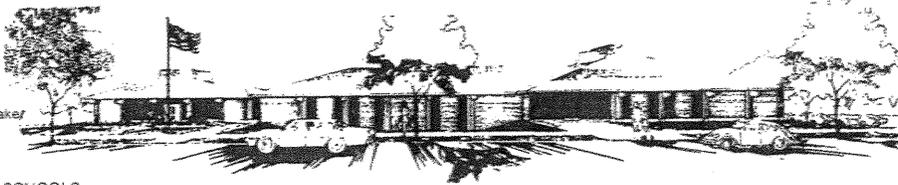


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STAFF REPORT #MJR-15-01

Timber Creek Acres a proposed Eight Lot Major Subdivision of 40.08 acres located in the 1/2 SW 1/4, Section 2, Township 07 North, Range 58 East, P.M.M., Fallon County Montana.

May 11, 2015

Applicant:

Roland Maier
P.O. Box 995
Baker MT 59313

Agent:

Faron Henderson, P.E.
8 Badger Lane
Townsend MT 59644

Technical Information:

Stateline Surveys Inc.
Adam Thompson
P.O. Box 668
Glendive MT 59330

FH Engineering
Faron Henderson, P.E.
8 Badger Lane
Townsend MT 59644

Date of Application: February 4, 2015

Element Review: February 9, 2015

Sufficiency Review: April 8, 2015

Property Description:

The property is located along the north side of Timber Creek Road in the 1/2 SW 1/4, Section 2, Township 07 North, Range 58 East, P.M.M., Fallon County, Montana. Timber Creek Road intersects with US Highway 12 approximately 6.5 road miles west of the city of Baker or 4 road miles east of Plevna along US Highway 12.

Property Size:

160.0 Acres Gross

Zoning District:

N/A

Applying For:

Major Subdivision

Notice Provided:

Per the Fallon County Subdivision Regulations, notification was given at least (15) fifteen days prior to hearings via certified mail to all property owners of adjoining lots of applicant

landowners on May 12, 2015. Legal notice of public hearing was published in the May 15, 2015 edition of Fallon County Times hearing notices were posted as provided by the Subdivision Regulations and the application was made available at the Fallon County Planners Office and online for public review.

Schedule/Procedure:

Public Hearings are scheduled for:

The Planning Board Meeting Monday, June 1, 2015 at 7:00 p.m.

The County Commission Hearing is scheduled for, Monday June 8, 2015 at 11:30 a.m.

Summary of Project:

This project is a major subdivision as more than 5 parcels will be created from the parent tract of record.

One item that absolutely must be addressed is the 120 acre remainder parcel. Where the property is less than 160 acres in size it must be addressed one of three ways:

1. It is a lot in the subdivision and the project must be reevaluated and advertised as a 9-lot major subdivision;
2. It is deemed an Agricultural Tract and an agricultural covenant and prohibitions on development imposed that require review as a subdivision and approval of the County Commissioners to lift the Agricultural restriction;
3. The remaining 120 acres is aggregated by deed or survey into adjoining ownership(s) such that a tract(s) greater than 160 acres is created.

Statutory Authority:

76-3-103 MCA

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

76-3-104 MCA

What constitutes subdivision? A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

These sections of Montana law clearly give the County the authority to review this project and the 120 acre parcel depending upon the desire of the owner. The process for review is afforded by Major Subdivision Review in our local regulations and 76-3-604 MCA.

The standard of review is compliance with our local regulations in addition to the primary review criteria found in Montana Subdivision Law in addition to duly noticed public hearings. We may impose conditions to mitigate impacts identified in the review or deny the project if the Governing Body does not believe that the adverse impacts of the development can be mitigated by conditions.

Growth Policy

The proposed development appears to be consistent with the major tenants of the Fallon County Growth Policy. The following excerpts of the Growth Policy relate to this application:

Pg. 6-1. By locating uses along this corridor, (Highway 12) future land uses can be planned to use existing infrastructure, are compatible with each other and have high-quality design elements that support growth policy goals and objectives.

Chapter 6 Development Areas. Residential development is encouraged to be located within the incorporated places of Baker and Plevna or near these communities where necessary infrastructure can be extended. That said the Policy does not preclude the possibility of expanded rural residential opportunities provided that the necessary infrastructure exists and the impacts of development are borne by the development.

Chapter 7. This chapter points out the demand for housing not only within the incorporated places but in the County in general. With growth rates in the high teens the “need for additional quality housing units is significant”.

