

Additional conditions:

Item 7. c.

City Council Regular

Date: 05/22/2023
Title: Fifty-Four West Subdivision - City Major Preliminary Plat
Presented by: Hunter Kelly, Planner 1
Department: Planning & Community Services
Presentation: Yes
Legal Review: Not Applicable

COUNCIL ACTION	Approved
9-2, Rupsis + Choriki	opposed
MAY 22 2023	
Jb	
CITY CLERK	

RECOMMENDATION

The Planning Board recommends to City Council that the preliminary plat of Fifty Four West Subdivision be conditionally approved and the Findings of Fact adopted as presented in the staff report.

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

On March 1, 2023, KLJ Engineering, on behalf of Michael Christensen, applied for preliminary major plat approval for Fifty Four West Subdivision. The proposed subdivision creates 66 lots for residential development. The subject property is generally located North of Rimrock Road and East of 54th Street West. The property is currently zoned N3. Per the zoning code, the property will need to be rezoned to a Planned Neighborhood Development. Additionally, in order for this land to develop in the City, annexation is required. Both an annexation and zone change are being reviewed by staff and will be considered concurrently at this meeting with this application. The land is currently vacant.

VARIANCES

No variances are requested.

PROPOSED CONDITIONS OF APPROVAL

1. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS to determine what type of deliver system is preferred and to locate and provide the correct amount of space for safely delivering the mail to the residents.
2. To minimize the effect on local services, to be compliant with Planned Neighborhood Development zoning regulations, and because of the location in proximity to Cottonwood Park, the subdivider shall provide a combination of 2% (.33 acres) developed park and 9% (1.46 acres) cash-in-lieu. The dollar value shall be determined based on methods outlined in Section 23-1007 of the City of Billings Subdivision Regulations. The payment shall be made prior to final plat approval.
3. In order to protect public health and safety and provide for future park maintenance, all required parkland shall be privately owned and maintained. Prior to final plat approval, the subdivider shall submit for review and comment, documents outlining how the maintenance will occur.
4. 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.
5. 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.
6. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles, fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 6 feet in height. The Covenants, Codes, and Restrictions (CC&Rs) filed with the final plat shall include this language. In addition, the following language shall be placed into the Subdivision Improvements Agreement under Section II. Titled Property Conditions and Information for Lot Purchasers F. rear yard fences of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 6 feet in height. The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency.
7. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles and per the City of Billings Subdivision Regulations Section 23-406 A. 3. The subdivider shall install plantings within the open space area adjacent to the shared use path. The landscaping shall include at least 1 tree and 6 shrubs or ornamental grasses every 40'. The trees should be of a variety included in the City's preferred tree planting list.

Note: The staff recommended version of condition number 6 proposed limiting fence heights to 4 feet, only allowing a

6' fence if the fence were constructed of materials that promoted transparency. After review of the Planning Boards recommendation, Staff would like to identify potential points of conflict between Condition 6 and information disclosed from the developer that may need to result in the City Council further amending Condition number 6.

The applicant stated during the public hearing of this preliminary plat of their intent to place a 6-foot tall perimeter cinder block wall around the subdivision, in order to mirror the aesthetic of the subdivisions opposite of Rimrock Road and provide secure and private backyards for future residents. The last sentence of Condition 6, "*The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency.*", may conflict with this design and the intent of the amended Condition 6 as discussed in the public hearing, however the Planning Board did not motion for this language to be struck during the public hearing.

The applicants' agent, during the presentation said the applicant was content with the side yard fences adjacent to the 30' wide ROW for the shared used path being limited to 4 feet in height, as further described in the stakeholder section. However, the Planning Board's motion did not reflect this intent, either. The current version of condition 6 would allow for 6' high fencing or walls along the 30' wide ROW for the shared used path, which would conflict with the CPTED-Friendly intent of Condition 6.

If the City Council were to consider further amendments, based on the Planning Board recommendation, to avoid these potential points of conflict, the following amendments to condition number 6 should be considered.

- Consider limiting the side yard fences to a 4' maximum height immediately adjacent to the 30' wide shared use path access for Lot 9, Block 7 and Lot 7, Block 8.
- Since the developer has indicated they intend to construct a solid type wall (block style) consider striking "*The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency.*"
- Staff recommends current Condition #6 language be replaced with the following: *In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles; fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 shall be limited to 6 feet in height. The side yard fences adjacent to the 30' wide shared use path access for Lot 9, Block 7 and Lot 7, Block 8 shall be limited to 4 feet in height. The Covenants, Codes, and Restrictions (CC&Rs) filed with the final plat shall include this language. In addition, the following language shall be placed into the Subdivision Improvements Agreement under Section II. Titled Property Conditions and Information for Lot Purchasers F. rear yard fences of Lots 1-7, Block 8, and Lot 9, Block 7 shall be limited to 6 feet in height. The side yard fences adjacent to the 30' wide shared use path access for Lot 9 Block 7 and Lot 7 Block 8 shall be limited to 4 feet in height.*

