Miles City Community Service and Planning

Miles City Planning Board Meeting
April 20, 2021

6:00p.m.
City Hall Conference Room

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- **Zoom Link**

Join Zoom Meeting

- https://zoom.us/j/98715184794?pwd=QW1Vb0E0OWFjSmRGU2t4Mi9NRkFRUT09
-
- Meeting ID: **987 1518 4794**
- Passcode: **385897**
- One tap mobile
- +12532158782,,98715184794#,,,,*385897# US (Tacoma)
- +13462487799,,98715184794#,,,,*385897# US (Houston)
- Dial by your location
  - +1 253 215 8782 US (Tacoma)
  - +1 346 248 7799 US (Houston)
  - +1 669 900 6833 US (San Jose)
  - +1 301 715 8592 US (Washington DC)
  - +1 312 626 6799 US (Chicago)
  - +1 929 205 6099 US (New York)
- Find your local number: https://zoom.us/u/asppzwJaU

The April 20, public hearing will be held in the City Hall Conference Room at City Hall, 17 South 8th Street, Miles City, Montana, 59301 and people may attend via Zoom by contacting the Planner Office at City Hall. For more information, contact the Planning Office at City Hall or (406) 234-6339.

Miles City

City Planning Board

P.O. Box 910
Miles City, Montana 59301
(406) 234-6339

PUBLIC HEARING AGENDA

City Hall Conference Room
April 20, 2021
6:00 pm

Call to Order

Please turn off all cell phones.

Roll Call

Disclosure Statement: *Members must disclose any Ex Parte Communications or Conflicts of Interest, (including subject of discussion).*

Approval of Minutes

From the March 24, 2021 Meeting

Citizen/Visitor Request

(For items not on the agenda – Please stand, give your name, address and a brief description of your concern).

Open Public Hearing – Introduce sub-division proposal

- Proposed City View Subdivision, a 4-lot subsequent minor subdivision of a ±22.4-acre tract of land that may be legally described as Lot 2 of the Amended Plat of Block 5 of the Amended Plat of Southgate Meadows Subdivision.

Determine if proper notice has been provided

- Certified letters mailed April 2, 2021
- Legal Notice sent to the Miles City Star March 30, 2021, publish date requested April 5, 2021 Date published April 6, 2021

Do any board members wish to declare conflict of interest in the sub-division
(excuse any member who declares such a conflict from participation in the hearing)

Request of Staff Report
(to be presented to the Board and Public)

Sub-division Administrator to present an overview of the Staff Report with Staff Recommendation

Planning Board may ask questions to the Sub-Division Administrator

Questions to the Subdivider or designated agent;

(present subdivision, describe pertinent features of the proposal and respond to the staff report and recommendation)

Members of the Planning Board may ask questions of the subdivider

Open Public Hearing to Public Comment

(public comment to be given in a manner and of limited duration per person as determined by the Chairman and members of the Planning Board)

Members of the public choosing to speak

(shall identify themselves prior to commenting and shall direct comments to the Board and not members of the audience or the subdivider)

After Public Comment

(Chair may close the hearing to public comment)

Board may Move to:

(recommend approval, conditionally approve, or denial of a proposal. All Board members may vote on the motion or abstain from voting)

The Board may ask the subdivider for an extension of the preliminary review period

(if an extension is agreed upon, the Board may continue the public hearing to a date, time and place announced during the hearing.)

Planning Board shall forward its recommendation to City Council for a final decision prior to the mandatory review deadline. (*May 11, 2021)*

Unfinished Business:

Recommendation to Council – City View Subdivision

New Business:

Board Member & Staff Comment:

Adjournment

Next regularly scheduled board meeting July 19, 2021

Speakers are to give their name and address. Speakers are requested to limit their testimony to relevant information and to allow others the opportunity to speak. If multiple speakers are giving the same testimony, it is requested that they either appoint a representative or to briefly acknowledge that they agree with previous testimony.

Questions about the items on the agenda can be directed to the City Planner

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City Planning Board

PO Box 910
Miles City, MT 59301
(406) 234-6339

Meeting Minutes

March 24, 2021
6:00 pm

Call to Order: The City Planning Board met in the Conference Room on Wednesday, March 24, 2021. The meeting was called to order by Board President (BP) Brant Kassner at 6:01 pm and requested a roll call. Board Members (BM) present were Brant Kassner, Dennis Hirsch, Tyler Kennedy, Steven Palmeri and Jason Oddy. Board Member (BM) Leif Ronning and Michelle Simpson were excused absent. Joel Nelson of Land Solutions appeared via zoom. Others present were Mayor Hollowell, Ally Capps Planner I, Dan Rice City Attorney, Scott Gray Public Works Director and Nicole Richardson served as recorder. Others present are on the attached sign-in sheet. Ally Capps reported all legal notices were mailed out on March 8, 2021 as well as the notice in the Miles City Star.

Open Public Hearing for Comments: BP Kassner asked the Planning Board if anyone had any conflict of interest with the applicant and the request brought before the board. No conflicts were brought up and the public hearing was opened.

Ally Capps presented an introductory staff report of the Preliminary Plat Review of City View Subdivision, a Proposed Subsequent Minor Subdivision of Lot 2 of Block 5 of the Amended Plat of Southgate Meadows Subdivision. The project is a four-lot subsequent minor subdivision. Lot sizes proposed are Lot 2A: 4.982 acres, Lot 2B: 2.920 acres. Lot 2C: 3.315 acres and Lot 2D: 11.198 acres. This proposal constitutes as subsequent minor subdivision as defined by the Miles City Subdivision Regulations (MCSR) and as outlined by Montana law. The allotted time for the preliminary plat review of a subsequent minor subdivision is 60 working days. The Miles City Planning Board will hold a public hearing on the proposal on Tuesday, April 20,2021, at 6:00PM. The City Council is scheduled to review the subdivision at 6:00 pm on Tuesday, May 11, 2021. Ally Capps also gave the zoning, present land use, applicant, landowner, local agent and project engineer information that can be found on page 2 of the introductory staff report. All four lots would be provided municipal water and sewage disposal services via the Custer County Water and Sewer District, with water and sewer mains looping through the subdivision on all four lots. The project description is on page 4 of the introductory staff report and goes into detail about the water, sewage services and other improvements on Horizon Parkway. On page 5 it is explained the four lots are proposed for undetermined commercial uses in compliance with the General Commercial Zoning District. Figure 3 shows the projects landscape plan. The subdivision includes two variance requests that are on Page 6 of the introductory staff report.

BP Kassner opened up for public hearing and comment asking each person to state their name and address. Bette Jewell at 107 Ponderosa stated she was against the subdivision for the main reason of Southgate not having a second exit. Bette provided Ally Capps a copy of her questions that are attached to the minutes. Bette stressed in her public comments that Southgate has been promised a second exit as far back as 2010. In her print out, she explained that Highway 59 intersects Horizon Parkway and this adds a lot of traffic and sometimes danger to this area. She mentioned 2 incidents where Horizon Parkway

intersection was blocked. Bette also explained they saw a few agencies response to the proposed subdivision but not one from MCFR.

Dave Jewell at 107 Ponderosa is opposed of the subdivision because of several unanswered questions. Dave also provided Ally with a copy of his questions that are also attached to the minutes. The unanswered questions listed were if DEQ has reviewed the subdivision? Will the developer comply with storm water, landscaping, utilities, etc. and how it will be enforced? What is the difference between residential and commercial condominium? Will any additional fire hydrants be installed in the subdivision? Dave lastly wants a copy of the final finding of facts and recommendations report from the Planning Board.

Dwayne Rude at 10 Arrow Circle opposes the subdivision for the same reasons previously stated. He does think it is time for the City to take a look at a second exit for Southgate. With a second exit Dwayne thinks property values would increase, home ownership would increase and potential development would occur out there. He stated Miles City needs more homes as more people would move here. For now, he does oppose the subdivision.

Dan Rice the Attorney for the City will he helping Ally, Joel and Scott with the final report so a lot of the above asked questions will be answered in that. Dan wanted to ask the Southgate residents that showed up what their feelings on a Special Improvement District. He explained that the City is not allowed to put full cost of outside the subdivision road improvements on the developer. Bette didn't want to answer that for everyone, she wants to know how the City will hold past, present and future developers accountable to pay their share of the second exit. Once those numbers are presented she would answer that. Dan explained that the second exit should have been done and considered at the time of the development. But, his understanding is the County approved everything and the City later annexed the subdivision. Dan was wanting the residents to understand the burden of the second exit can't just be passed off onto one developer. Bette does not feel a big burden should be passed to the residents for this second exit. Dan states it is the only way to practically handle it as it has been so many years since it has been developed. Dwayne would like to see the City get some cost estimates and some kind of plan to bring to the residents of Southgate instead of them just being told it will cost too much. A long-range transport plan done in 2017 had options such as 30,000-foot level. He doesn't know if this is still realistic but he feels if Southgate was presented with more information they could better decide if an S.I.D. is something they want to do. He did agree the burden should not be put on one developer who comes in to do work on the south end. He would just like to see options, cost and a proposal from the City. Dan brought up when Steele St was looked at private property would have had to have been purchased and that is when that fell apart. Dan had never heard of any easement but Scott Gray Public Works Director said it was on Kenny Monier's property. Dwayne said back in 2010 Kenny sat on the Planning Board and he had offered the easement however he wasn't sure where it was located on his property. Dwayne again expressed options would be nice for Southgate to be able to decide on the second exit.

BP Kassner closed the public hearing for comment.

Approval of Minutes: BP Kassner called for approval of the minutes from February 24, 2021 meeting.

** *Kennedy moved for approval of the minutes from the February 24, 2021 meeting, second by Palmeri. All in favor, motion* ***approved.***

Citizen/Visitor Request: Not related to the subdivision. None.

Unfinished Business: No unfinished business.

New Business: No new business.

Board Member/Staff Comment(s): BP Kassner asked the board if anyone had any questions/comments for Ally. Dan Rice introduced Joel, he is our contracted planner for the City. He does professional land planning all over the state where Dan, Scott and Ally are doing it at the local level. BP Kassner asked again if the board had any questions. BM Hirsch says the subdivision was well put together and he thinks it will benefit the City of Miles City. BP Kassner reviewed and said it was good and he didn't have any questions at this time for Joel. No questions were asked by any City staff members.

Adjournment: On motion, the meeting was adjourned at 6:25 pm.

Meeting Reopened: On motion the meeting was reopened at 6:26 pm. Dan Rice explained if the board had any preliminary questions or concerns to give the staff some direction on what needs to be included in the staff report and recommendations, now is the time. Dan stated that the second exit comes up a lot when Southgate is discussed and Joel can provide insight to the Board how often this kind of exemption is used around the state. When they should be denied or approved. Joel may also have some comments on commercial condominiums. BM Palmeri asked Joel what the difference between commercial and residential condominiums? Joel explained it has to do with the use, but a condominium is a form of ownership. The Montana Unit Ownership Act says property is held in common but units are held individually. They can be residential or commercial and, in some instances, could be mixture of them both. In Western Montana they have dockominiums where people store their boats, they own the building and the association owns the ground and the roof of the buildings. A second access is a common variance in heavily forested areas where it is needed. In the Flathead area a two-lot subdivision would have a variance like this with thousands of homes only having one road in and one road out. The most common way it is dealt with is future owners will waive their right to protest an S.I.D. This distributes the cost amongst the developer and other users of the road. This way it is not solely on the developer to solve the problem but have everyone apart of the solution. Joel then asked the board if they had any further questions on the second access or condominiums. Dan asked Joel when we would expect to see the association agreement apart of the current process or before the condominium units are sold. In this situation the sub divider creates the lots and then the exemption for the condominium development gets submitted to the City. It will go from staff to the City Council, it is exempt from review except under the exemption section that will require a declaration of unit ownership dealing with the maintenance. Title 70-23 of Montana Law explains the point of contemplating condominium lots is to see potential use right now. It's part of zoning and subdivision exemptions in cities. When you have municipal zoning and subdivisions there can also be exemptions for condominiums that will allow for more owners and more units and not more lots. Dan asked Joel is part of the exemption also a part of this process. When do we see that declaration or draft of the declaration or will it come later? Joel stated it will come later as there are extensive requirements and past practice for Miles City has been that it will go to City Council. Dan asked Joel or Scott what has been contemplated on the extension of Horizon Parkway. Scott explained it will extend to the east at the start of the subdivision where the water and sewer tie in to the last entrance of the subdivision which is about 700-800 feet with pavement, curbing and sidewalk. The depth is based off of specs from the road and weather if its major or minor flood arterial route will determine depth of asphalt and sub-base. Cory Wilhelm was the surveyor for the subdivision and he noted they had an engineering company come in and do a traffic study to figure out the amount of flow on Horizon Parkway and found out it is classified as an arterial street. With this information the asphalt will be 6 inches. It had to be designed by a licensed engineer and submitted to the City as well as water, sewer and storm water plans. All of this is up with DEQ and they will not review to make a recommendation until they have