Pg. 9-2. Timber Creek Road is classified as a local street.

Surrounding Uses

The property is surrounded by fallow crop fields or pasture land agricultural uses. The applicants dwelling is located on a quarter section to the north of this development and there are two rural residential homes that are presumed to be adjacent to belong to agricultural operations on surrounding properties.

There is a tank farm is less than a mile west/northwest of the subject property with the following oil companies using it for various uses. 1) Bridger pipeline (pipe yard), 2) Hiland Crude, LLC) 3) Plains Marketing LP, 4) Butte Pipeline LLC, (large tank farm).

There is a large amount of truck traffic on Highway 12 & Tonquin Trail which then goes onto Division Road out to Highway 12 depending on what is going on during the different times of year.

The following parts of Chapter 6 of the Fallon County, City of Baker & Town of Plevna Subdivision Regulations Code are not adequately addressed in the application or require additional mitigation to comply with the intent of the regulations:

Those sections not addressed hereafter are determined to be addressed satisfactorily by the application or are not applicable this development.

VI-C Lands Unsuitable for Subdivision. The application speaks to the possibility of expansive soils on the property. This in and of itself is not cause for denial but potential buyers should be placed on notice that engineered footings and foundations may be necessary to ensure proper support for residential structures. Additionally, clay and clay loam soils may require pressure dose drain fields and other limitations to comply with the Montana Sanitation is Subdivisions Act. (76-4-101 et. seq. MCA)

While the application contains enough information to review the project under the Subdivision and Platting Act, additional data will need to be generated and submitted to the County Sanitarian and MDEQ for review and approval of the plans to provide water and septic systems on each lot within the project.

A brief review by the County Sanitarian expresses concerns about the location of several of the proposed drainfield sites. The concerns of the County Sanitarian are hereby incorporated into this report.

VI-D. Floodplain Provisions. The application states that the area is not mapped by FEMA and is assumed to not be flood prone or have concerns related to flooding.

The fact of the matter is the property is located in Flood Zone D “areas of possible but undetermined flood hazards.” This knowledge coupled with the fact that the aerial photo for the area shows a branch of Timber Creek within 500 feet of the exterior boundaries of the subdivision warrants disclosure of these facts to prospective purchasers.

VI-H. Streets and Roads. All of the lots within the subdivision front on the County Road ‘Timber Creek Road’. The rural fire department has requested that areas be provided to get their equipment off of the road and provide safe areas for drive through access.

Without additional justification to require the individual driveways to be built to a specific standard it is difficult to justify the imposition of this request. The department may need to stage their equipment on the County Road or on the shared approaches to provide fire protection.

Road Name signs, rural address signs and standard traffic control signs, unless already existing shall be installed and are the responsibility of the developer prior to filing a final plat for the project.

VI-J. Water Supply Systems. The proposal is that each lot would be served by an individual well for domestic water. A well log was included with the subdivision application as documentation that water was available to serve the lots in the proposed subdivision.

Much of the domestic water in this area comes from a coal vein with water quality that varies from excellent to not fit for human consumption. In some cases home owners have spent significant sums of money to have a filter system installed to have potable water.

Where the lots within the subdivision are less than 20-acres in size, the necessary data to review the provision of water to each lot within the subdivision must be submitted to the Montana Department of Environmental Quality and approved in accordance with ARM 17.36.301, 17.36.302, 17.36.303, and 17.36.305.

The Governing Body may not approve the final plat for this project until this requirement has been met.

VI-K. Sewage Treatment Systems.

The developer is proposing individual septic tanks and drain fields for each of the lots within the subdivision. The lots are less than 20 acres in size the plans for treatment and disposal of sewage must be reviewed and approved by the Montana Department of Environmental Quality in accordance with ARM 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326.

Additionally the Fallon County Sanitarian has issued a letter that expresses concerns about the location of some of the proposed drain fields and naturally occurring drainage swales.

Barring the introduction of additional concerns about the treatment of sewage and the limited information supplied in this application the following condition should be imposed.

The subdivision and the plans for sewage disposal shall be reviewed and approved by the Montana Department of Environmental Quality in accordance with ARM 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326.

The Governing Body may not approve the final plat for this project until this requirement has been met.

VI-O. Disposition of Water Rights.

The water rights associated with the subdivided portion of the property are proposed to be severed from the parcels. This proposal meets with the requirements of the Fallon County Subdivision Regulations.