PROCEDURAL HISTORY

Pre-Application Meeting: August 25, 2022

Preliminary Plat application submitted to Planning Division: March 1, 2023

Departmental Review Meeting: March 16, 2023

Preliminary Plat Resubmittal: March 23, 2023

Planning Board Plat Review: April 11, 2023

Planning Board Public Hearing: April 25, 2023

Preliminary Plat to City Council: May 22, 2023

60 Working-Day Preliminary Plat Review period ends: May 24, 2023

PLAT INFORMATION

General Location: North of Rimrock Road and East of 54th Street West

Legal Description: Certificate of Survey 1834, Parcel 2B Amended, AMD 30.608 ac (98)

Owner/Subdivider: Michael Christensen

Engineer/Surveyor: KLJ Engineering

Existing Zoning: N3 - Suburban Neighborhood Residential

Existing Land Use: Vacant land

Proposed Zoning: PND - Planned Neighborhood Development

Proposed Land Use: Residential

Gross & Net Area: Gross 30.61 Acres & Net 16.21 Acres

Lot Size:

Minimum: 10,000 Square Feet

Maximum: 21,707 Square Feet

Parkland Requirements: 1.78 Acres required. 0.83 Acres is provided. Of that, 0.33 is provided toward the park land dedication and the remaining 1.45 acres is to be covered via cash-in-lieu contribution. The cash contribution will go

towards Cottonwood Park since the subdivision is located within the 1 mile radius of the park.

STAKEHOLDERS

PLAT REVIEW MEETING

At the Planning Board Plat Review meeting on April 11, staff gave a brief overview of the subdivision and was available for questions from the Board. President Cook called for questions and discussion from members of the Board. Board member John Staley requested clarification regarding the CPTED requirements as proposed in conditions 6-8. Planning and Community Services Director Wyeth Friday responded, explaining the City Council's initiative to incorporate CPTED principles into ongoing planning projects. Board member David Nordel raised additional concerns regarding the CPTED conditions and how they may seem counterproductive to the intended goals of the CPTED principles. Board member Roger Gravgard asked for clarification on what lots were effected by the proposed fence height restrictions. Staff responded and further explained how CPTED applied to those lots. Board member Gravgard suggested bringing additional city staff to explain CPTED and how it applies to the City of Billings, with Director Friday responding in the affirmative.

Board member Staley segued into a concern regarding the conditions of approval referring to the parks and the cash-in-lieu contribution. Staff responded by explaining the concerns of the Parks department and the no programmable space proposed by the developer and the storm water facilities planned for the park areas. Director Friday explained further, detailing the possible uses of the cash in lieu contribution and how it relates to the nearby Cottonwood Park. Board member Woody Woods had questions regarding the possible maintenance of the private open space and who would actually perform it. Staff responded by affirming the condition that the private parkland will be privately maintained. Board member Woods also raised concerns regarding the proposed stormwater retention area and if it would be fenced. Travis Copper, the project engineer, responded to the question and stated they could look at fencing options but the stormwater area was intended to be very shallow with gradual slopes. Mr. Copper gave additional context regarding their proposed park and stormwater retention designs. Board member Woods asks staff to clarify the subdivision process and how the associated annexation and zone change are incorporated, with staff affirming the applicant is following all the procedures as necessary. The Applicant, Michael Christensen, rose to speak and provided his vision and mission statements for the project. Mr. Christensen went on to give his rationale on the park distribution within the subdivision and how the proposed private parkland would reflect a more marketable subdivision with grass, benches and other improvements.

There were no further questions or discussion on the plat.

PUBLIC HEARING MEETING

Staff gave a brief presentation to the Planning Board at a public hearing for this subdivision on April 25, 2023.

President Cook called for questions and discussion from the members of the Board. Board member Woods asked about Condition of Approval #8 which was no longer being recommended by staff, and Planner Kelly and Division Manager Plecker provided an explanation. Condition #8 initially read as *"In order to minimize the impacts on local services and protect public health and safety, the 30' wide private open space lots on the perimeter of the development shall be changed to easements as opposed to standalone lots. The Final Plat shall depict these areas as being part of individual lots and depict the easement. The easement along Lot 7, Block 8 and Lot 9, Block 7 shall include the required landscaping/planting strip as referenced in Condition #7."* After additional consideration, staff found that treating these buffer parcels as easements would, in the long term, produce a net detriment on the safety and maintenance of the areas effected. An easement in the previously described area would place the burden of safety and landscaping maintenance on the individual property owners, which may lead to inconsistent enforcement in the areas described in condition 8. This would ultimately not address the CPTED issue as intended, making the condition superfluous.