finding of facts from the Planning Department. That is the last thing given to DEQ for their approval. Dave Jewell stated currently there is a fire hydrant on the north side of Horizon Parkway and wants to know if any will be added to the south side. Cory explained fire hydrants are in the water design, what they will be doing is extending the water and sewer from Ponderosa south into the subdivision where it will do a horseshoe effect back to Horizon Parkway and back west to the intersection. Dave Jewell wanted to know why in the subdivision improvement agreement only four main areas were under exhibit A and why not everything such as storm water and landscaping. What assurance do the people of Southgate have that it will be built according to the design? The question was directed to Joel which he explained exhibit A is about the public water main extension, public sewer main extension, Horizon Parkway road extension and storm water detention facilities are the extent of the proposed improvements by the sub divider. Exhibit A is general not talking about fire hydrants or sidewalks along Horizon Parkway but that is all based on the approval of the subdivision. With the staff recommendation it will include specific conditions of approval in terms of required improvements which will go to the planning board and then City Council. It is all up to the City Council what the improvements are. Lighting is not proposed and the staff is not aware it is a requirement. The vegetation and landscaping shown does not need to be installed prior to final plat approval of the subdivision. The way subdivision and zoning regulations work is when somebody comes in to develop a lot, typically after a subdivision is platted they will have to adhere to the landscape plan on file for the subdivision or create their own that demonstrates compliance with zoning. Improvements of vegetation will have to be installed with completion of the building. There are provisions for an improvement agreement, if they need a certificate of occupancy for a building but it's the middle of winter and they can't install landscaping there is leniency in the zoning regulations. Landscaping is not tied to the final plat approval the way roads, storm water, water and sewer are. If all of that is not completed they have to do a subdivision improvement agreement. The developer improvements that still have to be done will require a bond or letter of credit with an improvement agreement of full details to ensure it will get done. Conditions of landscaping is the obligation of the association who owns the condominium to provide surety for those before obtaining certification of occupancy for that lot or condominium. An overview Dan Rice gave was improvements done by the developer need a timeline and a subdivision improvement agreement for those developer items. Bette and Dave Jewell expressed their concern about the brim that runs parallel and adjacent with Horizon Parkway. The brim is currently covered in weeds and has water running off it, they want to know what guarantee there is it will look better if this subdivision is developed. Bette also wants to know if there will be sidewalks and lighting. Sidewalks will be included in the bond as explained by Dan Rice. Bette wants to know about the plan with that brim as when it rains runoff, silt and dirt comes from there into the only storm water drain out in Southgate. Cory Wilhelm explains part of the storm water prevention development rules the engineer has to follow is if you develop a site you have to control the runoff to come off the site at the previous developments rate. The vegetation on the slope is not a part of this subdivision process. Dan stated if the subdivision is approved there is no guarantee the lots will ever be developed and then no change would happen to the natural landscaping. When the development does take place, it will have to go through an approval process of vegetation and landscaping which DEQ will have to approve anything that is done. It is possible the subdivision is approved; all requirements are put in and nothing ever happens and it just stays the way things already are out there. Matthew Lothspeich explains he wants the subdivision to look nice but it is difficult to plan final landscaping before any retention ponds, water and sewer is even ran up there. Cory explains that condominiums in Miles City are pretty irregular but what the rule says for a subdivision is when you are considering putting in condominiums all you have to do as the developer, engineer and surveyor is state the fact your client is considering putting them in. In the future there is a bigger submittal on the condominium part. BP Kassner asked if anyone else had questions or comments. Mayor Hollowell brought up that multiple commercial buildings leaves a

lot to the imagination as to what can go out there. Cory brought up it is zoned General Commercial which means what can go in there is vast making it tough for the traffic study. What can go in could be small such as a self-employed business or a big business. All they can follow is the zoning, so anything that falls under General Commercial can go in there. At this time there is no plan of anything specific going into the condominiums. Dave brought up there was never a recommendation from the fire department. Cory is required to send a list of people the environmental assessment and if he hears back from them it is included in the paperwork. He has not heard back from them on this part of the subdivision but he has been working with them through DEQ as far as water main design to have appropriate fire flow. Cory did receive a letter from them saying they will have the correct fire protection in the development as long as the building regulations are followed. Certain regulations are for doing a brick building vs a wooden one. BP Kassner asked if anyone else had anything and Rick Huber had some questions. He first asked if a person doesn't know what kind of business would go in there it could determine what kind of water flow needs to be in at a maximum, right? Cory said the street designs are at maximum even though the first traffic study said it wouldn't be but with concerns from the City and per zoning it could be so they went for the maximum. He then asked about how they make the drainage stay at the previous flow rate. Wilhelm explained they have sized out a storm water retention pond to withhold a certain event and a pipe to release it at the same rate as before. It can't come off that brim any faster than it did previously. It is coming off at Horizon Parkway as well as the back side too so once the work is complete the water flow will stay that same. The storm water plan explains that on the 20 acres being developed the runoff will go into the detention pond, then into the pipe at the same rate it won't run any faster. Huber then asked if the last step of the subdivision is the landscaping and if its been approved yet. Cory explained the last step is the road design, also we have an element review and sufficient review. One is the first 5 days then 15 days for the next review. There were 4 or 5 submittals done on the second review as the City had concerns that were addressed making the last the road design. BM Palmeri stated with the concept that this moves forward and landscaping is done, the detention ponds are put in with the valves it would significantly mitigate debris coming off and erosion. The issue with the drain might elevate some problems making this a benefit. BP Kassner asked if anyone else had any questions or concerns.

Adjournment: On motion, the meeting was adjourned at 7:00 pm.

Respectfully submitted,

_____Date _____ _____Date_____

Nicole Richardson
Recording Secretary

Brant Kassner
Board Chair

Miles City Fire Rescue
CITY OF MILES CITY

www.milescityfirerescue.com

2800 Main Street
Miles City, MT 59301

Telephone (406) 234-2235
Fax (406) 874-8666

March 30th 2021

To: Cory Wilhelm (Wilhelm Land Surveying LLC)
Regarding: Impact to the Miles City Fire & Rescue

Cory,

Regarding the submitted plans for the Southgate Meadows Subdivision. I see some minimal impacts to the Fire Department. Impacts related to the Fire Department operations would include increased structure protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies. I do not feel that these minimal impacts should prevent the process for this subdivision from moving forward.

Access and egress for future reference. As continued development progresses off of Horizon Parkway, I see a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these.

If you need any additional information, please contact me at bstevens@milescity-mt.org.

Sincerely,

Branden Stevens
Fire Chief
Miles City Fire Rescue
bstevens@milescity-mt.org

Responses to questions submitted by Dave Jewell:

-Subdivision Administrator responses

- **Question....Where is MCFR response to this proposed subdivision?**

Response:

The preliminary plat application included a copy of a letter from Wilhelm Land Surveying to Miles City Fire & Rescue attempting to solicit comments on the project. No response from MCFR was included with the application.

On March 12, the Miles City Planning Department sent letters to several agencies including Miles City Fire & Rescue regarding this project. To date, no response has been received.

It is important to note the following language from 76-3-504(1)(i), MCA: *"...A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body."*

That said, as the reviewers, we concur that comment from Miles City Fire & Rescue regarding the subdivision application and the variance request for the lack of a second access would be very helpful.

1. **Has DEQ reviewed, issued any permits, or given approval of any storm water plans?**

Response:

We are unaware of any approvals or permits issued by DEQ for this project. The application for DEQ subdivision review was submitted to DEQ, with information on the DEQ submittal and review included with the application at City Hall, which is available for public inspection.

It is our understanding that the applicants are awaiting the public comments from the city review to submit to DEQ in accordance with state law. Per 76-3-604(7)(a), MCA, *"The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat. (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the: (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres..."*

We therefore encourage comments regarding water, sewer, stormwater and solid waste be submitted in writing.

2. **We would like to see all the current plans, grading, storm water plan, landscaping, sidewalks, curb and gutter, lighting, water and sewer, streets, utilities, etc and cost estimates from 3 sources included in the Subdivision Improvements agreement. Will the developer be required to fully comply with the requirements of the agreement and how will the agreement be enforced?**

Response:

Please note the required improvements for the subdivision have not yet been determined. Staff will make a recommendation based on the regulations and review criteria, as will the Planning Board. The conditions of preliminary approval, if granted by City Council, will outline the required improvements that must be completed prior to final plat approval, unless secured through a proposed Subdivision Improvements Agreement (SIA). A draft SIA was submitted for the improvements being proposed by the subdividers, per Sec. 21-14(5)(a) MCSR, which includes "*A form of subdivision improvements agreement, if proposed*" as a potentially required 'supplement to the preliminary plat', which was required during element review of this application. It would be premature to include bids and estimates at this time, because the required improvements have not been determined through the public subdivision review process and detailed in a conditional approval letter.

The acceptance of a proposed SIA will be contingent upon City Council approval. The proposal to bond for the improvements is part of the current preliminary plat proposal, which is under review. Please note that 76-3-507, MCA addresses this, which is entitled, "Provision for security requirements to ensure construction of public improvements." Please note subsection (4) states, "*The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.*"

Sec. 21-14(b)(7) of the MCSR (under the final plat subsection) addresses improvements agreements and the above statute. It states in part, "*The governing body may require 50 percent of all improvements or 100 percent of any improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security for purposes of filing a final plat.*" Because the improvements proposed to be secured by the SIA are related to public health and safety, this section of the regulations is important to consider, and will be addressed in the upcoming staff recommendation.

Please also note the following from Sec. 21-14(b)(7) of the MCSR: "*...If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125 percent by the highest bid...*" If and when an SIA is proposed as part of the final plat application, the regulations will require three bids as you have suggested.

In regards to enforcement of the SIA, the terms of the draft agreement outline how the agreement is to be administered. The agreement and financial security must remain in place until improvements are completed and as obligations are completed by the developers, but the security may be reduced incrementally until all improvements are complete. If improvements are not completed by the developers per the agreement, the idea of the agreement is that upon default, the City would be able to access the financial security and cause the improvements to be completed as required.

3. **What is the difference between a residential condominium and a commercial condominium?**

Response:

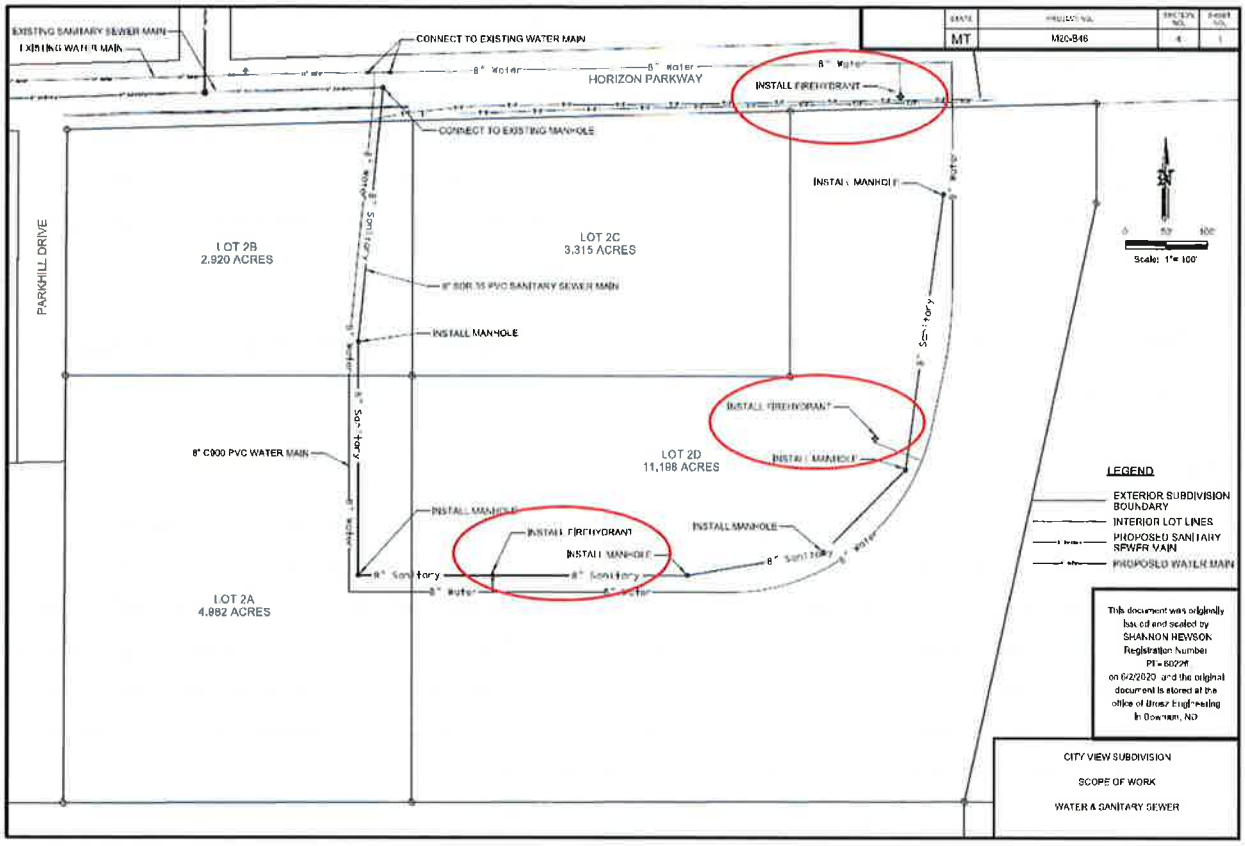
As Joel Nelson explained at the March 24 hearing, the main difference between a residential condominium and commercial condominium seems to be the use (residential vs. commercial). "Condominium" is a form of ownership. Please see the Montana Unit Ownership Act at MCA Title 70, Chapter 23, and the definition of condominium (70-23-102(7), MCA): *"Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter. The term does not include a townhome, a townhouse, a community land trust, or a housing unit located on land belonging to a community land trust.*

-other definitions in the Unit Ownership Act also apply to condominium projects and may help to answer your question.

4. **Will additional fire hydrants be installed on the south side of Horizon Parkway? Current fire hydrants are on the north side and in a fire event the entire residential portion may be blocked.**

Response:

The requirement is subject to City Council action, but the submittal proposes fire hydrants at the locations shown on the following map excerpt, on which we circled the hydrants shown:



5. **We would like a copy of the draft final finding of facts and recommendations report from the planning board that it will deliver to the City Council along with a completed Subdivision Improvement Agreement. How and when will these documents be available?**

The report with the *Planning Board's* findings and recommendations will be available within ten working days after the April 20 public hearing (May 4) per Sec. 21-16(a)(5)(d), MCSR and 76-3-605(4), MCA. We will email you a copy of that report when it is completed.

There will also be a *staff report* prior to the April 20 public hearing of the Planning Board. This will include the staff-recommended findings of fact and recommendations on the application and requested variances. The regulations and state law do not dictate a deadline for that report, but staff's internal goal for completing and distributing the staff report to the Planning Board is one week prior to the hearing (approximately April 13, but again, without a hard deadline). We will email you a copy of that report when it is completed.

