

# Yellowstone County



## **JEFF MARTIN**

Clerk & Recorder  
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May 17, 2022

John Poukish  
PO Box 2697  
Avon, CO 81620

To Whom It May Concern:

Please be advised the Board of County Commissioners of Yellowstone County, Montana, at their regularly scheduled Board meeting on Tuesday May 17, 2022, voted to conditionally approve Creekside Estates Subdivision, 2<sup>nd</sup> Filing – Preliminary Major Plat with the following conditions:

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 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 resolution of the Yellowstone County, and the laws and Administrative Rules of the State of Montana.

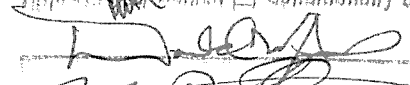


The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, including laws regarding moving houses onto or off the property, and the laws and Administrative Rules of the State of Montana.

The applicant may appeal to District Court a decision of the County Commissioners approving or rejecting a proposed subdivision plat upon application for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the County Commission. If you have any questions, please contact Dave Green at (406) 247-8666, or stop by the City/County Planning Office located at 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor, Billings, MT 59102.

Sincerely,

A handwritten signature in cursive script, appearing to read "Teri Reitz", is written over a horizontal line.

Teri Reitz  
Clerk to the Board of County Commissioners  
Yellowstone County, Montana

BOARD OF COUNTY COMMISSIONERS  
has taken the following action:  
Approved ☒ Denied ☐ Conditionally approved ☒  
 Chairman  
 Member  
 Member

**B.O.C.C. Regular**

Agenda Item 17. b.

**Meeting Date:** 05/17/2022

**SUBJECT:** Creekside Estates Subdivision, 2nd Filing - Preliminary Major Plat

**THROUGH:** Monica Plecker

**FROM:** Dave Green

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**TOPIC**

Creekside Estates Subdivision, 2nd Filing - Preliminary Major Plat.

**INTRODUCTION**

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.

**RECOMMENDATION**

The Planning Board recommends to the Board of County Commissioners to 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.

**VARIANCE 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, 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

Surveyor/Engineer: IMEG

Existing Zoning: Rural Residential 1 (RR1)

Proposed Zoning: Same

Existing Land Use: Former Farmland

Proposed Land Use: Residential

Gross area: 17.55

Net area: 16.99

Proposed number of lots: 8

Max.: 3.59

Min.: 1.17

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.

### **PLANNING BOARD PUBLIC HEARING DISCUSSION**

President Cook called for discussion and question by the members of the Board. Board member Woods asked to verify his understanding of proposed well locations. He was correct with his understanding of the well locations proposed on the plat. He also asked if Lots 7, 8 will have sanitary restrictions lifted? Kolten Knatterud, representative for the applicant, stated Lots 7-8 are undevelopable unless they are annexed into the city and have access to municipal facilities. He also stated this site is difficult to develop due to ground water issues. Mr. Knatterud stated the applicant previously tried to rezone for a dry use but were unsuccessful. The highest and best use may be for horses or livestock. The client is providing an easement along the Birely Drain that could be used for pedestrian trail facility and the intent is to construct a multi-use path.

#### **Public Hearing**

President Cook opened the public hearing and asked for anyone wishing to speak in favor or against Creekside Subdivision, 2<sup>nd</sup> Filing.

Laren Pluhar, 1720 60<sup>th</sup> Street West

Mr. Pluhar noted that the large lots to the east of the proposed subdivision flood irrigated their lots. There is a drainage ditch along the east edge of the proposed subdivision, will that be staying in place? If not there are what appears to be 3 septic systems proposed that would get flooded with the flood irrigation of the lots to the east.

Kolten Knatterud

Mr. Knatterud responded stating on the east boundary of the property a berm will be created to prevent surface water from entering the drain fields. There is a stormwater swale for onsite stormwater.

At 7:15 President Cook closed the public hearing called for a motion.

#### **Motion**

Board member Stephenson made a motion and Board member Gravgaard seconded the motion that the Planning Board recommend to the Board of County Commissioners the preliminary plat of Creekside Estates, 2<sup>nd</sup> Filing be conditionally approved, the Findings of Fact as presented in the staff report be adopted and the variance request be approved.

**The motion carried with a unanimous voice vote.**

### **YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS FINDINGS OF FACT**

See attachment Findings of Fact

### **CONCLUSIONS OF FINDINGS OF FACT**

See attachment Findings of Fact

### **RECOMMENDATION**

The Planning Board recommends to the Board of County Commissioners the preliminary plat of Creekside Estates Subdivision, 2nd Filing be conditionally approval, including Findings of Fact as presented in the staff report be adopted, and approval of the variance request.

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### **Attachments**

Findings of Fact

Proposed Plat

SIA Draft

Attachment A Variance

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## **FINDINGS OF FACT**

The City-County Planning Division Staff has prepared the Findings of Fact for Creekside Estates Subdivision, 2<sup>nd</sup> 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 properly 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)**

62<sup>nd</sup> 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.

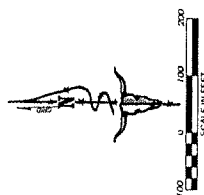
**CONCLUSIONS OF FINDINGS OF FACT**

- 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.