In response to a question by Board member Staley, staff said Cottonwood Park is located across Rimrock Road and 54th Street West, south of this parcel.

Public Hearing

Steve Grabel with KLJ Engineering represented the applicant, Michael Christensen. Mr. Grabel spoke to clarify Condition of Approval #2 requiring the developer to provide a combination of 2% (.33 acres) developed park and 9% (1.46 acres) cash-in-lieu and he also addressed the question of fencing in the private park area. He said that question was asked during the last Planning Board meeting whether fencing would be provided along the Cove Ditch and the detention area. Mr. Grabel stated that the subdivider agrees to install a 4-foot tall fence adjacent to the proposed private park along the north side of the Cove Ditch. The detention pond in the parkland will be designed and constructed to comply with all City of Billings storm water regulations. Additionally, Mr. Grabel said consideration will be given to flattening the embankment slopes. He continued regarding Condition of Approval #6: *"...Design (CPTED) principles; fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 4 feet in height..."* The developer agrees with this

condition with the exception of the back lot lines of the lots located along Rimrock Road. The developer is requesting a 6-ft fence height which he said would be in concurrence with CPTED guidelines for natural surveillance between homes and neighborhood streets, and meeting the criterion for secure backyards. In addition, this would provide noise attenuation and give the landowners the feel of a more secure backyard. Mr. Grabel said that the criterion for a 4-ft fence does not apply in this instance as opposite this subdivision is a 6-ft fence following along the south side of Rimrock Road. He said the applicant is asking that the requirement either be removed or changed from a 4-foot to a 6-foot fence height. Other than that, the applicant concurs with the stipulations and the Conditions of Approval.

President Cook asked the Board if they have questions for Mr. Grabel. Board member Gravgaard asked if the 6-ft fencing would apply to the walkway between Lot 7 and Lot 9. Mr. Christensen, the applicant/developer, instead answered that he is open to suggestions for the pathway corridor to have lower fencing, but he said having the 6-ft fence would create privacy on the backyard of the lots. Board member Ronquillo asked about the materials used for fencing. Mr. Christensen said it would be a wall and he is considering using cinder block, very similar to the wall located on the opposite site of the road. Board member Woods asked about fencing along Cove Ditch to provide a separation for children who tend to wander. Mr. Christensen said that he plans to install a fence on the north side of the Cove Ditch on the 30-ft easement line.

President Cook opened the public hearing and asked if there is anyone present wishing to speak in favor or against the 54 West Subdivision. There was no public comment. President Cook closed the public hearing and called for a motion from the Board.

Motion

Board member Ronquillo made a motion and Board member Nordel seconded the motion that the Planning Board recommend to City Council that the preliminary plat of Fifty Four West Subdivision be conditionally approved and the Findings of Fact adopted as presented in the staff report, and amend Condition of Approval #6 to require a 6-ft fence instead of the 4-foot fence.

President Cook called for discussion on the motion. Board member Stephenson asked staff for background information on the CPTED Conditions of Approval. Division Manager Plecker said this started with a City Council initiative that was passed last year (See Findings of Fact Section 5. Effect on the public health, safety and welfare). This initiative is making it a priority for staff to consider insertion and consideration of CPTED principles and language for recommendations for subdivisions, especially for public walking paths to avoid a tunnel effect. She noted the Boards' discussion on the need to balance the safety of the residents and safety of the public using infrastructure.

Board member Stephenson pointed out that in this case, the walking path is adjacent to Rimrock Road and fronts the rear yards. Division Manager Plecker said a CPTED training for staff is scheduled for staff in May and possible CPTED integration into City policies and regulations can be discussed more holistically during a future Planning Board meeting. Planner Hunter Kelly provided clarification on Condition of Approval #6 and said under current zoning code, the maximum rear yard fencing height is 6 feet and the proposed amendment would strike Condition of Approval #6 as a whole. Division Manager Plecker clarified and said instead of striking the condition, updated Findings of Fact would be acceptable. Board member Woods commented it would be beneficial if Council would make Boards and Commissions aware of these types of initiatives so they can make informed decisions. He is in favor of a 6-ft fence along the lots for a number of reasons, especially along Rimrock Road, and it meets present zoning code.

Board member Staley asked why the applicant's proposed internal parkland is not sufficient and the City is asking the applicant to pay for a Cottonwood Park instead, which requires children walking across a very busy street to get there. Ms. Plecker said there is a City resolution stating if parks are located within 1 mile of Cottonwood Park, there is a cash-in lieu dedication requirement. Mike Pigg, the City of Billings Parks Superintendent, said the parkland dedication is a state statute. Ms. Plecker said the parkland requirements in the subdivision regulations are percentage based on the size of lots. There is separate City resolution stating that any time parks are located nearby, contributions would have to be made to Cottonwood Park. Mr. Pigg provided clarification on the City policy and stated this parcel is within a 1 mile radius of a public park and the cash-in-lieu funds for this subdivision will be required to go to fund Cottonwood Park. He pointed out there is a stop light with a crosswalk on Rimrock Road, and a paved path down 54th Street West to Cottonwood Park, which will be designed to be a community park for this area.