Staff Report to the City Planning Board
File # CV 2020-01
Preliminary Plat Review of City View Subdivision, a Proposed Subsequent Minor Subdivision of Lot 2 of Block 5 of the Amended Plat of Southgate Meadows Subdivision
April 15, 2021

I. GENERAL INFORMATION

A. Review Period

This proposal constitutes a subsequent minor subdivision as defined by the Miles City Subdivision Regulations (MCSR) and as outlined by Montana law. The allotted time for the preliminary plat review of a subsequent minor subdivision is 60 working days. The Miles City Planning Board held a special meeting and introductory public hearing regarding this subdivision on Wednesday, March 24, 2021 at 6:00pm. The Planning Board will hold a 2nd public hearing on the proposal on Tuesday, April 20, 2021 at 6:00pm at its regular quarterly meeting. At the conclusion of the April public hearing, the Planning Board will make a recommendation on the proposal to the Miles City City Council. The City Council is required to take final action on or before the review deadline of May 11, 2021. The City Council is scheduled to review the subdivision at 6:00pm on Tuesday, May 11, 2021, with a 3rd public hearing scheduled at that time.

B. Project Characteristics

1. Type of Project:	Four-lot subsequent minor subdivision (preliminary plat)
2. Proposed Lot Sizes:	Lot 2A: 4.982 acres Lot 2B: 2.920 acres Lot 2C: 3.315 acres Lot 2D: 11.198-acres
3. Zoning:	City of Miles City General Commercial (GC) Zoning District (current – no proposed change)
4. Present land use:	Vacant
5. Proposed land uses:	Commercial and other non-residential land uses allowed in General Commercial (GC) Zoning District

6. **Access:** Approaches to City streets: Horizon Parkway and Parkhill Drive; project includes proposed improvements to Horizon Parkway and other staff-recommended improvements

7. **Utilities:** Electrical and telecommunications utilities available in Horizon Parkway public right-of-way

8. **Water/Sewer:** Extensions of Miles City and Custer County Water and Sewer infrastructure with water and wastewater services provided by Miles City's municipal systems

C. Project Proponents

1. **Applicant:**
Matthew Lothspeich, *for*
L & L Developers, LLC (subdivider)
2323 South Haynes Avenue
Miles City, MT 59301

2. **Landowner:**
L & L Developers, LLC
2323 South Haynes Avenue
Miles City, MT 59301

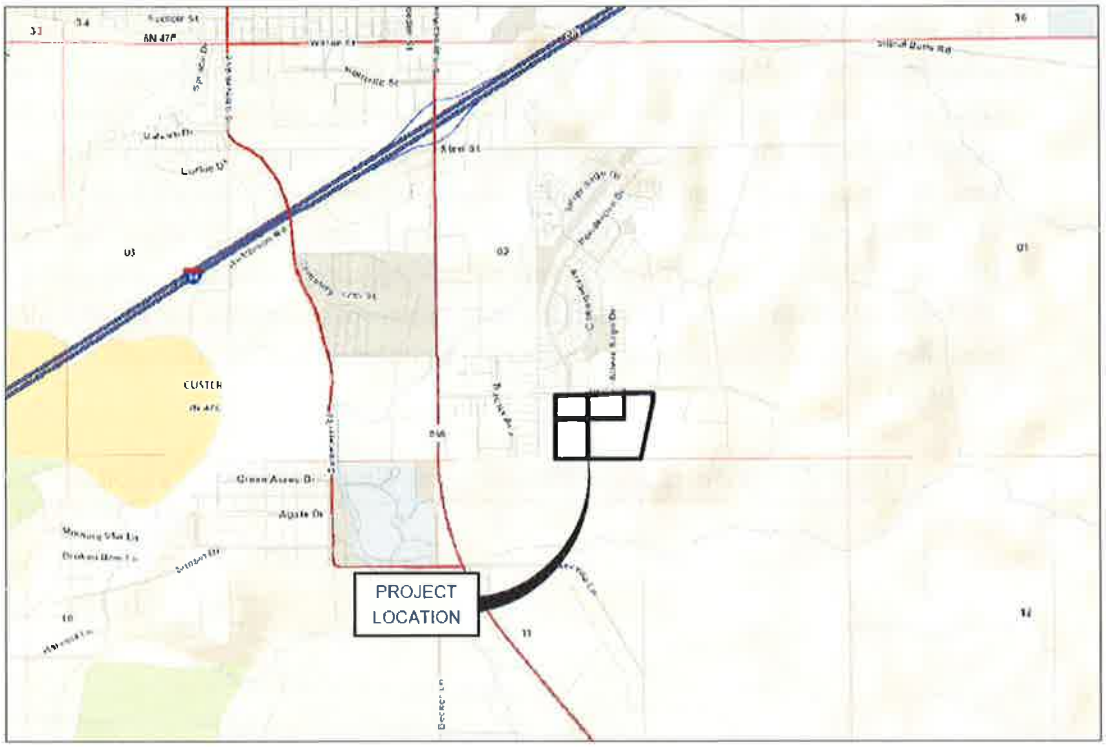
3. **Local Agent:**
Cory Wilhelm, PLS, CFedsS
Wilhelm Land Surveying, LLC
713 Pleasant Street
P.O. Box 1518
Miles City, MT 59301

4. **Project Engineer:**
Shannon Hewston, PE
Brosz Engineering
109 South Main Street
Bowman, ND 58623

D. Property Description

The ±22.4-acre tract of land is located at 501 Parkhill Drive in the southeast portion of Miles City, along the south side of Horizon Parkway approximately 1,530 feet east of MT Highway 59. See Figure 1, 'Vicinity Map'.

Figure 1: Vicinity Map.



The tract may be legally described as Lot 2 of the Amended Plat of Block 5 of the Amended Plat of Southgate Meadows Subdivision, Env. 530B of the Custer County Clerk & Recorder's Office, located in Section 2 of Township 7 North, Range 47 East, P.M.M., Custer County, Montana; in the City of Miles City.

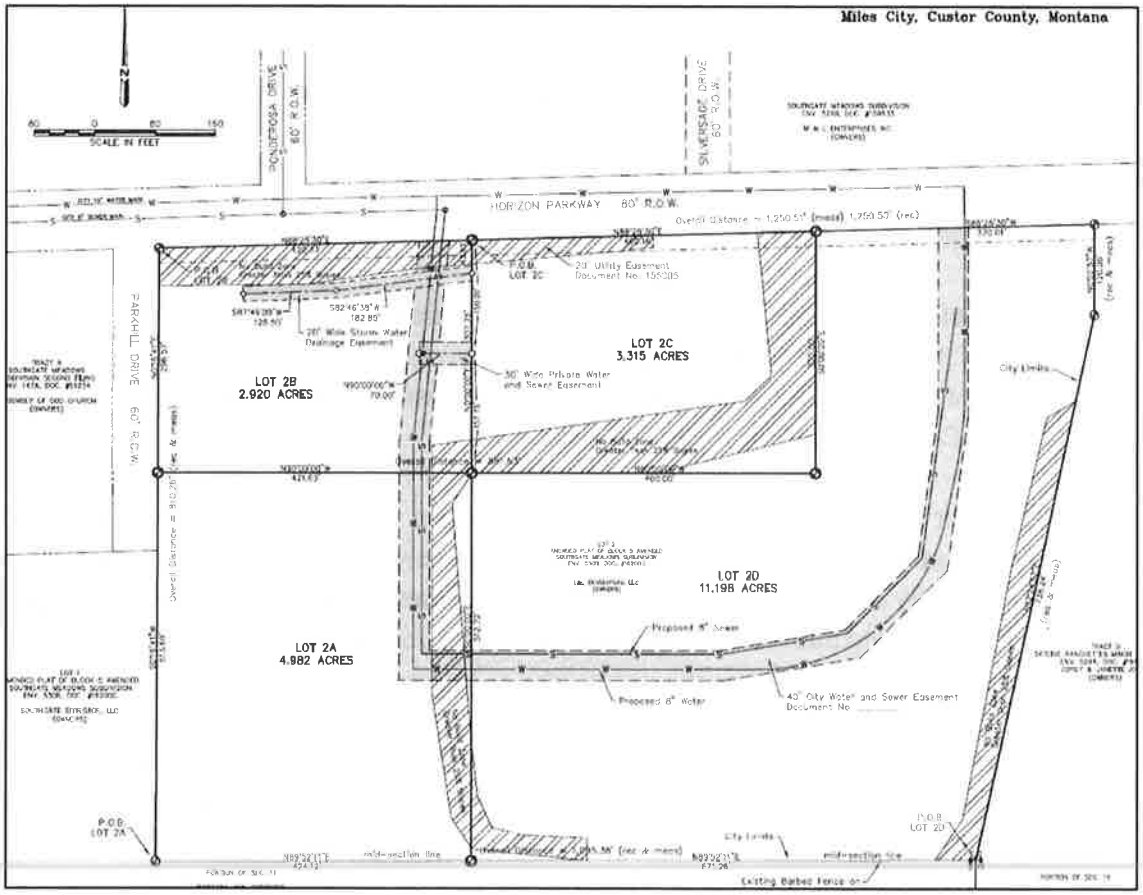
The tract is vacant and undeveloped, and is within the Miles City General Commercial (GC) Zoning District. The property is a relatively gently sloped tract that has been significantly disturbed in recent years. Vegetation has historically been a mix of sagebrush and grasses, and due likely to soil disturbances, is now a mixture of exposed soils, weeds, grasses and sagebrush.

The tract is located on the edge of a developed area of southeastern Miles City. Commercial and similar development is located to the west, with a church and small storage facility adjacent to the west. To the north is the primarily residential Southgate Meadows Subdivision and a large vacant tract. To the east and south are somewhat large, vacant tracts outside the city limits, with communication towers within ±1/4 mile of the tract on non-adjacent parcels.

E. Project Description

The proposed subdivision would create four lots ranging in size from 2.92-acres to 11.198-acres from the 22.4-acre tract (See Figure 2). All four lots would be provided municipal (City of Miles City) water and sewage disposal services via the Custer County Water and Sewer District, with water and sewer mains looping through the subdivision on all four lots. Access to Lots 2C and 2D would be directly off Horizon Parkway, a city street. Access to Lots 2A and 2B would be directly off Parkhill Drive, a city street that connects to Horizon Parkway at the northwest corner of the subject property. Improvements to portions of Horizon Parkway and pedestrian facilities are proposed by the subdividers along north boundary of the subject property to bring the facilities up to City standards to the approach to Lot 2D.

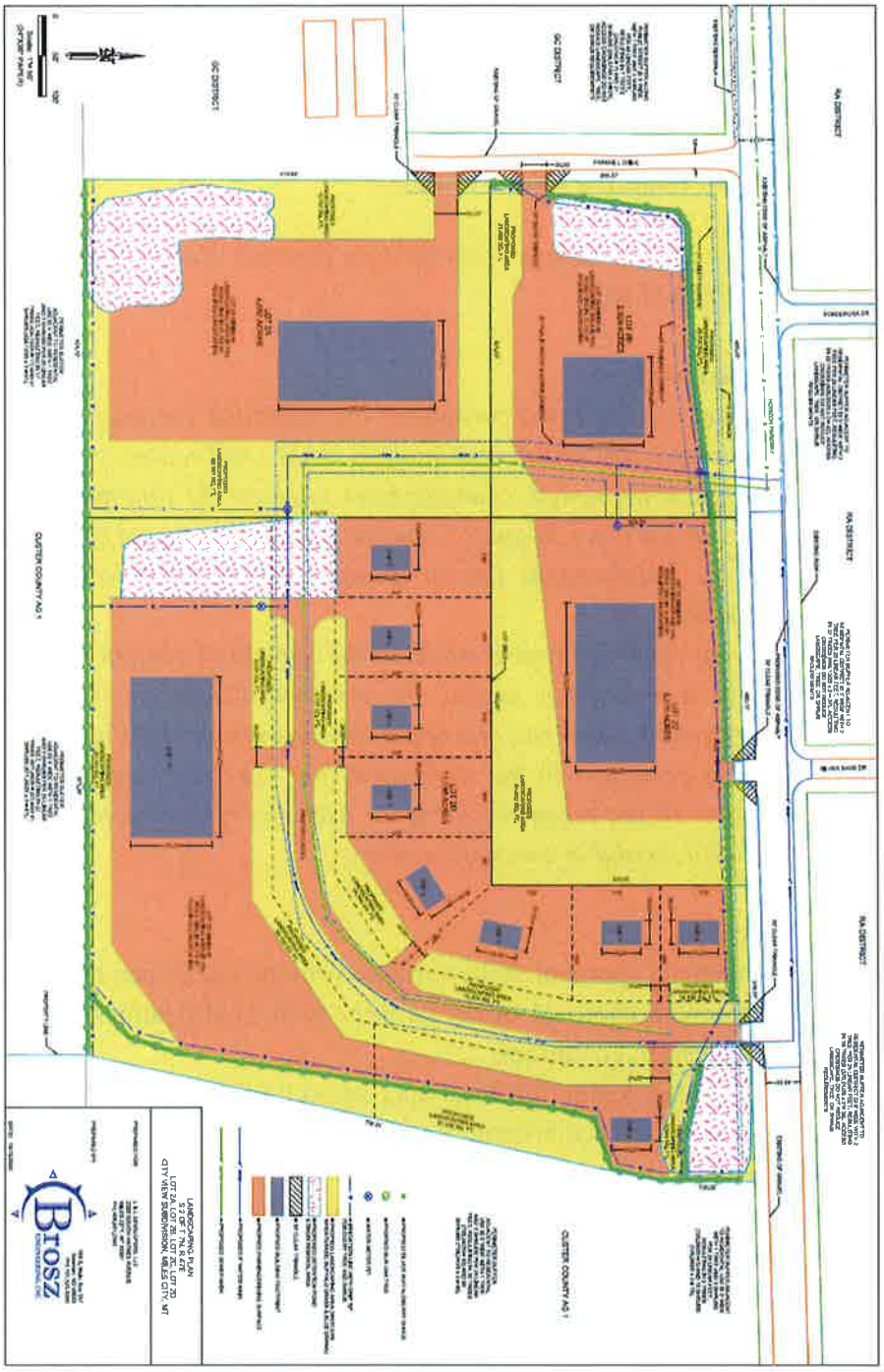
Figure 2: Excerpt of the preliminary plat, showing the subdivision design.