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

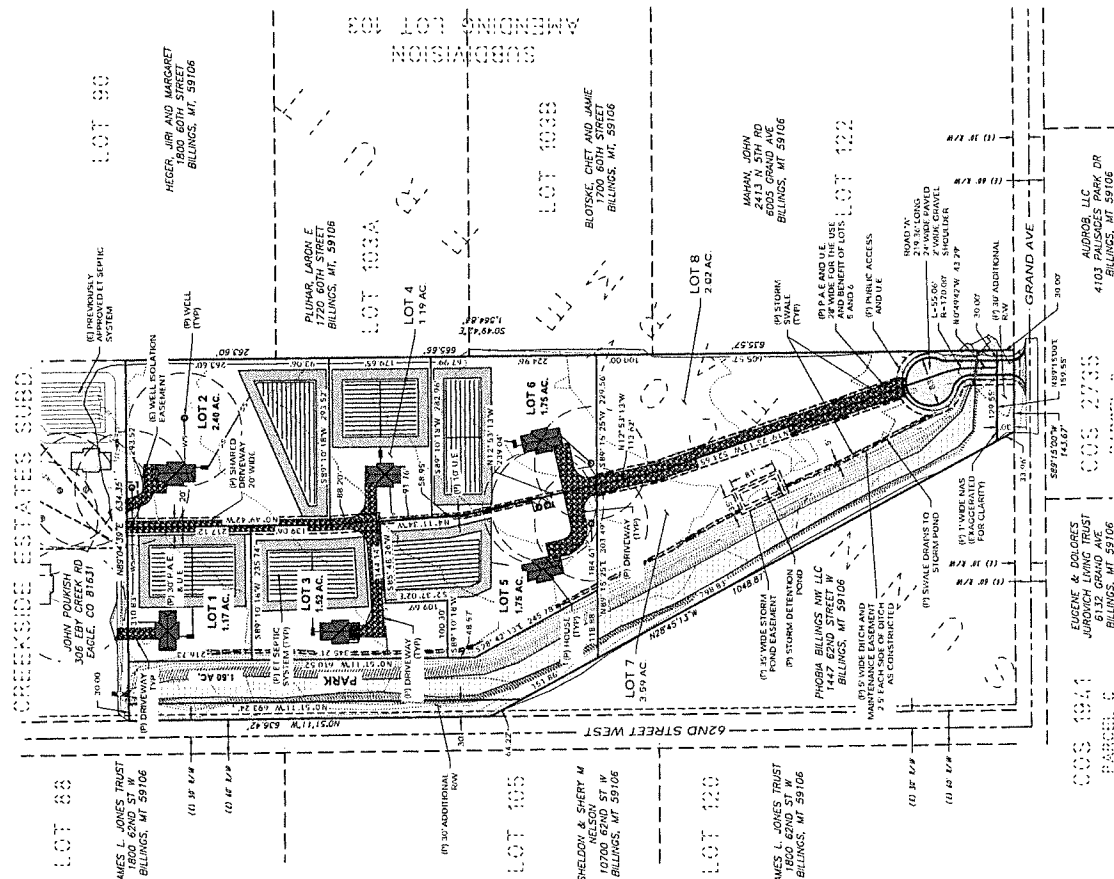


SITE DATA	
NUMBER OF LOTS	8
MINIMUM LOT AREA	15.9 AC
MINIMUM LOT AREA	11.7 AC
AREA OF PARKLAND	1.0 AC
LINEAR FEET OF STREETS	219.30 FEET
NET ACREAGE	38.99 AC
GROSS ACREAGE	12.55 AC
EXISTING ZONING	N/A
PROPOSED ZONING	R-1A
EXISTING LAND USE	RUIN, RESIDENTIAL
PROPOSED LAND USE	RESIDENTIAL

NOTES

PERIMETER LEGAL DESCRIPTION

1/4	SEC.	1.	1.
	37	1N	25C



**LEGEND**

(C) - EXISTING  
(P) - PROPOSED  
COS - CERTIFICATE OF SURVEY  
/N OR R/W - RIGHT-OF-WAY  
P.A.E. - PRIVATE ACCESS EASEMENT  
U.E. - UTILITY EASEMENT  
N.A. - NOT A PART OF THIS MAP

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 60<sup>th</sup> 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 58<sup>th</sup> 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 60<sup>th</sup> 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

Creskide 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.

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

“SUBDIVIDER”

*John Poukish.*

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared John Poukish who executed the foregoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_  
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: \_\_\_\_\_

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.

*Creekside Estates, Second Filing*

John Poukish.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) : ss

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

Notary Public in and for the State of \_\_\_\_\_  
 Printed name: \_\_\_\_\_  
 Residing in \_\_\_\_\_  
 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 1<sup>st</sup> Filing was also granted the same variance. Creekside Subdivision, 1<sup>st</sup> Filing, is on the north end of Creekside Subdivision, 2<sup>nd</sup> 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, 1<sup>st</sup> 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 60<sup>th</sup> 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  
Creeside Estates, Second Filing**

Creeside Estates, Second Filing is a proposed major subdivision in Yellowstone County. The subdivision is proposing to use the existing pressurized hydrant at 60<sup>th</sup> 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;  
**Creeside 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.**