Board member Staley said there is no sidewalk on the south side of Rimrock Road. He asked if a variance could be given to allow use of the available ground within the subdivision for parkland. Division Manager Plecker said parkland serving as storm water retention or detention does not count towards the required percentage for contribution of parkland; and the City can express its preference for cash-in lieu of parkland. Board member Staley voiced concern that the only option for children living in this subdivision wanting to access the park is to cross a very busy street and put themselves in harm's way. He said he is having difficulty recommending this as the applicant is having to pay for a park he isn't going to use and it is unsafe for children to access the public parkland. Division Manager Plecker clarified and said there is an existing avenue for pedestrians when crossing 54th Street West and Rimrock. Meaning there are lighted, signaled cross walks. After exiting the crosswalk, there is a shared use path that will take

pedestrians down to Cottonwood Park. Per request of Board member Gravgaard, Division Manager Plecker clarified the location of the shared use path and the way of using existing infrastructure to stay on crosswalks and sidewalks in order to access Cottonwood Park.

President Cook called for a vote on the motion. The motion carried with a unanimous voice vote.

ALTERNATIVES

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends May 24, 2023, State and City subdivision regulations also require that preliminary plat be reviewed using specific criteria, as stated within this report. The City 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 City Council 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 City'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 City 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

Preliminary Plat
Draft SIA
Findings of Fact
Mayor's Letterhead

PRELIMINARY PLAT OF

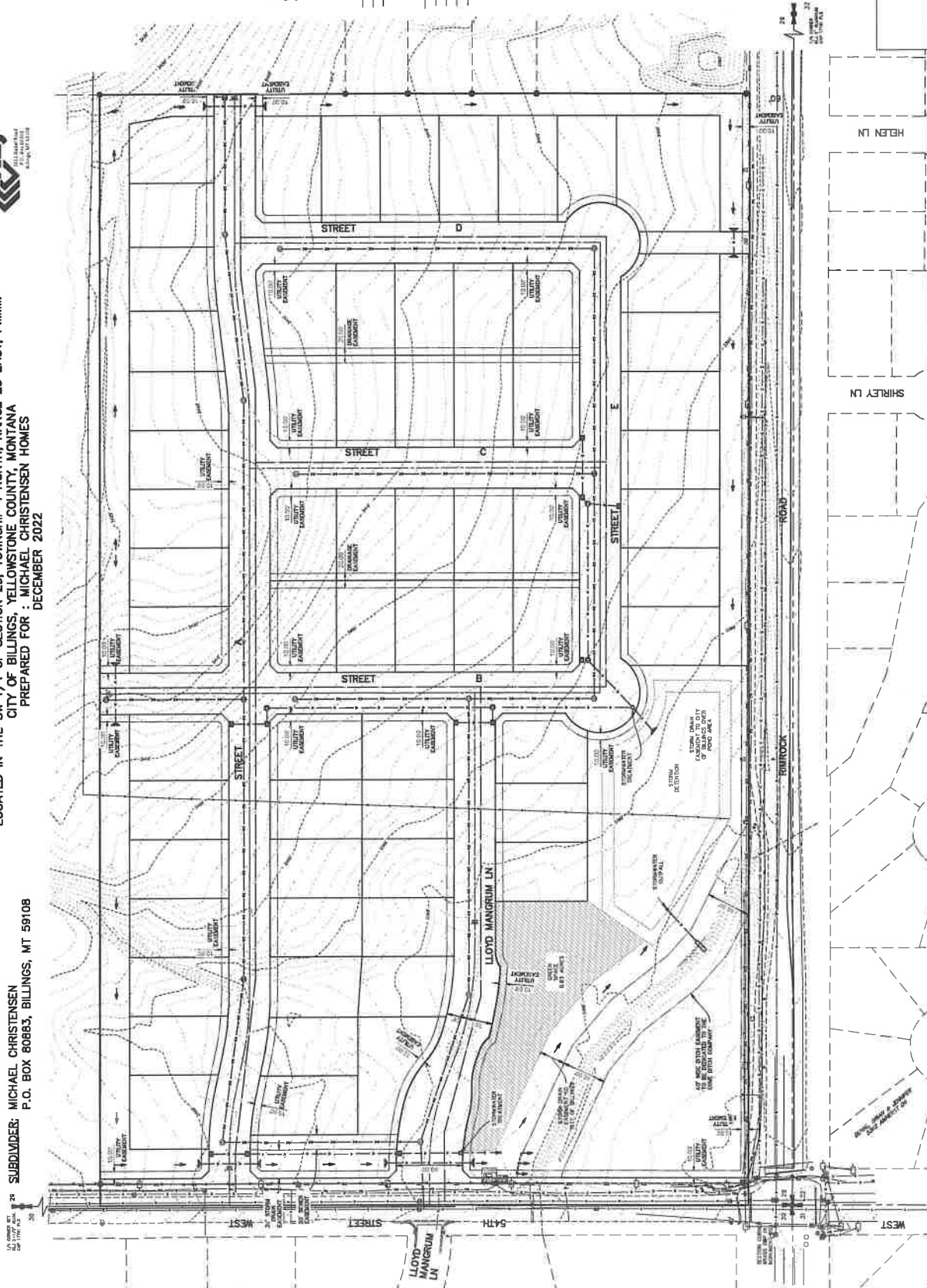
NED ZIMMERMAN
541 DARSY DEAN ROAD
WILSALL, MT 59086-9405