All four lots are proposed for undetermined commercial uses in compliance with the GC Zoning District. Lot 2D is proposed for a later condominium development that would provide for 10 commercial condominium units to be exempt from subdivision review as allowed by Montana law and the MCSR. Figure 3, the project's landscape plan, depicts

possible building locations and other potential development scenarios on each of the four lots.

Figure 3: Project's landscape plan that depicts the possible condominium units that would be exempt from subdivision review.



F. Variance Requests

The subdivision application includes two variance requests to the MCSR: (1) to allow three lots to be divided by an easement contrary to Sec. 21-18(a)(6)(b) MCSR, and (2) for the subdivision to rely upon a road, Horizon Parkway, that does not provide a second or emergency access as required by Sec. 21-18(a)(8)(a)(8) MCSR. Variance requests are subject to review per Sec. 21-22(a) MCSR and are further analyzed in Section II.A of this report.

G. Recommended Planning Board Motions:

Variances: The project includes two variance requests. Each variance should be acted on and voted on individually.

-Recommended motions:

1. *"Having reviewed and considered the submitted variance request for lot design, the variance discussion and analysis in the staff report, public comment, and all information presented, I hereby move to adopt the findings presented in the staff report for Variance Request #1 and recommend approval of the requested variance from the requirements for lot design to allow three lots to be divided by an easement."*
2. *"Having reviewed and considered the submitted variance request for lack of a second or emergency access, the variance discussion and analysis in the staff report, public comment, and all information presented, I hereby move to adopt the findings presented in the staff report for Variance Request #2 and recommend approval of the requested variance from the requirement for the subdividers to provide a second or emergency access."*

Alternatives:

1. Recommend approval of the variance with the recommended findings (per above);
2. Recommend approval of the variance with modifications to the findings and/or recommended conditions;
3. Recommend denial of the variance based on findings of non-compliance with the applicable variance criteria contained within the applicable laws and regulations; or
4. Continue the hearing to provide for further information and analysis of the requested variance, with specific direction to staff and/or the subdividers to supply additional information or to address specific items of concern.

Preliminary Plat/Application Motion: *"Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby move to adopt the findings presented in the staff report for the City View subdivision and recommend preliminary approval subject to the conditions of approval as recommended by staff."*

Alternatives:

1. Recommend approval of the preliminary plat application with the staff-recommended findings and conditions (per above);
2. Recommend approval of the application with modifications to the recommended findings and/or conditions;
3. Recommend denial of the application based on findings of non-compliance with the applicable criteria contained within the applicable laws and regulations; or
4. Continue the public hearing on the subdivision application, with specific direction to staff and/or the subdividers to supply additional information or to address specific items of concern.

II. PROJECT DETAILS

A. Property and Project History

The pertinent history of the Southgate Meadows subdivision and creation of the subject tract of record is included as Appendix A. The appendix also provides information on easements and street dedications.

Court Order:

The subdivision involves some unique circumstances as a result of the litigation surrounding the subdivision that created the subject tract. To comply with a court order stemming from the case (Montana Sixteenth Judicial District Court Cause No. DV 2014-129), the City of Miles City is to take steps to ensure that subdivision review of this application is conducted in full compliance with the Montana Subdivision and Platting Act (MSPA), including public participation. In order to ensure ample public participation, two public hearings will be held as part of the City Planning Board review of this matter. Further, staff reports and other materials have been provided to the attorneys of record for the Plaintiffs in the foregoing court action for their review and comment. The City Council is also to hold a public hearing on May 11.

Pre-application for this subdivision (March 2020):

On March 26, 2020, the subdividers' agent, Cory Wilhelm emailed the Subdivision Administrator and other City staff a pre-application meeting request, the first step required in a subdivision review process. The City failed to respond specifically to the submittal requesting a pre-application meeting, possibly due to the time of submittal aligning with the start of the COVID-19 pandemic. In any event, following preliminary plat submittal in June 2020 during the initial element review (discussed further below), it was agreed that the City would process the preliminary plat application without requiring a pre-application meeting, and the Subdivision Administrator would review the application for completeness and sufficiency based on what the Subdivision Regulations require, as opposed to following a list that would typically be provided as part of pre-application review, which was never created for the subdivision proposal.

Preliminary plat review of this application (June 18, 2020 – present):

The following is a timeline of events surrounding the current City View subdivision preliminary plat application:

- Preliminary plat application received by the City on June 18, 2020, giving a 1st Element Review deadline of June 25, 2020 for the Subdivision Administrator to respond.
- 1st Element Review completed on June 25, 2020 (Day 5 of 5). Application found incomplete.
- Additional information received on July 6, 2020, giving a deadline of July 13, 2020 for the Subdivision Administrator to complete the 2nd five working day Element Review and respond.
- 2nd Element Review completed on July 10, 2020 (Day 4 of 5). Application found incomplete.
- Additional information received on July 17, 2020, giving a deadline of July 24, 2020 for the Subdivision Administrator to complete the 3rd five working day Element Review and respond.
- 3rd Element Review completed on July 22, 2020 (Day 3 of 5) and sent on July 23, 2020 (Day 4 of 5). Application found incomplete.
- Additional information received on July 23, 2020, giving a deadline of July 30, 2020 for the Subdivision Administrator to complete the 4th five working day Element Review and respond. Subsequent additional information was also submitted on July 24, 2020, which was reviewed during the 4th Element Review.
- 4th Element Review completed on July 30, 2020 (Day 5 of 5). Application found incomplete.

- Additional information received on August 24, 2020, giving a deadline of August 31, 2020 for the Subdivision Administrator to complete the 5th five working day Element Review and respond.
- 5th Element Review completed on August 26, 2020 (Day 2 of 5). Application found complete, triggering 15 working day Sufficiency Review #1 and a deadline of September 17, 2020 for the Subdivision Administrator to complete the sufficiency review and respond.
- 1st Sufficiency Review completed on September 17, 2020 (Day 15 of 15). Application found insufficient.
- Additional information received on November 13, 2020, triggering 15 working day Sufficiency Review #2 and a deadline of December 7, 2020 for the Subdivision Administrator to complete the sufficiency review and respond.
- 2nd Sufficiency Review completed on December 7, 2020 (Day 15 of 15). Application found insufficient.
- Additional information received on December 30, 2020, triggering 15 working day Sufficiency Review #3 and a deadline of January 25, 2021 for the Subdivision Administrator to complete the sufficiency review and respond.
- 3rd Sufficiency Review completed on January 25, 2021 (Day 15 of 15). Application found insufficient.
- Additional information received on February 5, 2021, triggering 15 working day Sufficiency Review #4 and a deadline of March 1, 2021 for the Subdivision Administrator to complete the sufficiency review and respond.
- 4th Sufficiency Review completed on February 16, 2021 (Day 6 of 15). Application found sufficient for review, triggering the 60 working day public review period, during which time at least one Planning Board public hearing is required, followed by a City Council meeting and decision. Review deadline is May 11, 2021.
- A public hearing with the Planning Board was initially scheduled for March 16, 2021 but was later postponed until March 24, 2021, and a Planning Board organizational meeting was tentatively planned for early- to mid-March.
- Legal notice for a March 24, 2021 public hearing was completed on March 9, 2021.
- While preparing for the Planning Board organizational meeting for March and the March 24, 2021 public hearing, on or around March 8th, City staff discovered the City

Planning Board lacked sufficient, properly-appointed membership to conduct an organizational meeting, which was therefore cancelled on March 12th.

- On March 15th, City staff scheduled a City Council meeting to properly appoint the members of the Planning Board for March 23, 2021. The public hearing scheduled for March 24th remained scheduled, but with concern that a full Planning Board would not be appointed until the evening prior to the public hearing, which would not be in time to review a staff report with a full recommendation on the subdivision, it was determined the March 24th public hearing would be introductory in nature, and a noticed second public hearing for a Planning Board recommendation would be scheduled.

- Following the Planning Board bylaws' requirement that required, quarterly April Planning Board meetings be held on the third Tuesday of that month, the second public hearing was scheduled for April 20, 2021.

- Legal notice was planned to be completed on April 5, 2021, 15 days prior to the April 20 public hearing, with a legal notice submitted to the Miles City Star on April for publication on April 5, 2021, and certified mailings to adjacent property owners, the subdividers and landowners sent on April 1.

- On April 7, 2021, City staff became aware that the Miles City Star did not publish the legal notice on the requested date of April 5, which was the deadline to meet the statutory requirement that the notice be published not less than 15 days prior to the date of the hearing. The notice was instead published on April 6, which was 14 days prior to the hearing. However, the March 24 public hearing's legal notice met the requirements, and to ensure public notice is sufficient, and even beyond the requirements, the City Council's May 11, 2021 meeting will include a fully-noticed public hearing, which will be completed after the date of this report.

- The City Council will hold a public hearing on the proposed subdivision on May 11, 2021, the review deadline.

- Within 30 working days of a decision on the preliminary plat and application, a decision letter will be sent to the subdividers.

III. STAFF ANALYSIS AND FINDINGS OF FACT

A. Project Specifics and Design Elements.

The following are discussions on the various aspects of subdivision design and similar elements of the project as they pertain to the design standards found in Sec. 21-18 of the MCSR:

1. Lot and Block Design:

Sec. 21-18(a)(6) MCSR outlines design standards for lots, and Sec. 21-18(a)(7) outlines those for blocks. Because the subdivision does not utilize a 'block' pattern, those standards do not apply to this subdivision design. The lots comply with the lot design standards, with one exception described below, for which a variance is requested. Sec. 21-18(a)(6) MCSR generally requires that "each lot intended for building purposes must contain a satisfactory building site and conform to health board regulations, applicable zoning regulations, and these regulations.

The following Table II.16 provides the GC District Specifications that outline critical regulations/specifications of the zoning code that must be considered:

TABLE II.16: GC DISTRICT SPECIFICATIONS

Regulations	Specifications
Minimum lot width	50 feet
Minimum lot size	None
Minimum front yard setback	15 feet
Minimum side yard setback	0 feet
	Corner lots – 10 feet for side yard adjacent to street
	Uses abutting residential districts – 5 feet
Minimum rear yard setback	0 feet
	Uses abutting residential districts – 15 feet
Maximum lot coverage	80%
Maximum building height	Primary building - 40 feet
	Accessory buildings – 18 feet

Based on the GC specifications, each lot complies and appears developable in compliance with Table II.16 of the Zoning Code.

Variance Request #1 (lots divided by easements):

Sec. 21-18(a)(6)(b) MCSR states, "*No single lot may be divided by a public or private road, alley or utility right-of-way or easement*". With the design of the subdivision including proposed water and sewer main extensions in a looped manner through the subdivision, the proposed 40' wide city water and sewer easement that would contain the infrastructure also loops through the subdivision such that the easement 'divides' Lots 2A, 2B, and 2D, with areas on each side of each lot. Therefore, the application included a variance request to allow for the proposed 40' wide city water and sewer easement that 'divides' Lots 2A, 2B, and 2D, which is attached to this report.

The requested variance must be reviewed according to Sec. 21-22(a), MCSR, "Variances". Procedurally, the section requires the subdivider to include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The subdivision administrator and planning board will consider the requested variance and recommend its approval or denial to the governing body. The governing body may grant the variance(s) if it meets the specific variance criteria, as discussed below. In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations, and when a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based. The variance review criteria are listed and underlined below, followed by *the Subdivision Administrator's analysis and draft findings in italics.*

Sec. 21-22(a)(1), MCSR, "Variances authorized": The governing body may grant variances from section 21-18, design and improvement standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that (note: all four criteria must be met):

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

   Staff Analysis: The granting of the variance to allow Lots 2A, 2B, and 2D to be divided by the proposed 40' wide city water and sewer easement is not expected to be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties.

No concern with the nonconforming lot design has been raised by any service providers. The Subdivision Administrator cannot foresee any potential detriments to public health, safety, or general welfare or potential for the design standard to be injurious to other adjoining properties. The Custer County Water and Sewer District utilities that will be located within the easements will be primarily underground and will not substantially interfere with development of the lots or affect the public or adjoining property owners in any manner that would be detrimental to public health, safety, general welfare, or adjoining properties.

b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;

Staff Analysis: According to the submitted variance request, the variance/easement is simply to allow the Custer County Water and Sewer District access to their water and sewer lines on private land, and there is no other way to install the water and sewer mains on this subdivision due to ground elevations for water pressure. If this is the preferred location of the infrastructure and easement, which appears to be the case, it appears the variance is necessary and results from the physical surroundings, shape, and topographical conditions of the property involved. Strict compliance with the regulations would impose an undue hardship on the owner and potentially the service providers.

c. The variance will not cause a substantial increase in public costs; and

Staff Analysis: Based on the statement that there is no other way to install the water and sewer mains on this subdivision due to ground elevations for water pressure, it appears the noncompliant design standard is intended to minimize public costs by placing the water and sewer infrastructure and associated easement in a preferred location relative to the physical conditions of the site. Considering these factors, it appears approval of the variance will not cause any increase in public costs, and would instead minimize public costs.

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

Staff Analysis: The Subdivision Administrator has reviewed the zoning regulations and consulted with the Zoning Administrator regarding the subdivision, and has

found no provision of the zoning regulations that applies to the variance request for the lots to be divided by water/sewer easements. Without evidence indicating otherwise, the variance will not place the subdivision in nonconformance with any adopted zoning regulations.

Staff Summary and Recommendation on Variance Request #1: In light of the above Staff Analyses on Variance #1, it appears approval of the requested variance would meet all required criteria; therefore, the Subdivision Administrator recommends approval of the variance.

