Vickers <anna.m.vickers@imegcorp.com>; Kolten L. Knatterud
<Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] RE: Shop World Condos Second Access Discussion

Zach

If the development were able to access both Stillwater and 80th that would be acceptable for two accesses being that traffic can exit on 80th by going either north or south. If 80th were a dead end then it would not be acceptable for a second access.

Hope this helps

Tim Miller
Yellowstone County Public Works Director / Floodplain Administrator

*Phone 406-256-2735
e-mail tmiller@yellowstonecountymt.gov
Po Box 35024
Billings Mt 59107*

My e-mail has changed to tmiller@yellowstonecountymt.gov

From: Kirkemo, Zach <zkirkemo@mt.gov>
Sent: Tuesday, August 23, 2022 7:50 AM
To: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>; Plecker, Monica <pleckerm@billingsmt.gov>; Tim Miller <tmiller@yellowstonecountymt.gov>; Green, Dave <greend@billingsmt.gov>
Cc: Anna M. Vickers <anna.m.vickers@imegcorp.com>; Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: RE: Shop World Condos Second Access Discussion

All,

I have a hypothetical question for City/County Planning to help ensure my understanding of the two access requirement. I wish I had thought to ask this yesterday.

Say this particular development was adjacent to 80th St W and Stillwater Dr. Would having one access to 80th St W and one access to Stillwater Dr satisfy Planning's requirements, or would the development still need one additional access point off King Ave W in this hypothetical?

Thanks,

Zach Kirkemo
MDT Billings District Traffic Engineer
(406) 657-0240
zkirkemo@mt.gov

From: Shawn M. Thorson <Shawn.M.Thorson@imegcorp.com>
Sent: Monday, August 22, 2022 11:55 AM
To: Kirkemo, Zach <zkirkemo@mt.gov>; Plecker, Monica <pleckerm@billingsmt.gov>; Tim Miller <tmiller@yellowstonecountymt.gov>; Green, Dave <greend@billingsmt.gov>
Cc: Anna M. Vickers <anna.m.vickers@imegcorp.com>; Kolten L. Knatterud <Kolten.L.Knatterud@imegcorp.com>
Subject: [EXTERNAL] Shop World Condos Second Access Discussion

All,

Thank you for your time today for a discussion regarding the second access to King for this project. Please use this email when providing correspondence to keep everyone in the loop.

Just a few notes regarding the discussion:

- MDT requested emergency access only due to the proximity of the approach to the east.
- The estimated trips per day are less than 50 due to the development being storage units.
- If this gets approved as a full access, the access will still be controlled by a coded gate.
- IMEG's response timeline is being granted some leniency due to this decision.

If you have any questions or comments, please let me know.

Thank you,

Shawn Thorson, P.E.

Civil Project Engineer

 [imegcorp.com]

IMEG Corp.

175 N 27th Street Suite 1312 Billings, MT 59101

(406) 414-7768 single reach

(307) 620-0130 mobile

Shawn.M.Thorson@imegcorp.com

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