MICHAEL CHRISTENSEN
P.O. BOX 80883, BILLINGS, MT 59108



KLJ
1011 Main Road
P.O. Box 6000
Atlanta, GA 30308

BEING LOT 2B OF CERTIFICATE OF SURVEY NO. 1834
LOCATED IN THE SW 1/4 OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 25 EAST, P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
PREPARED FOR : MICHAEL CHRISTENSEN HOMES
DECEMBER 2022



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LAWRENCE LAMBERT
LAWRENCE LAMBERT

LAT: N45°41'00"

ADJUSTED

SCALE FACTOR

SHEET 2 of 2

1100

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS**

Fifty Four West Subdivision

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(City of Billings, Montana)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE
SPECIAL IMPROVEMENT DISTRICTS**

Fifty Four West Subdivision

This agreement is made and entered into this __ day of _____, 2023, by and between Michael Christensen Homes (Subdivider), whose address for the purpose of this agreement is PO Box 80883 Billings, Montana 59108, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on __ day of _____, 2023, the Board of Planning recommended conditional approval of a preliminary plat of *Fifty Four West Subdivision*; and

WHEREAS, at a regular meeting conducted on __ day of _____, 2023, the City Council conditionally approved a preliminary plat of *Fifty Four West Subdivision*; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to *Fifty Four West 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 City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

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

I. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A.** Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- B.** Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- C.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the project Geotechnical Engineering Report prepared by Rimrock Engineering, under project number G22154, dated October 5, 2022. The report contains foundation design and construction recommendations for the subdivision lots that should be considered during building construction.

- D.** 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.
- E.** 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.

II. TRANSPORTATION

A. Streets

- Subdivider shall construct Streets A, B, C, D, E and Lloyd Mangrum Lane with asphalt pavement, curb, gutter and sidewalk. The street width shall be 34-feet from back-of-curb to back-of curb. The streets shall be centered in a 56-foot-wide right-of-way, dedicated to the City.
- Subdivider shall construct the east half of 54th Street West along the west subdivision boundary. Construction shall include pavement widening, curb and gutter. The street half-width shall be 19.5-feet from the right-of-way centerline to the east back-of-curb. Subdivider shall dedicate a 37-foot-wide right-of-way half-width along 54th Street West.
- Rimrock Road is designated as a Major Arterial and is located within a 120-foot right-of-way. Rimrock Road shall be constructed with a minimum standard width of 42-feet, back of curb to back of curb. That portion of Rimrock Road adjacent to the subdivision has been partially constructed. The existing street includes approximately (24-feet) of asphalt. The Subdivider shall provide a cash-in-lieu contribution for the construction of approximately an additional 7-feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter, necessary tapers and stormdrain piping and inlets on Rimrock Road along the frontage of the subdivision, due prior to final plat approval. The cash-in-lieu contribution shall include engineering design and construction administration.

B. Sidewalks

- Subdivider shall construct 5-foot-wide boulevard walks at the following locations:
 - Along 54th Street west, adjacent to west subdivision boundary
 - Along south side of Lloyd Mangrum Lane, adjacent to the Private Park lot.
 - On the southwest curve of the bulb-out, at the intersection of Streets B & E, adjacent to the Private Park lot.
 - Along street frontages adjacent to private open spaces.
- Subdivider shall construct pedestrian ramps at each intersection within the subdivision and at the east side of intersections with 54th Street West.
- 5-foot-wide boulevard walks shall be constructed along streets within the subdivision by lot owners, along the frontage of each lot, in conjunction with building permits for each respective lot.