2. Streets:

The subject property is currently accessed via Horizon Parkway and Parkhill Drive. The subdivision application proposes access to Lots 2C and 2D directly off Horizon Parkway, and access to Lots 2A and 2B directly off Parkhill Drive. A segment of Horizon Parkway along the subdivision's north boundary is proposed to be improved by the subdividers to serve the subdivision.

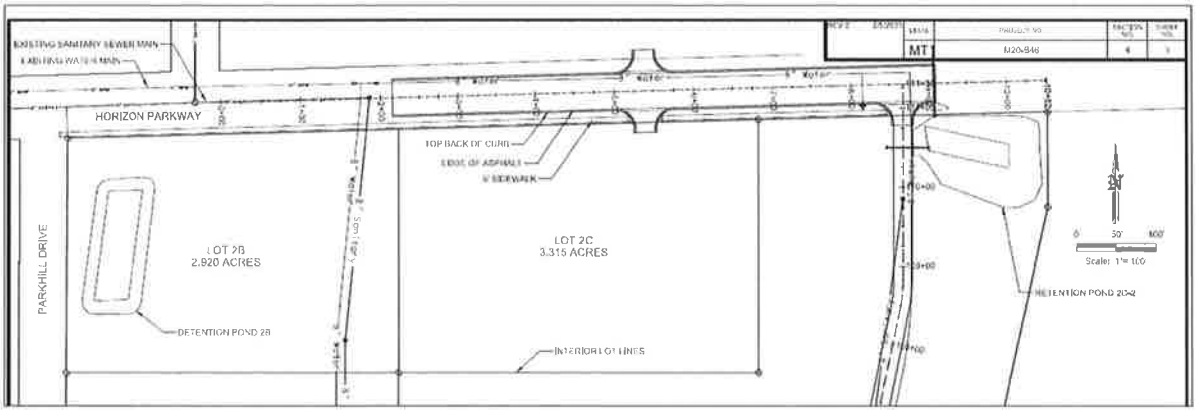
Sec. 21-18(a)(8) MCSR outlines design standards for streets. Many of the street design standards depend upon the type of street, which are defined in Sec. 21-5 MCSR (see 'Street types'). The street types are based largely on the volume of average daily traffic the streets carry. To assist with determinations of street types and projected traffic volumes, Sec. 21-14(a)(5)(a) and (b) MCSR may require a "Transportation impact analysis or transportation plan" and/or "Traffic study by a registered engineer for non-residential subdivisions" to be included with preliminary plat applications. To meet the requirement, the application included a "Limited Traffic Analysis" prepared by the project engineer, dated December 17, 2021. The engineer also supplemented the analysis with a letter dated February 5, 2021, with which the engineer clarified items in the analysis and projected traffic counts, and acknowledged Horizon Parkway is an "Arterial Street" (the previous submittal indicated Horizon Parkway east of Ponderosa Drive is a "Major Collector" based on traffic projections, but following a meeting with city staff, it was agreed that based on potential traffic from the subdivision and because although that existing segment may currently carry less traffic, all of Horizon Parkway constitutes an arterial, and the improvements up to Lot 2D's approach should be subject to design standards for Arterial Streets).

Horizon Parkway:

Horizon Parkway is a city street, which occurs along the north side of the subject property within an 80' wide right-of-way that was dedicated on the original subdivision plat of Southgate Meadows. Between Horizon Parkway's intersection with MT

Highway 59 and the subject property, the right-of-way is 100-feet wide and the street has a paved driving surface varying in width from 32 to 44feet in width. From a point near the proposed common boundary between Lot 2B and Lot 2C of the subdivision, Horizon Parkway becomes a gravel road and begins to narrow to approximately 30-feet in width. The majority of Horizon Parkway lacks sidewalks, the only exception being a segment of sidewalk along the Assembly of God Church property, and curb and gutter exists only from the NW corner of the Assembly of God Church property where the Southgate Meadows subdivision begins, along the subject property up to the gravel.

Being an Arterial Street, Horizon Parkway and its improvements to serve the subdivision are subject to the design and construction standards for Arterials as outlined in Sec. 21-18(a)(8) MCSR, including those found in Table 1 of that section. To provide sufficient access to the subdivision, Horizon Parkway is proposed to be improved to the Arterial street standards from where the current pavement ends to the proposed new approach to Lot 2D. The design plans call for matching the current 44' street width from inside of gutter to inside of gutter. The improvements along that segment would include curbs and gutters, with improved intersections and a 6' wide sidewalk along the south side of the street. The following snapshot of the site grading plans provide a general overview of the location of the proposed improvements to Horizon Parkway:



Variance Request #2 (No second or emergency access):

Sec. 21-18(a)(8)(a)(8) MCSR states, "*Second or emergency access. To facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations, the subdivider shall provide a second access in major subdivisions and all subdivisions located in high fire hazard areas.*" Because Southgate Meadows is a major subdivision, and this subsequent subdivision increases the number of lots in Southgate Meadows, a second access is required to serve the subdivision, unless a variance is granted. Further, according to MCSR Section 21-16(a), subsequent minor subdivisions

qualify for review under the requirements for major subdivisions where second accesses are required. The application included a variance request to allow for no secondary access for the subdivision, which is attached to this report.

Public comment to date for this subdivision, and previous reviews, include concern for the lack of a second access to Southgate Meadows. It is noteworthy that based on the location and dimensions of the subject property, this subdivision cannot provide a secondary access on the subject property to comply with the MCSR because any additional street proposed on the property would not lead to any other streets.

The requested variance must be reviewed according to Sec. 21-22(a), MCSR, "Variances", as discussed with Variance Request #1 above. The variance review criteria are listed and underlined below, followed by *the Subdivision Administrator's analysis and draft findings in italics.*

The governing body will not approve a variance unless it finds that (note: all four criteria must be met):

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

Staff Analysis: The granting of the variance to allow for this subdivision without provision of a second or emergency access to facilitate access by emergency vehicles and to allow an escape route for occupants in emergency situations may be detrimental to the public health, safety, or general welfare and may be injurious to other adjoining properties.

An essential element of evaluating the variance and its possible detriments to public health, safety, or general welfare can be input from the local emergency service providers, in particular the first responders, e.g., the fire department, ambulance service, and law enforcement. The following are the Fire Chief's comments on the subdivision's impact to Miles City Fire & Rescue (the local agency that provides fire protection and ambulance services):

> *"Regarding the submitted plans for the Southgate Meadows Subdivision. I see some minimal impacts to the Fire Department. Impacts related to the Fire Department operations would include increased structure protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies. I do not*

feel that these minimal impacts should prevent the process for this subdivision from moving forward.

Access and egress for future reference. As continued development progresses off of Horizon Parkway, I see a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these."

It is noteworthy that the Fire Chief indicates the impacts on Fire Department operations that result in increased demands on their services from this subdivision are minimal and should not prevent the subdivision process from moving forward, but the Fire Chief also notes a need for alternative access as development progresses off of Horizon Parkway. The Fire Chief does not identify at what threshold development no longer becomes acceptable, but notes an issue that applies to development off Horizon Parkway.

Written comment from the Chief of Police for the Miles City Police Department was also included with the application, noting the Police Chief reviewed the "three-lot" minor subdivision paperwork sent and [the department sees] minimal impact with this development.

The main purpose of a secondary or emergency access is stated within the design standard itself: to facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations. For example, an emergency situation may result in the blockage of Horizon Parkway while also requiring emergency service vehicle access to a situation within Southgate Meadows, and/or escape by people that rely upon use of Horizon Parkway to flee the emergency or vacate the area of other reasons. There are scenarios under which this could occur, such as wildfires and vehicular accidents. Without a second access, public health may be impacted because members of the public and emergency services providers may not be able to escape emergency situations or obtain medical assistance in incidents that may include medical or health emergencies. Public safety may be impacted because emergency service responses to such types of emergencies when a secondary access is critical are likely could be hindered by limited access. The results of such health and safety risks are increased by additional lots and users being added to an area that relies wholly one access. Therefore, this subdivision would be a contributing cause to diminished public welfare. In combination, the resulting impacts on public health, safety, and general welfare may be significant, with all property owners who rely upon Horizon Parkway for access, including

owners of property adjacent to the subdivision, potentially impacted. Therefore, the granting of the variance could be injurious to adjoining properties.

b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;

Staff Analysis: The physical conditions and geographic location of the property in combination with the initial development of the Southgate Meadows Subdivision with only one access contribute to the hardship that would be imposed on the current subdividers if strict compliance with the regulations is required. The non-compliant situation (lack of a second access) is existing. The current subdivision proposal will exacerbate the situation, and the subdividers cannot solve the problem without utilizing land or roads outside the subject property, which demonstrates it is the physical conditions of the property involved that results in the hardship that would be caused if the regulation is strictly enforced. The hardship is not personal or financial, as it is not entirely the subdividers' personal or financial situation that limits their ability to provide the secondary access. It is not a self-imposed hardship either; the subdividers did not create the situation, which is existing. However, this project does exacerbate the problem. Considering these factors, it appears, the hardship of strict compliance with the regulations is undue on this owner, and is, to a large extent, the result of physical surroundings, shape, topographical, and historical conditions of the property involved.

c. The variance will not cause a substantial increase in public costs; and

Staff Analysis: The variance, if approved, may cause a substantial increase in public costs if an emergency situation related to the subdivision occurs in the future that results in public costs that would be avoided or minimized with a second access or in the absence of the subdivision. It may also cause a substantial increase in public costs if the variance is approved without appropriate and proportional mitigation by the current subdividers in conjunction with the city or public. Therefore, with appropriate mitigation, including ensuring the subdividers and/or future property owners within the City View Subdivision would be required to contribute a proportional share of the costs if and when the city or public acts to provide a second or emergency access, the approval of the variance will not cause a substantial increase in public costs. Alternatively, without appropriate

mitigation, approval of the variance has the potential to cause a substantial increase in public costs.

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

Staff Analysis: The Subdivision Administrator has reviewed the zoning regulations and consulted with the Zoning Administrator regarding the subdivision, and has found no provision of the zoning regulations that applies to the variance request for lack of a second or emergency access. Without evidence indicating otherwise, the variance will not place the subdivision in nonconformance with any adopted zoning regulations.

Staff Summary and Recommendation on Variance #2: In light of the above Staff Analyses on Variance #2, the Subdivision Administrator recommends approval of the variance request only if the subdividers are required to waive the right to protest creation of a Special Improvement District to provide a second access and contribute a proportional share toward providing the access improvements as stated in the conditions of approval.

Parkhill Drive:

Parkhill Drive is a 27- to 32- foot wide hard-surfaced (recycled asphalt millings) city street that occurs within a 60' wide right-of-way that was dedicated to the City of Miles City in 1978 on the plat referred to as the Second Filing of Southgate Meadows Subdivision, Env. 147A. Currently, Parkhill Drive provides access to the two adjacent lots (Assembly of God Church and a ministorage facility) and the subject property. Proposed Lots 2A and 2B of the subdivision are proposed to utilize Parkhill Drive for legal and physical access. The traffic analysis submitted with the application indicates Lots 2A and 2B will add approximately 141 average daily trips to the existing traffic. Based on these figures, it is likely Parkhill Drive is currently either a Minor Street or Minor Collector, and with the additional traffic, will become a Minor Collector. Based on recent improvements and the current standards of Parkhill Drive, staff notes the existing street substantially complies with the design standards for a Minor Collector and will provide sufficient access to the lots. However, Parkhill Drive lacks an established turnaround area within an easement/right-of-way. As indicated by Table 2 in Sec. 21-18(a)(8) MCSR and Sec. 21-18(a)(8)(a)(6), no dead-end streets shall be permitted without an approved turnaround. Where streets terminate, the developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Currently there are large areas for vehicular turnarounds at the end of Parkhill Drive, but such turnaround

maneuvers require use of private driving/parking areas on the adjacent Assembly of God Church property or storage facility property. Because these areas lack publicly-dedicated easement or right-of-way area for any turnaround portion of Parkhill Drive, staff is recommending a condition of approval that would require a turnaround area to be established within an adequate easement or dedicated right-of-way, which could be accomplished with an extension of a turnaround leg where the proposed approach to Lot 2A would currently be located.

3. **Water:**
   As part of the preliminary plat review process, 76-3-622, MCA outlines water and sanitation information that is required to accompany preliminary plat. To provide water service to the lots in the proposed subdivision, the subdividers propose to extend the City of Miles City waterlines within the Horizon Parkway right-of-way and extend new Custer County Water & Sewer District waterlines south of Horizon Parkway to loop through the subdivision within a proposed easement to be granted to the Water & Sewer District. According to the submitted engineering report for water and sewer, the portions of the proposed water system within the Horizon Parkway right-of-way will be taken over and maintained by the City of Miles City and the portions of the proposed water system south of Horizon Parkway right-of-way will be taken over and maintained by the Custer County Water & Sewer District. Prior to final plat approval, DEQ and City approval of the subdivision's plans for water services will be required.

4. **Sewer:**
   As part of the preliminary plat review process, 76-3-622, MCA outlines water and sanitation information that is required to accompany preliminary plat. Similar to the above-described plans for water service, to provide sanitary sewer service to the lots in the proposed subdivision, the subdividers propose to extend the City of Miles City sewer lines within the Horizon Parkway right-of-way and extend new Custer County Water & Sewer District sewer lines south of Horizon Parkway to loop through the subdivision within a proposed easement to be granted to the Water & Sewer District. According to the submitted engineering report for water and sewer, the portions of the proposed sewer system within the Horizon Parkway right-of-way will be taken over and maintained by the City of Miles City and the portions of the proposed sewer system south of Horizon Parkway right-of-way will be taken over and maintained by the Custer County Water & Sewer District. Prior to final plat approval, DEQ and City approval of the subdivision's plans for sewer services will be required.