VI-P. Parkland Dedication.

All of the lots in the proposed subdivision are greater than 5.0 acres in size. As such, parkland dedication is not required for this project.

VI-Q. Fire Protection.

The application states that the applicant “may” comply with additional requirements of the Rural Fire Department. Where the application was submitted without the signature of the

Department Chief, the Governing Body not the Developer's Agent, should be the final arbiter of what is or is not required to address this component of the regulations.

The Chief has subsequently issued a review letter portions of which are addressed in Section VI-H above. That said if additional fire protection items become available they should be evaluated per the finding in this section.

VI-S. Noxious Weeds.

The application addresses the lack of weeds on the property in the current state. This is not surprising where the parcel is in CRP and the soils have remained undisturbed for years with very good cover.

A weed management plan shall be prepared by the developer and approved by the Weed District prior to filing final plat. The weed plan should be incorporated into the CC&R's for the property.

Analysis under the Primary Review Criteria 76-3-608 MCA:

Except as modified in the body of this report, staff incorporates the analysis of the primary review criteria found in 76-3-608 provided by the developer into this report as findings of fact.

1. Effect on Agriculture:

The project at a minimum will remove 40.08 acres from production or the potential of agricultural production in Fallon County.

The creation of lots between 5 and 20 acres as rural residential tracts is a poor use of average and better agricultural property.

The property is in the CRP which would indicate that it has had some viable agricultural potential in the past. Further, the CRP designation implies that the owners have been compensated for the benefit resulting from the removal of the parcel from productive agriculture.

Residential development in agricultural areas leads to conflicts between normal agricultural operations which often result in dust, flies, noise, use of chemicals, fertilizers and herbicides, and odors that are objectionable to residential owners. Owners of the lots need to be notified that they are purchasing property in an active agricultural area and that in doing so they have been deemed to have waived their right to object to or infringe upon normal and customary agricultural operations in the loosest definition of the terms 'normal and customary'.

In addition to the acknowledgement of agricultural operations, owners need to be made aware that they have a duty to prevent trespass onto surrounding agricultural lands by their family members and guests and that they need to keep their pets confined to their respective ownership. Certain breeds of dogs not adequately kept kenneled and the possibility of harm to surrounding livestock.

The overall effect on Agriculture resulting from this project subject to the imposition of conditions to address the identified impacts is INSIGNIFICANT.

2. Effect on Agricultural Water User Facilities:

The property is not part of an Agricultural Water User or Irrigation system.

The property is not subject to easements apparent or of record for infrastructure to support an agricultural water user or users association.

The overall effect on Agricultural Water User Facilities is INSIGNIFICANT.

3. Effect on Local Services:

Residential development even at full build out in the urban environment does not pay the full cost of the provision of public services. The proof to this is the mixture of development within our cities that includes commercial and industrial development which pay more than they demand in services.

The project at full build out will result in increased demands for policing, snow removal operations, and calls for additional road maintenance due to the quadrupling

of traffic (using numbers) from the application on the rural road system and an expansion of bus route services to transport students to the local schools.

Between 60 and 80 percent of the total tax bill associated with the created lots in this subdivision will be directed to local schools. The balance will be allocated in accordance with the mil rates established to the various funds approved by the Board of County Commissioners.

The net increase in taxable valuation, taxes paid to the various county funds and the incremental increase in the demands for services do not balance. Currently, Fallon County appears to have excess capacity in the various services and this project will not place the services in a deficit position.

Possibly the single greatest concern in dryland grasses is wildfire and wildland firefighting as grass fires advance before the prevailing winds very rapidly. Given this concern defensible space around residential structures should be required for each lot within this subdivision.

The overall effect of the development of this subdivision, subject to the imposition of conditions, on Local Services is INSIGNIFICANT.

4. Effect on the Historic or Natural Environment:

The provision of potable water and the collection, treatment and disposal of waste water on each lot within the subdivision will need to be reviewed and approved by the Montana Department of Environmental Quality in accordance with Montana Law and the applicable Administrative Rules.

There are some concerns related to the location of a couple of proposed septic and drainfield locations. However given the lot size of 5 plus acres it is highly unlikely that a suitable location cannot be located on each lot.

As pointed out in this report the property is located in Flood Zone D. This designation means 'undetermined but possible flood hazards.' Owners of property need to be aware of the undetermined risks and should take steps during construction to limit risk. These items include building on the highest portion of the lot, elevating the structure well above ground level on the foundation, avoiding basements and creating positive drainage away from the structure.