C. Street Lighting

Construction or installation of streetlights within the public rights-of-way shall not be required at this time, but streetlights are included in the Waiver

referenced herein for construction of the same in the future. A maintenance district for streetlights may be formed for future maintenance of any streetlights installed in the future.

B. Traffic Control Devices

- “Developer shall furnish and install all necessary traffic control devices in accordance with the MUTCD and approved by the City of Billings Public Works Department.
- Subdivider shall install stop signs on Lloyd Mangrum Lane and Street A at intersections with 54th Street West.
- Subdivider shall install street name signs at all subdivision intersections.
- Road closed signs shall be installed on the north end of Street B and the east end of Street A.
- A traffic impact study has been completed for the Subdivision. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider’s expense. The percent of traffic contributions to the following intersections shall be in accordance with the traffic accessibility study:
 - Rimrock Road and 54th Street W: 2.25%
 - Rimrock Road and 46th Street W: 2.54%
 - Shiloh Road and Rimrock Road: 2.33%

The cash contributions shall be based on the percent of traffic contributions to the intersections based on the total cost of an intersection as determined by City Engineering for the year in which the contribution is made. The cash contribution shall be made prior to final plat approval.

C. Access

- No access to or from the subdivision directly to Rimrock Road shall be allowed, except
- Subdivider shall construct a shared use path from the intersection of Street E and Street D, to the existing shared use path along the north side of Rimrock Road. Shared use path shall be in a 20-foot minimum width right-of-way, dedicated to the City of Billings.

D. Heritage Trail Plan

The subdivision is not within the Heritage Trail Plan and no trail improvements are required.

E. Public Transit

No public transit facilities are required to be constructed with the subdivision improvements.

III. EMERGENCY SERVICE

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

At a minimum, the following is required:

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

IV. STORM DRAINAGE

Stormwater runoff flowing toward the subdivision from large drainage areas to the north, shall be diverted around the perimeter of the subdivision in drainage ditches and through culverts to be constructed by the Subdivider. Runoff from minor off-site drainage areas may be captured and conveyed through the subdivision stormwater management facilities. Perimeter ditches shall be routed to points of discharge existing in the pre-developed site condition. Discharge points shall be designed and constructed to disperse concentrated flows and prevent downstream property damage.

Perimeter ditches described above shall be constructed within a strip of land around the north, west and east side of the subdivision, as shown on the plat. The ditches shall be owned and maintained by the Homeowner's Association.

Stormwater conveyance facilities shall be constructed within the subdivision in accordance with City design standards. Runoff from the subdivision shall be conveyed to the proposed stormwater treatment and detention area in the Private Open Space adjacent to the north side of the Cove Ditch. Stormwater from the detention facility shall be discharged to the Cove Ditch in accordance with City of Billings design standards and written agreement with the Cove Ditch Company. The design rate of discharge shall not exceed one cubic-foot-per-second (1 CFS) per 10 Acres of Subdivision Area. The HOA shall be responsible for paying all fees required as part of agreement with the Cove Ditch Company.

Subdivider shall construct all stormwater management and conveyance facilities discussed above.

V. UTILITIES

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

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

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

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

A. Power, Telephone, Gas, and Cable Television

- 10-foot-wide utility easements shall be dedicated on the plat along all road frontages within and adjacent to the subdivision, to allow for installation of power, gas, telecommunication, data, and other services.

VI. PARKS/OPEN SPACE

In accordance with Section 23-1002 of the City Subdivision Regulations, the Subdivider must dedicate park land at a proportion of 11-percent of the area of residential lots being created that are smaller than ½-acre or pay cash-in-lieu. In accordance with Section 27-800 of the City Zoning Regulations, the subdivision must provide a minimum of 2-percent of the net subdivision area as parkland or open space. This area is credited toward the parkland dedication requirements. The Subdivider must provide for a balance of 9-percent to satisfy these requirements.

The total area of residential lots created by the subdivision, smaller than ½ acre, is 16.26-acres. The total park area requirement is 1.46-acres. The Subdivider agrees to pay the City of Billings cash-in-lieu for this land amount prior to recordation of the final plat.

VII. IRRIGATION

Subdivider shall grant to the Cove Ditch Company a 60-foot-wide easement, 30-feet each side of the center line of the cove ditch, to operate and maintain the ditch.

VIII. SOILS/GEOTECHNICAL STUDY

See Section I.C of this agreement.

IX. FINANCIAL GUARANTEES

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

X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A. Subdivider agrees to guarantee all public improvements for a period of one two years from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this

Agreement.

- C.** The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors and assigns and transferees of the respective parties.
- D.** In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
- E.** Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- F.** Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

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

"SUBDIVIDER"

Michael Christensen Homes

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 (Subdivider), 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 the City of Billings, this _____ day of _____, 2005.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

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 Mayor and City Clerk, respectively,
of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such
capacity and acknowledged to me that they executed the same on behalf of the City of Billings,
Montana.