5. **Stormwater management/drainage facilities:**

Sec. 21-18(a)(9), MCSR outlines city requirements for drainage facilities in subdivisions. The section requires a grading and drainage plan, with drainage system and facilities required for storm run-off affecting the subdivision subject to approval by the governing body. In addition, subdivisions containing lots less than 20 acres in size also must be reviewed and approved by the Montana DEQ under MCA Title 76, Chapter 4, the Sanitation in Subdivisions Act. As part of the preliminary plat review process, 76-3-622, MCA outlines water and sanitation information, including that for storm water systems, that is required to accompany preliminary plat. Other specific regulatory requirements that apply to stormwater drainage include:

- Curbs and gutters or swales will be required as determined by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities. (Sec. 21-18(a)(9)(c), MCSR).
- The subdivider must provide suitable drainage facilities for any surface runoff affecting the subdivision; these facilities must be located in street rights-of-way or in perpetual easements of appropriate widths and are subject to approval by the governing body. (Sec. 21-18(a)(9)(e), MCSR)
- Each drainage facility must accommodate potential runoff from upstream drainage areas. (Sec. 21-18(a)(9)(f), MCSR)
- Drainage systems must not discharge into any sanitary sewer facility. (Sec. 21-18(a)(9)(g), MCSR)
- The grading and drainage system must be designed and certified by a professional engineer. (Sec. 21-18(a)(9)(h), MCSR)
- The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat. (Sec. 21-18(a)(9)(i), MCSR)
- Sec. 24-46 of the Miles City Zoning Code also outlines requirements for stormwater management plans.
- Per the Montana Pollutant Discharge Elimination System (MPDES), depending upon project specifics, the subdividers may need to obtain a General Permit for Storm Water Discharges Associated with Construction Activity from Montana Department of Environmental Quality , or written documentation that no permit is required. Staff is therefore recommending a condition requiring the approved permit or other written authorization issued by the Montana Department of Environmental Quality to be included with the final plat application.

The preliminary plat application included grading plans for the subdivision that addresses grading and future stormwater management. The plans were prepared by the project engineer. The plans call for four detention ponds and one detention pond, with conveyance pipes, culverts and drainage swales directing stormwater to the ponds. It appears the stormwater management plans substantially comply with the applicable requirements, subject to approval by the City Council and Montana DEQ.

One item that is not entirely clear regarding the site grading (and drainage) plans is whether any or all of the stormwater retention/detention ponds, convenance facilities and other stormwater-related facilities will be shared amongst more than one lot. Such shared facilities would require proper easements in appropriate locations, which should be shown and dedicated on the final plat, and a declaration(s) of shared use and maintenance agreement should be established per Sec. 21-14(b)(6) MCSR. The recommended conditions of approval address proper easements and maintenance agreement for stormwater facilities, which will likely also be required by DEQ requirements under the Sanitation in Subdivisions Act.

6. **Utilities:**

The application does not substantially address the location of existing electrical and telecommunication facilities or the future provision of these services, but it appears there are electrical and telecommunication facilities in the right-of-way for Horizon Parkway. The application included copies of the subdividers' agents' request for comments from the applicable service providers, which include Montana-Dakota Utilities and Mid-Rivers Communications. The application did not include any responses from these agencies. The City Subdivision Administrator also attempted to solicit comments from these agencies by sending letters and subdivision information to them on March 12, 2021, and as of the date of this report, no responses have been received.

Sec. 21-18(a)(13), MCSR addresses utility requirements in subdivisions. Because each lot abuts the publicly-dedicated city streets where utilities exist, the application complies with Sec. 21-18(a)(13)(a), MCSR, which requires that the subdivider must provide adequate and appropriate easements for existing utilities and the construction of planned utilities within the subdivision. The staff-recommended conditions of approval further address compliance with Sec. 21-18(a)(13), MCSR, and would require that each lot have electrical and telecommunication utilities extended to the lot or immediately adjacent to the lot within sufficient easements or public rights-of-ways as per applicable requirements of the utility service providers, along with the providers' documented approvals of any necessary requirements to meet these conditions.

7. **Fire Protection:**

Requirements for "fire protection" in subdivisions are outlined by Sec. 21-18(a)(17), MCSR. The application included a fire risk rating analysis indicating the subdivision lies in a "Moderate" fire rating, citing a Wildland Fire Assessment System map. Based on the moderate rating, the potential "special standards" that apply to subdivisions in high fire hazard areas per Sec. 21-18(a)(17)(e) do not apply to this subdivision.

On March 31, 2021, Fire Chief Branden Stevens provided written comments on the subdivision, which are attached to this report. The following is a summary of the fire department comments:

- I see some minimal impacts to the Fire Department.
- Impacts related to the Fire Department operations would include increased structure protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies.
- I do not feel that these minimal impacts should prevent the process for this subdivision from moving forward.
- Access and egress for future reference. As continued development progresses off of Horizon Parkway, I see a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these.

It appears the primary concern to be addressed through the subdivision review is the lack of an alternative (second) access to the area with continued development off of Horizon Parkway. This is the subject of Variance #2, which is analyzed with consideration for the Fire Chief's comments in Section III.A.2 of this report.

8. **Parkland:**

Sec. 21-18(a)(16), MCSR and 76-3-621, MCA outline potential park dedication (or cash-in-lieu) requirements for certain types of subdivisions. Per Sec. 21-18(a)(16)(b)(2), MCSR and 76-3-621(3), MCA, a park dedication is not required for "subdivision into parcels that are all nonresidential". Because all four lots are proposed for commercial/nonresidential uses, this subdivision is exempt from any park dedication requirements. It should be noted that although "Multifamily dwellings" are a "permitted use" in the GC Zoning District, the lots are not proposed for residential uses and because the application has not addressed potential residential uses or related requirements for residential lots, such as park dedication, the subdivision should be restricted to nonresidential uses without further review and approval by the City of Miles City. Recommended condition of approval #14 addresses this matter.

9. **Landscaping:**

Sec. 21-18(a)(18), MCSR outlines "Landscaping standards for commercial development", and Sec. 24-49 of the Miles City Zoning Code outlines "Landscaping requirements" in general. Although Sec. 21-18(a)(18)(g) MCSR states the applicable subsection of the subdivision regulations shall complement the landscaping section of the Miles City Zoning Code, the landscaping requirements between the two sets of regulations are not entirely consistent, with some minor conflicts between the two. Sec. 24-7, "Conflict with other laws and ordinances" addresses this type of situation, stating, "*Wherever conflicts exist between the standards imposed by these regulations and any such standard imposed by other local ordinances or regulations or state statutes, the higher or more restrictive standards shall govern. See MCA 76-2-309.*"

The result of the two regulations' landscaping requirements are as follows: The MCSR require the preliminary plat application to show existing and proposed landscape buffers and demonstrate compliance with the zoning regulations. The Zoning Code outlines requirements for landscape plans, and states (Sec. 24-49(b)(2)), "*...these provisions shall be used as the basis for determining the landscaping plans for future subdivisions and planned unit developments, and such developments' landscaping plans shall meet or exceed these landscape standards.*" However, the regulations' do not require the plans to be implemented and the landscaping elements (vegetation, irrigation system, groundcover, etc.) installed until each lot is newly developed (or redeveloped or developed with expanded land uses).

Therefore, the application included a Landscaping Plan for the subdivision that demonstrates the ability for each lot to comply with the landscaping requirements of the zoning and subdivision regulations upon individual lot development, with installation tied to the building permit timelines. See Sec. 24-49(j) of the Zoning Code, which outlines 'Timing' of landscape installations.

With submittal of future building permit applications for the lots after the final plat is filed, future applicants/lot owners will have the ability to utilize the subdivisions' landscape plan as the basis for the individual lot development plans. Future development will need to demonstrate compliance with the applicable regulations at the time lot development is proposed, based on project specifics. Recommended condition of approval #13 addresses the landscaping plan and its applicability to future individual lot development as follows:

"The landscaping plan submitted for the subdivision, which shall be held on file at the City Planning Department at City Hall, shall be referenced on the face of the final plat to notify future lot owners of the plan. The plan may be used as a basis for individual lot development, but any such future individual lot development is subject to approval by the City of Miles City in accordance with the regulations in place at the time of proposed development, which may require modifications to the subdivision's landscape plan, supplemental information, or a new landscape plan."

B. Findings of Fact based on the requirements for a governing body decision and documentation.

Sec. 21-16(a)(9) MCSR outlines requirements for the governing body (City Council) decision and documentation on major and subsequent minor subdivisions, which also reflect those outlined in Sec. 21-16(a)(5) MCSR that must be considered by the Planning Board at its public hearing when making a recommendation to the City Council. The Subdivision Administrator's recommended findings of fact are outlined below and are based on the subdivision application materials and preliminary plat provided by the subdividers and in accordance with the Miles City Subdivision Regulations (MCSR), last updated in 2018, the 2015 Miles City Growth Policy, and other applicable laws and regulations.

1. Prerequisites to approval (Sec. 21-16(a)(9)(a) MCSR):

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- Provides easements within and to the proposed subdivision for existing utilities and for the location and installation of any planned utilities;

  Finding: The subdivision provides adequate easements within and to the proposed subdivision for existing utilities and for the location and installation of utilities to each lot. Existing electrical and telecommunications are located in the public right-of-way for Horizon Parkway, which abut Lots 2B, 2C, and 2D. Parkhill Drive is a 60' wide public right-of-way that may be used for any necessary utility extensions for Lot 2A. Further, the recommended conditions of approval address utility extension requirements within rights-of-way/easements.

- Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument of transfer concerning the parcel;

  Finding: The subdivision is provided primary legal and physical access via Horizon Parkway, an existing Miles City arterial street with an established 80' wide right-of-way, which will be improved to city arterial street standards from the NW corner of Lot 2C to a proposed approach to Lot 2D. Lots 2A and 2B will be provided legal and physical access by existing Horizon Parkway and Parkhill Drive, both being city streets. As described in Section III.A.2 of this report, improvements are proposed to bring the substandard portion of Horizon Parkway up to city arterial standard to the last approach into the subdivision. Parkhill Drive lacks an established turnaround area within an easement/right-of-way, and the application has not included a variance request for the lack of a turnaround. In addition, a variance is being requested to the MCSR's requirement for major subdivisions to have a second access.

  Staff is recommending conditions of approval to require compliance with the MCSR's requirements for legal and physical access, including the proposed improvements to Horizon Parkway, requirements to provide a turnaround at the end of Parkhill Drive, and to waive the right to participate in provision of a secondary or emergency access through a Special Improvement District process.

- Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section 21-14(b)(7) of these regulations;

  Finding: Based on the recommended conditions of approval, the subdivision would require numerous improvements to be installed or guaranteed prior to final plat approval. The application includes a proposal to bond for all improvements through a proposed Subdivision Improvements Agreement (SIA) with financial security provided by a letter of credit. The proposed SIA appears reasonable in terms of content, but the final SIA would be subject to approval by City Council during final plat review.

  76-3-507, MCA addresses such proposals to bond for improvements, which is entitled, "Provision for security requirements to ensure construction of public improvements." Subsection (4) states, "The governing body may require a

percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

Sec. 21-14(b)(7) MCSR (under the final plat subsection) addresses improvements agreements and the above statute. It states in part, "The governing body may require 50 percent of all improvements or 100 percent of any improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security for purposes of filing a final plat." Because all of the improvements proposed to be secured by the SIA are related to public health and safety, this section of the regulations is important for the Planning Board to consider, and is addressed in the staff recommendation.

Please also note the following from Sec. 21-14(b)(7) of the MCSR: "...If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125 percent by the highest bid..." If and when a SIA is proposed as part of the final plat application, the regulations will require three bids per this section.

Staff is concerned with the extent of the proposed improvements that the subdividers wish to secure through a SIA. Should the subdividers default on the agreement, the subdivision lots would be created without provision of very important items related to public health and safety, such as legal and physical access that complies with minimum standards, direct access to a water supply or sewage disposal facilities, and stormwater facilities. Staff is therefore recommending the following improvements be installed prior to final plat approval, as opposed to including said improvements in the SIA:

- *Site grading per the grading plans, including erosion control required by these conditions.*
- *Reseeding and weed treatment associated with this list.*
- *All water mains and fire hydrants.*
- *All sewer mains and related facilities.*
- *Stormwater conveyance and retention/detention facilities.*
- *Horizon Parkway: widening, construction, curb and gutter, with the only exception of surface paving.*

- *Sidewalk along Horizon Parkway.*
- *Parkhill Drive: construction of full turnaround area to proper city street/turnaround standards within a public easement/right-of-way, with the only exception of surface paving/hard-surfacing.*
- *Traffic signs.*
- *All engineering costs (design, construction, and certification), permitting, and reseeding/weed treatment of the improvements not included in the SIA.*

The following could then be included in the SIA:

- *Remaining erosion control, reseeding and weed treatment.*
- *Electrical and telecommunication utilities to each lot (if not in place currently)*
- *Paving of Horizon Parkway from current end of pavement to and including the approach to Lot 2D.*
- *Surface paving/hard-surfacing of the turnaround at the terminus of Parkhill Drive.*
- *Mail facilities.*
- *Remaining engineering costs (design, construction, and certification) and permitting (including all required by these conditions).*

- Assures that the requirements of MCA 76-3-504(1)(j), regarding the disclosure and disposition of water rights as set forth in section 21-18(a)(15) have been considered and will be accomplished before the final plat is filed;

  Finding: *According to the submitted subdivision application, the Montana DNRC Water Right Query System does not show any existing water rights on this property. This property does not contain any existing water wells or irrigation ditches/canals. This is consistent with staff/planning consultant (Land Solutions) research. With no water rights in place, Sec. 21-18(a)(15) MCSR has no applicable provisions for the subdivision to further address.*

- Assures that the requirements of MCA 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in section 21-18(a)(14) have been considered and will be accomplished before the final plat is filed; and

  Finding: *The subdivision is not included within a known irrigation district, nor does it contain irrigation facilities that would necessitate water course and*

irrigation easements or otherwise prompt actions to comply with Sec. 21-18(a)(14) MCSR, which is inapplicable to the current subdivision.