The overall effect on the Natural Environment resulting from the development of this subdivision, subject to the imposition of conditions to mitigate identified impacts is INSIGNIFICANT.

5. Effect on Wildlife or Wildlife Habitat:

The introduction of domestic pets, especially cats, will have an adverse effect on the wildlife that have historically utilized the property.

The development of each lot will reduce the ground cover, nesting sites, forage available to wildlife in the area.

In addition to the reasons to 'keep your pets at home discussed in the Effects of Agriculture section, Lot owners will need to ensure that they do not allow their pets, especially dogs to chase deer and birds out of season.

The overall effect of the development of this subdivision, subject to the imposition of conditions on Wildlife and Wildlife Habitat is INSIGNIFICANT.

6. Effect on the Public Health and Safety:

The preliminary soils report and text of the subdivision application address the possibility of “expansive” soils on the property.

The preliminary soils report indicate that the soils are very tight and will impose limitations on the size type and construction of the subsurface drainfield for each lot. The overall cost of the septic tank and drainfield systems may well exceed the \$10,000.00 discussed in the subdivision application.

The overall effect of the development of this subdivision, subject to the imposition of conditions on the Public Health and Safety is INSIGNIFICANT.

Summary:

The project is in general compliance with the Fallon County Subdivision Regulations and subject to the imposition of reasonable conditions could be approved by the Fallon County Commissioners.

The application site plan and related documents as modified by this report, address all of the items necessary for the County to complete a thorough review of the project and the probable impacts associated with the project. In the staff opinion, all of the probable impacts have been addressed and can be mitigated by the imposition of conditions.

Staff Recommendation and suggested motions:

- A. I move the adoption of Staff Report Number MJR-15-01 as findings of fact.

- B. I move to recommend the approval of Timber Creek Acres a proposed Eight Lot Major Subdivision of 40.08 acres located in the S½ SW¼, Section 2, Township 07 North, Range 58 East, P.M.M., Fallon County Montana, subject to the following conditions:
 1. That the final plat be in accordance with the plat, plans and specifications submitted for preliminary review except as modified by these conditions.
 2. That the plans for the provision of water and sewer to the subdivision be reviewed and approved or exempted from by the MDEQ.
 3. That the developer may bond for improvements required by this approval in accordance with the Fallon County , City of Baker and Town of Plevna Subdivision Regulations.
 4. Road Name signs, rural address signs and standard traffic control signs, unless already existing shall be installed and are the responsibility of the developer prior to filing a final plat for the project.
 5. A weed management plan shall be prepared by the developer and approved by the Weed District prior to filing final plat. The weed plan should be incorporated into the CC&R's for the property.
 6. The property is located in Flood Zone D “areas of possible but undetermined flood hazards.” As such, the proposed Covenants shall be amended to reflect the unknown nature of the flood hazard. In addition the following items will be included to mitigate concerns with flooding: building on the highest portion of the lot, elevating the structure above ground level on the foundation, basements are not recommended and creating positive drainage away from the structure.
 7. Owners of the lots need to be notified that they are purchasing property in an active agricultural area and that in doing so they have been deemed to have waived their

- right to object to or infringe upon normal and customary agricultural operations in the loosest definition of the terms 'normal and customary'.
8. In addition to the acknowledgement of agricultural operations, owners need to be made aware that they have a duty to prevent trespass onto surrounding agricultural lands by their family members, guests and pets within their respective ownership.
 9. Defensible space a minimum of 30-feet in width shall be maintained around residential structures for each lot within this subdivision.
 10. Where the property is less than 160 acres in size it must be addressed one of three ways:
 - a. It is a lot in the subdivision and the project must be reevaluated and advertised as a 9-lot major subdivision;
 - b. It is deemed an Agricultural Tract and an agricultural covenant with appropriate prohibitions on development are imposed that require review as a major subdivision and approval of the County Commissioners is required to lift the Agricultural restriction;
 - c. The remaining 120 acres is aggregated by deed or survey into adjoining ownership(s) such that a tract(s) greater than 160 acres is created.
 11. That this approval is valid for three years from the date of approval by the County Commissioners.

Documents Referenced and Available for Review in the Planning Office and Online

Fallon County, City of Baker and Town of Plevna Subdivision Regulations.
Fallon County Growth Policy