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

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

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

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

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

Fifty Four West Subdivision

Signed and dated this _____ day of _____, 20__.

Subdivider/Owner

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 Subdivider/Owner Name, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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

Notary Public in and for the State of Montana
Printed name: _____
Residing in Billings, Montana
My commission expires: _____



Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

CITY OF
Billings
MAYOR'S OFFICE

May 22, 2023

Travis Copper
KLJ Engineering
2611 Gabel Road
Billings, MT 59102

Dear Applicant/Engineer:

On May 22, 2023, the Billings City Council conditionally approved the preliminary plat of Fifty Four West Subdivision, subject to the following conditions of approval:

1. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS to determine what type of deliver system is preferred and to locate and provide the correct amount of space for safely delivering the mail to the residents.
2. To minimize the effect on local services, to be compliant with Planned Neighborhood Development zoning regulations, and because of the location in proximity to Cottonwood Park, the subdivider shall provide a combination of 2% (.33 acres) developed park and 9% (1.46 acres) cash-in-lieu. The dollar value shall be determined based on methods outlined in Section 23-1007 of the City of Billings Subdivision Regulations. The payment shall be made prior to final plat approval.
3. In order to protect public health and safety and provide for future park maintenance, all required parkland shall be privately owned and maintained. Prior to final plat approval, the subdivider shall submit for review and comment, documents outlining how the maintenance will occur.
4. 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.
5. 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.



Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
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6. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles; fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 shall be limited to 6 feet in height. The side yard fences adjacent to the 30' wide shared use path access for Lot 9, Block 7 and Lot 7, Block 8 shall be limited to 4 feet in height. The Covenants, Codes, and Restrictions (CC&Rs) filed with the final plat shall include this language. In addition, the following language shall be placed into the Subdivision Improvements Agreement under Section II. Titled Property Conditions and Information for Lot Purchasers F. rear yard fences of Lots 1-7, Block 8, and Lot 9, Block 7 shall be limited to 6 feet in height. The side yard fences adjacent to the 30' wide shared use path access for Lot 9 Block 7 and Lot 7 Block 8 shall be limited to 4 feet in height.
7. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles and per the City of Billings Subdivision Regulations Section 23-406 A. 3. The subdivider shall install plantings within the open space area adjacent to the shared use path. The landscaping shall include at least 1 tree and 6 shrubs or ornamental grasses every 40'. The trees should be of a variety included in the City's preferred tree planting list.
8. To minimize the effect on local services, prior to final plat approval, the subdivider shall work with the City Parks Department to complete the expansion of the existing Yellowstone Family Park SID for the maintenance of the park.

Should you have any questions please contact Hunter Kelly at (406) 247-8613 or by email at kellyh@billingsmt.gov

Sincerely,


William A. Cole, Mayor

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Fifty Four West Subdivision. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-302.H.2.]

1. Effect on agriculture and agricultural water user facilities

The subject property is Vacant. Perimeter ditches and drains shall remain in place and not be altered by the subdivider or subsequent owners. The subdivision should not affect agricultural water users' facilities.

2. Effect on local services

- a. **Utilities** – Water service will be provided by the City of Billings. New individual services will be provided to all the lots, and new fire hydrants will be installed as required by the City Fire Department. The water service for this subdivision comes from 54th Street West. Any needed extension of those water lines will be installed by the subdivider to meet the requirements of the City of Billings Engineering Department regulations. The subdivider will install all new water lines in the local streets and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Engineering/Public Works Department and MDEQ. This is outlined in the SIA under the heading VI Utilities, A, Water.

Sanitary sewer service will be provided by connecting to the existing City of Billings' sewer mains. There is an existing sewer main on 54th Street West. All new services shall be installed in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ. This is outlined in the SIA under the heading VI Utilities, B, Sanitary Sewer.

Private Utilities will be provided from existing facilities to the subdivision. No additional easements on the lot frontage have been requested.

Stormwater – Stormwater drainage for the public streets is proposed to be provided by curb and gutters that discharge into storm water pipes. These and all other drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the City Engineering Department.

- b. **Solid Waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. **Streets** – The subdivision is adjacent to 54th Street West and Rimrock Road. Subdivider shall construct the east half of 54th Street West along the west subdivision boundary. Construction shall include pavement widening, curb and gutter. The street half-width shall be 19.5-feet from the right-of-way centerline to the east back-of-curb. Subdivider shall dedicate a 37-foot-wide right-of-way half-width along 54th Street West. Rimrock Road is a developed right of way and no street improvements are anticipated at this time. Street improvements are included in the Waiver of Right to Protest Future Special Improvement Districts.