- Provides for the appropriate park dedication or cash-in-lieu.

  Finding: Because this subdivision is proposed only for commercial, non-residential uses, any potential park land or cash-in-lieu of park dedication requirements do not apply per Sec. 21-18(a)(16)(b)(2) MCSR and 76-3-621(3)(b), MCA, which state a park dedication is not required for subdivision into parcels that are all nonresidential. Condition(s) of approval should reflect the lack of review and approval of non-residential uses.

2. Consideration—Standards (Sec. 21-16(a)(9)(b) MCSR):

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection (a)(5)b. above, and whether the proposed subdivision complies with:

- These regulations, including, but not limited to, the design and improvement standards set forth in section 21-18;

  Finding: Section III.A of this report includes a thorough analysis and recommended findings of fact regarding the subdivision's compliance with the design and improvement standards set forth in section 21-18. The standards of the MCSR are being considered with this review; the subdivision includes two variance requests that are discussed in Section III.A of this report. The subdivision is proposed in substantial compliance with the applicable design standards, and the recommended actions on the variance requests and recommended conditions of approval further ensure compliance with the design standards.

- Applicable zoning regulations;

  Finding: The lots that would be created by the proposed subdivision comply with the Miles City Zoning Code, including the requirements for the General Commercial (GC) District. Future lot development will be required to demonstrate compliance with the zoning regulations based on specific individual lot development plans.

- Other applicable regulations;

  Finding: *Other applicable regulations known to potentially apply to the project include Sec. 20-41 of the Miles City Code of Ordinances for sidewalks and the laws and rules administered by DEQ under the Montana Pollutant Discharge Elimination System (MPDES), which may require permit coverage under the authority of a General Permit for Storm Water Discharges Associated with Construction Activity. A recommended condition of approval addresses this potential requirement, which would require the subdividers to provide authorization from DEQ, through a permit or written documentation that no permit is required. The recommended condition would require the approved Storm Water Pollution Prevention Plan Permit and/or General Permit for Storm Water Discharges Associated with Construction Activity or other written authorization issued by the Montana Department of Environmental Quality to be included with the final plat application.*

- The MSPA, including but not limited to the following impacts:

  [Note: State law requires growth policies to include a statement explaining how governing bodies will define specific subdivision review criteria and evaluate and make decisions regarding proposed subdivisions with respect to these criteria. Therefore, the findings on the criteria below include the definitions Miles City has adopted along with how they are evaluated and how decisions are made with respect to those criteria during subdivision review.]

  - Impact on agriculture;

    Finding:
    According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Agriculture means the direct use of land for grazing and cropping to produce food, feed, and fiber commodities. This includes crop cultivation and tillage of the soil; grazing for milk, egg, meat, and breeding animal production; and animal feed production. It does not include farm animal confinement facilities or structures associated with farming and ranching."

    The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable impact on agriculture if it permanently removes good and prime irrigated soils from agricultural production, does not include

measures to control noxious weeds from proliferating to surrounding agricultural properties, does not fence livestock from entering subdivision lots, does not provide a sufficient buffer between residential developments and surrounding agricultural operations, does not take steps to prevent pets from harassing livestock, or does not notify future property owners of the right to farm by surrounding agricultural landowners. If a subdivision proposal in an agricultural area includes adequate measures to minimize the impacts on agricultural operations and resources, it is likely to be found to have little or no significant impact on agriculture."

The subject property is not currently used for agriculture, and is located in a developing area on the edge of Miles City, with residential development to the north and commercial development to the west. Tracts to the east and south are similarly-situated and used, with potential for livestock grazing and similar agricultural uses.

According to the USDA/NRCS soils information submitted with the application, the soils on the property are not prime farmland, but the southwest portions of the property include some soils (Kobase silty clay loam, comprising approximately 19% of the site) classified as farmland of statewide importance. However, given the location of the site, the lack of irrigation water, the slopes and disturbed status of the soils, the conversion of the site to commercial uses will not result in a significant elimination of agricultural land.

To control noxious weeds from proliferating to surrounding agricultural properties, the application included a proposed noxious weed management plan with the Custer County Weed District. The plan has not been signed by the Weed District. The recommended conditions of approval address the weed plan.

Staff is not recommending the fencing of the property to keep livestock out of the subdivision, primarily due to the lack of significant livestock grazing in this area.

The commercial use of the subject property will provide a sufficient buffer between residential developments to the north and surrounding agricultural operations to the south and east.

As proposed, the subdivision does not take steps to prevent pets from harassing livestock, and does not notify future property owners of the right to farm by surrounding agricultural landowners. Staff is recommending statement(s) on the final plat notifying future property owners of the right to farm by surrounding agricultural landowners and measures that may be taken to prevent pets from harassing livestock.

Considering these factors, the recommended conditions of approval, and the lack of significant surrounding agricultural uses and commercial development of the area, the likely impact on agriculture cause by the subdivision will be minimal.

- Impact on agricultural water user facilities;

Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Agricultural water user facilities means those facilities which provide water for agricultural land or the production of agricultural crops or animals including, but not limited to, canals, ditches, pipes, water-control devices, springs, dams and dugouts with associated collection areas, and water-spreading systems."

The 2015 Miles City Growth Policy states, "A subdivision proposal may be found to have an unacceptable impact on agricultural water user facilities if it does not comply with the irrigation provisions of the Miles City Subdivision Regulations or fails to implement a reasonable mechanism for delivering irrigation water to lots that will be assessed for irrigation district operation and maintenance, does not include sufficient easements for ditch and system maintenance, or is likely to result in the disruption of service to other water users. If the proposal complies with the subdivision regulations, includes measures to limit the impacts to other users and meets the requirements of the Tongue & Yellowstone (T & Y) Irrigation District, the proposal is likely to be viewed as having no significant impact on agricultural water user facilities."

The subject property is not currently irrigated and contains no agricultural water user (irrigation) facilities. Based on these factors and the lack of applicability of subdivision regulations' standards to address potential impacts on agricultural water user facilities, the subdivision is expected to have no impact on agricultural water user facilities.

- Impact on local services;

Finding: *According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Local services means any and all services and facilities that local government entities are authorized to provide. Examples of local services include, but are not limited to, those related to water, sewer, storm water, solid waste, transportation, emergency services, law enforcement, education, recreation, and public utilities and telecommunications." Examples of local services listed by the Growth Policy include, but are not limited to, those related to water, sewer, storm water, solid waste, transportation, emergency services, law enforcement, education, recreation, and public utilities and telecommunications.*

The 2015 Miles City Growth Policy states, "A subdivision proposal may be found to have an unacceptable impact on local services if it provides a substantial and unmitigated demand on local services, decreases the service provider's ability to provide timely services to the existing public, does not provide adequate facilities for service providers to serve the subdivision, provides barriers to service provisions, or is found to result in similar impacts without appropriate mitigation. If service providers comment on a subdivision and all applicable service provider and regulatory requirements are met, a proposal is likely to have minimal impacts on local services."

The following are brief discussions on the subdivision's potential impacts on local services:

Water: *The application included a copy of a letter dated June 18, 2020 from Miles City Public Utilities Director Thomas Speelmon to DEQ regarding water and sewer for the subdivision, and stated the City has sufficient capacities in both the city water and sewer systems to provide those services to the proposed subdivision. Considering these comments and the requirements for DEQ approval of the proposed connections to the municipal systems, impacts on local water service provider, being Miles City and the Custer County Water and Sewer District, are expected to be minimal, and offset by future fees paid to the service providers.*

Sewer: The application included a copy of a letter dated June 18, 2020 from Miles City Public Utilities Director Thomas Speelmon to DEQ regarding water and sewer for the subdivision, and stated the City has sufficient capacities in both the city water and sewer systems to provide those services to the proposed subdivision. Considering these comments and the requirements for DEQ approval of the proposed connections to the municipal systems, impacts on local sewer service provider, being Miles City and the Custer County Water and Sewer District, are expected to be minimal, and offset by future fees paid to the service providers.

Storm water: The above-mentioned letter from Public Utilities Director Thomas Speelmon noted no deficiencies in the stormwater drainage plans for the subdivision, which will be subject to approval by DEQ.

Solid waste: Solid waste from the subdivision will be addressed as part of DEQ review. It is expected that private local haulers or individual lot owners will be able to transport solid waste to the local landfill. No solid-waste related impacts are expected from the proposed four-lot subdivision.

Transportation: Vehicular and non-motorized transportation is addressed extensively throughout this report. Subject to the streets that serve the subdivision, including Horizon Parkway, Parkhill Drive, and potentially a second access, being improved to sufficient city standards and as deemed appropriate by variance, the subdivision's impacts on the transportation network are expected to be minimal.

Emergency services: According to the letter from the Miles City Fire Chief, the impacts from the subdivision to Miles City Fire & Rescue are expected to be minimal. Impacts related to Fire Department operations include increased structural fire protection, increased demand for emergency medical services, and increased demand for fire code enforcement and inspections for commercial occupancies. The Fire Chief indicated he does not feel that these minimal impacts should prevent the process for this subdivision from moving forward. For future reference, the Fire Chief added that as continued development progresses off of Horizon Parkway, he sees a need for alternative access and egress in to and out of these types of subdivisions, the wildland urban interface situation will continue to be an ongoing concern for areas such as these.

Law enforcement: *Written comment from the Chief of Police for the Miles City Police Department was included with the application, and [the department sees] minimal impact with this development.*

Education: *Because the subdivision is proposed for commercial development only and not residential uses, which is also recommended as a condition of approval, the educational facilities and school system are not expected to be impacted by the subdivision.*

Recreation: *Because the subdivision is proposed for commercial development only and not residential uses, which is also recommended as a condition of approval, the future occupants of the subdivision are not expected to be additional residents with recreational needs to be provided within the subdivision; the occupants will be businesses and employees that reside and recreate elsewhere. The project is exempt from park land or cash dedication in lieu of parkland due to the entirely non-residential use of the subdivision being proposed.*

Public utilities: *Electrical utilities are located in the adjacent right-of-way, and will be required to be extended to each lot in accordance with the MCSR and requirements of the service providers. The application included a copy of a letter sent to Montana-Dakota Utilities; however, no response from Montana-Dakota Utilities was include with the application. The recommended conditions of approval address installation of utilities to each lot with approval by the service providers.*

Telecommunications: *Telecommunications utilities are located in the adjacent right-of-way, and will be required to be extended to each lot in accordance with the MCSR and requirements of the service providers. The application included a copy of a letter sent to Mid-Rivers Communications; however, no response from Mid-Rivers Communications was include with the application. The recommended conditions of approval address installation of utilities to each lot with approval by the service providers.*

- Impact on the natural environment;

Finding: *According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Natural environment means the physical conditions [which/that] exist within a given area, including land, air, water, mineral, flora, fauna,*

sights, sound, and smells and objects of historic, aesthetic, or community significance."

The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable impact on the natural environment if it is found to have direct or indirect negative impacts on the physical conditions that comprise an area's natural environment or if the subdivision fails to comply with the applicable federal, state, and local regulations related to the natural environment. Any such negative impacts may require mitigation efforts by the subdivider. If a subdivision complies with all applicable regulations and mitigation measures are properly implemented, the proposal is likely to have no significant impact on the natural environment."

Regarding the natural environment, the subject property is not in a particularly sensitive area, with no surface waters on or immediately adjacent to the property. The vegetation on the property is primarily sage brush, grasses, and weeds, and vegetation on portions of the property has been denuded by relatively recent disturbances. The subdivision application included a noxious weed plan and grading plan, as well as long-term plans for stormwater management. The project will require DEQ review of the subdivision, and most likely, a stormwater discharge permit for disturbance of over one acre.

The Montana State Historic Preservation Office has commented on the subdivision, and stated the following:

> *"I have conducted a cultural resource file search for the above-cited project located in Section 2, T7N R47E. According to our records there have been a few previously recorded sites within the designated search locale. project area. In addition to the sites there have been a few previously conducted cultural resource inventories done in the areas. I've attached a list of these sites and reports. If you would like any further information regarding these sites or reports, you may contact me at the number listed below.*
>
> *It is SHPO's position that any structure over fifty years of age is considered historic and is potentially eligible for listing on the National Register of Historic Places. If any structures are to be altered and are*

over fifty years old, we would recommend that they be recorded, and a determination of their eligibility be made.

As long as there will be no disturbance or alteration to structures over fifty years of age, we feel that there is a low likelihood cultural properties will be impacted. We, therefore, feel that a recommendation for a cultural resource inventory is unwarranted at this time. However, should structures need to be altered or if cultural materials be inadvertently discovered during this project, we would ask that our office be contacted, and the site investigated."

Staff is concerned with the current status of the site, specifically the exposed soils along the south side of Horizon Parkway where a denuded, unvegetated slope exists as a result of disturbances. This may be addressed through the General Permit for Storm Water Discharges Associated with Construction Activity per the Montana Pollutant Discharge Elimination System (MPDES); however, in the event a General Permit is not required in the near future, and until the site is stabilized, the area will continue to erode and silt will enter the city drainage gutters along Horizon Parkway. Therefore, staff is recommending a condition that addresses stabilization of the site and implementation of erosion control measures so that the subdividers do not wait until all improvements are completed, which could take years.

Considering the above, as well as recommended conditions of approval that address DEQ review requirements, site stabilization, a noxious weed plan, and notification to future owners that if cultural materials are discovered during construction that SHPO be contacted to provide for the site to be further investigated, the subdivision is expected to have minimal impact on the natural environment.

- Impact on wildlife:

Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Wildlife means living creatures (e.g. mammals, birds, reptiles, [and] fish) which are neither human nor domesticated."