The sidewalks will be installed by the respective lot owner on a lot-by-lot basis, as lots develop. Sidewalks along the street frontage shall be minimum 5-foot-wide and separated with a boulevard width not less than five feet. The developer will also install all ADA required ramps at the intersections within the proposed subdivision. This information is all in the SIA under the heading Transportation.

The 40' linear private open space adjacent to Rimrock Road will be landscaped with one tree and 6 shrubs every 40 feet in order to screen adjacent properties from the nearby arterial roads. **(Condition #7)**

- d. **Emergency Services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station, Station #7, is located at 1501 54th St West. The subdivision is located within the ambulance service area of American Medical Response (AMR).
- e. **Schools** – School District #2 provides service to students within this subdivision from elementary to high school (Sandstone Elementary School, Castle Rock Middle School, and Skyview High School). School District #2 did not respond to request for comments at the time of the writing of this report. Previous correspondence with the district has mentioned schools in this vicinity are over or near capacity.
- f. **Parks and Recreation** – In accordance with Section 23-1002 of the City Subdivision Regulations, the Subdivider must dedicate park land at a proportion of 11-percent of the area of residential lots being create that are smaller than ½-acre or pay cash-in-lieu. In accordance with Section 27-803 and Table 27-800.1 of the City Zoning Regulations, the subdivision must provide a minimum of 2-percent of the net subdivision area as developed parkland. This area is credited toward the parkland dedication requirements. The Subdivider must provide for a balance of 9-percent to satisfy these requirements. The total area of residential lots created by the subdivision, smaller than ½ acre, is 16.26-acres. The developed park area requirement is 0.33 acres, with 0.83 acres provided. The Subdivider

agrees pay the City of Billings cash-in-leu for the remaining 1.46-acres prior to recordation of the final plat. **(Condition #2)**

- g. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has indicated that centralized mailbox units will be required as were installed for the previous filings of this subdivision. The developer will need to coordinate mailbox locations with the postal service. **(Condition #1)**

3. Effect on the natural environment

The subject property is currently vacant with the proposed use of residential lots. The property is not located in a floodplain. During development, storm water pollution prevention best management practices are required to be used and monitored to prevent erosion on exposed ground. Overall, the effect on the natural environment should be minimal.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. There is a paragraph in the SIA that warns future lot owners of the presence of deer in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat.

5. Effect on the public health, safety and welfare

There may be some impacts to public health, safety and welfare because of this subdivision in relation to visibility of the multi-use pathways along the south border of the subdivision on Rimrock Road and along the pathway corridor from the internal streets connecting to the pathway on Rimrock Road. Since passage of the FY23 Budget and the direction for use of resources and staff time on CPTED implementation, City Administration in consultation with City Council has directed City staff to incorporate CPTED evaluation and principals into projects and processes like transportation planning, park planning, and public safety related activities. **(Condition #6)**

B. Was an Environmental Assessment required? [(MCA 76-3-616 and BMCC 23-302.H.1.)]

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2014 Transportation Plan, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-302.H.4.]

1. City of Billings 2016 Growth Policy

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

Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods): Neighborhoods that are safe and attractive and provide essential services are much desired (p.8).

Home Base (healthy, safe and diverse housing options) Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings.

2. West Shiloh Area Plan

The proposed subdivision is consistent with the following goals of the West Shiloh Area Plan.

PLANNED GROWTH GOAL 1 - Establish Development Patterns that use land more efficiently

Policy A Promote efficient utilization of land within the West Billings planning area by promoting well designed, more pedestrian friendly, urban development patterns with a mix of uses and an efficient, creative use of land.

3. 2018 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision is within the jurisdiction of the Billings Area Bikeways and Trail Master Plan. There is an existing trail on Rimrock Road. No additional improvements of this nature are anticipated.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-302.H.3.a.]

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-302.H.3.e.]

The subject property is located within Suburban Neighborhood Residential (N3) zoning, and is currently undergoing a rezone process as a Planned Neighborhood Development (PND). The lot frontages shall conform to the requirements of this PND. Other building setbacks and structure specific requirements will be reviewed for compliance at the time of building permit review.

F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-302.H.3.b.]

The subdivider will provide utility easements as requested by private utility companies on the face of the plat.

G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-302.H.3.c.]

Legal and physical access is provided to the proposed will be from 54 Street West. New internal accesses will provide circulation to individual lots.

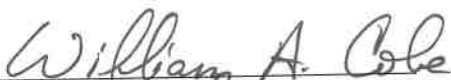
CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Fifty Four West Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several of the goals and policies of the 2016 Growth Policy, West Shiloh Area Plan and does not conflict with the Transportation or Bikeway/Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

The Planning Board recommends to City Council that the preliminary plat of Fifty Four West Subdivision be conditionally approved and adopt the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, May 22, 2023


William A. Cole, Mayor