The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable effect on wildlife if it directly displaces or removes

wildlife from an area or it does not include measures to prevent conflict between wildlife and subdivision inhabitants, including pets. Any such negative impacts may require mitigation efforts by the subdivider. Examples of wildlife mitigation measures include preserving vegetative cover along riparian and migration corridors, requiring building setbacks from water bodies, reducing development density in areas of important habitat, donating a monetary sum to an applicable wildlife or habitat preservation organization, and developing covenants that educate lot buyers and reduce the potential for human-wildlife conflict. If mitigation measures are properly implemented or a subdivision is not in a known wildlife area, the proposal is likely to have no significant impact on wildlife."

The subdivision is in a developing commercial area of the City and is not known to be in a wildlife area of any special significance; therefore, the proposal is likely to have no significant impact on wildlife.

- Impact on wildlife habitat; and

Finding: According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Wildlife habitat [includes] geographic areas containing physical or biological features essential to wildlife for living, breeding, or nesting either permanently or seasonally, or essential to the conservation of listed endangered and threatened species under the Endangered Species Act."

The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable effect on wildlife habitat if it destroys or otherwise removes important or critical wildlife habitat or concentrates human-related activities near important or critical wildlife habitat in a manner that has a significant negative impact on the wildlife the habitat supports. Any such negative impacts may require mitigation efforts by the subdivider. Examples of wildlife habitat mitigation measures include preserving vegetative cover along riparian and migration corridors, requiring building setbacks from water bodies, reducing development density in areas of important habitat, donating a monetary sum to an applicable wildlife or habitat preservation organization, and developing covenants that educate lot buyers and reduce the potential for human-wildlife conflict. If mitigation measures are properly implemented or a subdivision is not in the vicinity of important or critical wildlife habitat, the proposal is likely to have no significant impact on wildlife habitat."

The subdivision is in a developing commercial area of the City and is not known to contain or be in the immediate vicinity of important or critical wildlife habitat; therefore, the proposal is likely to have no significant impact on wildlife habitat.

- Impact on public health and safety.

  According to Sec. 21-5 MCSR and the 2015 Miles City Growth Policy, "Public health and safety means a condition of optimal well-being, free from danger, risk, or injury for the community at large or for all people, not merely for the welfare of a specific individual or a small class of persons. Examples of conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards; rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards."

  The 2015 Miles City Growth Policy states, "A subdivision proposal may have an unacceptable effect on public health and safety if it is located in an area that cannot be effectively served by emergency responders or is located in an area that is prone to natural or man-made hazards. Examples are development on steep slopes or within high fire hazard areas or areas not served by a fire department. If steps are taken to ensure that the residents of a subdivision can be adequately served by emergency service providers, the dangers posed by natural or man made hazards are mitigated, and the proposal complies with state and local regulations, a subdivision proposal is likely to be viewed as having little impact on public health and safety."

  As described in the submitted Environmental Assessment and with project modifications as recommended by staff, and imposition of conditions of approval that address the potential impacts to public health and safety, the identified impacts from the subdivision will be mitigated to an acceptable level.

- Proposed mitigation.

Finding: The subdivision application in full represents the subdividers' current plan for proposed mitigation to date, such as the proposed improvements and submitted documents that outline steps to be taken by the subdividers as part of the project. Additional mitigation measures are part of the recommended conditions of approval.

Sec. 21-16 MCSR addresses the "Subdivider's preference for mitigation" as follows:

> *"(a) No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board.*
>
> *(b) If the governing body determines the newly proposed mitigation measures to be material, the governing body shall either not consider the mitigation proposal or direct the subdivider to follow the procedures provided for under subsection (11) below, for amended applications.*
>
> *(c) If newly proposed mitigation measures are determined not material, the governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation prior to making the decision. (MCA 76-3-608(5)(b))"*

Therefore, the subdividers should discuss the staff-recommended conditions with the Planning Board, including the direction received from the Planning Board and any other mitigation measures proposed. Then, at least two working days before the City Council meeting, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board.

3. Consideration—Evidence.

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider and weigh the following, as applicable:

1. The subdivision application and preliminary plat;

2. The environmental assessment;
3. The summary of probable impacts;
4. Proposed mitigation;
5. The growth policy;
6. Information and testimony provided by potentially impacted parties at or before the public hearing;
7. The planning board report and recommendations;
8. Comments, evidence and discussions at the governing body's meeting; and
9. Any additional information authorized by law.
10. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.
11. Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

Finding: The City Council members have received copies of the preliminary plat application, including the preliminary plat, Environmental Assessment, summary of probable impacts, water and sanitation information, etc. Within 10 working days after the Planning Board's scheduled April 20 public hearing, the subdivision administrator, working on behalf and with the consent of the planning board will submit the Planning Board's report and recommendations to the City Council, which will include summaries of mitigation proposed to date, discussions and findings on the subdivision's compliance with the growth policy, information regarding public hearing testimony, comments and discussions from the public hearings, and other information as outlined above. All such information may be considered and weighed by the City Council when making its decision on the proposed subdivision. If changes are made to the staff-recommended findings of fact and/or recommendation by either the Planning Board and/or City Council, they should be reflective of the evidence those changes are based on.

Regarding the subdivision's compliance with the 2015 Miles City Growth Policy, the following statutes apply to use of an adopted growth policy:

*"**76-1-605. Use of adopted growth policy.** (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:*

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter."

-Subdivision Administrator's emphasis is underlined above. The growth policy's definitions of the subdivision review criteria along with how they are evaluated and how decisions are made with respect to those criteria during subdivision review are included in the above findings. Therefore the growth policy, primarily the "Subdivision Review" section, has been thoroughly considered with this review. Conditions have not been recommended based solely on compliance with the growth policy; rather, some conditions have been recommended based on impacts to the subdivision review criteria (as defined by the growth policy, along with how they are evaluated and decisions made) as required by state law.

There are other provisions of the growth policy to consider. Pages 61 – 62 of the growth policy describes how all public hearings will be conducted for the review of subdivision proposals when a public hearing is required. In addition, the following goals, objectives, and actions should be observed:

- *Land Use Goal #2 - Promote Citizen Involvement in Land Use Issues.*
  - *Objective 2.1: Engage citizens during public review of land use issues and make information available.*
    - *Action 'a': Post land use application materials, public hearing dates, agendas and meeting minutes on the City's website and make copies available for public review.*
    - *Action 'b': Incorporate citizen comments into land use decisions by addressing them prior to making motions.*

- *Land Use Goal #3 - Balance Property Rights with the Common Interests of the Community.*
  - *Objective 3.1: Protect private property rights and respect property owners' wishes to enjoy and gain economic return from their properties and investments while ensuring that other public and private interests are not unreasonably compromised or impacted by land uses and development projects.*
    - *Action 'a': While considering land use decisions, balance the rights of applicants with those of potentially impacted parties.*
- *Land Use Goal #4 - Provide for the Logical Expansion of the City's Boundaries that is Compatible with Existing Development and is Fiscally Responsible*
  - *Objective 4.1: Generally require that developers and future users of municipal services pay the upfront costs of extending services.*
    - *Action 'a': Maintain policies that require developers and users of municipal services to pay for the costs of serving development unless extraordinary circumstances exist.*
- *Wildland-Urban Interface Goal #1 - Ensure New Development is Protected from Risks Associated with Wildland Fire*
  - *Objective 1.1: Work with Miles City Fire Rescue and Custer County Fire Department to ensure existing and new development has adequate water for fire protection and egress routes.*
    - *Action 'a': Develop second access from Southgate into town.*

It is noteworthy that the City is the only partner listed to accomplish the above Action 'a' to develop a second access from Southgate into town, and that the timeline is considered "long-term" (actions are initiated or completed generally 5-10 years or longer after adoption of the plan).

Public comments from the March 24, 2021 first public hearing of the Planning Board are attached (draft meeting minutes and written comments). All written comments submitted by the public will be provided to the Planning Board and City Council.

IV. STAFF RECOMMENDATION

The Subdivision Administrator recommends approval of the preliminary plat application for the City View Subdivision, subject to the following actions on the variance requests and imposition of the conditions stated below. After each condition in parentheses are the regulations and statutes that were used as a basis for the imposition of the conditions. All conditions are based on the findings identified in this report and are recommended in order to reasonably minimize potentially significant adverse impacts according to 76-3-608, MCA.

Variances:

1. The subdividers have requested a variance to Sec. 21-18(a)(6)(b) MCSR, which states, "*No single lot may be divided by a public or private road, alley or utility right-of-way or easement*". Approval of the variance would allow Lots 2A, 2B, and 2D to be divided by the proposed 40' wide city water and sewer easement. In light of the Staff Analysis of Variance #1 in Section III.A.1 of the report, it appears approval of the requested variance would meet the required criteria; therefore, the Subdivision Administrator recommends approval of the variance.

2. The subdividers have requested a variance to Sec. 21-18(a)(8)(a)(8) MCSR, which states, "*Second or emergency access. To facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations, the subdivider shall provide a second access in major subdivisions and all subdivisions located in high fire hazard areas.*" In light of the Staff Analysis of Variance #2 in Section III.A.2 of the report, the Subdivision Administrator recommends approval of the variance with mitigation in the form of a condition requiring the property owner, heirs, and assigns to waive the right to protest creation of a Special Improvement District to provide a second access from Highway 59 to the subject property.

Conditions:

1. The final plat and plans shall be in substantial compliance with the preliminary plat and plans reviewed and approved by the City of Miles City, except as modified by these conditions. *[Sec. 21-14(b)(1) Miles City Subdivision Regulations (MCSR)]*

2. The approval period for the preliminary plat is three years. All conditions of preliminary approval shall be met within three years or the preliminary plat approval is null and void, unless an extension(s) is requested and agreed to by the governing body. The final subdivision plat must be filed and recorded with the Custer County Clerk and Recorder

within the three-year approval period or extended period, if applicable. *[Sec. 21-16(a)(9)(e) MCSR and 76-3-610(1), MCA]*

3. The final plat and supplements shall comply with the Uniform Standards for Final Subdivision Plats and shall be reviewed by Custer County's Examining Land Surveyor and Miles City's Subdivision Administrator prior to final approval. *[Sec. 21-14(b) MCSR and 76-3-402 and 76-3-611(2), MCA]*

4. All existing and proposed easements shall be identified as to purpose, dimensions and recipients of the dedication. *[MCSR and ARM 24.183.1107]*

5. The final plat application shall provide a title report or updated abstract dated no older than 30 calendar days prior to the date of submittal of the final plat application, with documentation showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land. The final plat application shall also include the written, signed, dated, and notarized statement with consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land. The Subdivision Administrator is authorized to provide for the review of the abstract or certificate of title of the land in question by the city attorney. *[Sec. 21-14(b)(2)(a) MCSR and 76-3-612, MCA]*

6. The City Council will only approve the final plat if the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. *[Sec. 21-16(a)(9)(e) MCSR and 76-3-611(1)(b), MCA]*

7. The City of Miles City will collect public comment submitted at the public hearings regarding the information presented pursuant to 76-3-622, MCA and shall make any comments submitted or a summary of the comments submitted available to the subdividers within 30 days after conditional approval of the subdivision application and preliminary plat. The subdividers shall, as part of the subdividers' application for sanitation approval, forward the comments or the summary provided by the City of Miles City to DEQ. *[76-3-607(7), MCA and ARM 17.36.103(1)(t)]*

8. The proposed plans for solid waste collection and water and wastewater treatment systems shall be reviewed by the Miles City Sanitarian and approved by the Montana Department of Environmental Quality. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer prior to final plat approval. The approved plans shall be filed with the final plat. *[Sec. 21-18(a)(10) through (12) MCSR, Sec. 21-14(b)(2)(a)(6) MCSR, and ARM 24.183.1107(3)]*

9. A storm water drainage plan, designed by a professional engineer who is licensed in the State of Montana, shall be reviewed by the Miles City Sanitarian and approved by the Montana Department of Environmental Quality. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer prior to final plat approval. The approved plans shall be filed with the final plat. *[Sec. 21-18(a)(9) MCSR, Sec. 21-14(b)(2)(a)(6) MCSR, and ARM 24.183.1107(3)]*

10. Easements and a declaration(s) of shared use and maintenance agreement shall be established on and with the final plat for any stormwater-related facilities that will be shared amongst more than one lot. *[Staff Report III.A.5 and Sec. 21-14(b)(6) MCSR]*

11. The subdividers shall provide authorization from Montana Department of Environmental Quality, through a permit or written documentation that no permit is required, under the authority of a *General Permit for Storm Water Discharges Associated with Construction Activity* per the Montana Pollutant Discharge Elimination System (MPDES). The approved *Storm Water Pollution Prevention Plan Permit* and/or *General Permit for Storm Water Discharges Associated with Construction Activity* or other written authorization issued by the Montana Department of Environmental Quality shall be included with the final plat application. *[Staff Report III.B.2; 76-3-608(3)(a), MCA, impacts on the natural environment; 75-5-101 et seq, MCA; and ARM 17.30.1101, 17.30.1301 et seq, and 17.30.601 et seq]*

12. Prior to final plat approval, the exposed soils on the property along the south side of Horizon Parkway, where a denuded, unvegetated slope exists, shall be stabilized with implementation of erosion control measures. The City encourages the subdividers to take erosion control measures as soon as possible, with the intent being that the subdividers do not wait until all subdivision-related improvements are completed. *[Staff Report III.B.2 and 76-3-608(3)(a), MCA, based on impacts on the natural environment]*

13. The landscaping plan submitted for the subdivision, which shall be held on file at the City Planning Department at City Hall, shall be referenced on the face of the final plat to notify future lot owners of the plan. The plan may be used as a basis for individual lot development, but any such future individual lot development is subject to approval by the City of Miles City in accordance with the regulations in place at the time of proposed development, which may require modifications to the subdivision's landscape plan, supplemental information, or a new landscape plan. *[Staff Report III.A.9, Sec. 24-49 of Miles City Zoning Code, and Sec. 21-18(a)(18)(g) MCSR]*

14. Future uses of the lots shall be in accordance with the Miles City Zoning Code and DEQ-approved Certificate of Subdivision Approval to be issued as referenced in these conditions. In addition, because the project has only been proposed for the non-residential uses allowed by the current General Commercial district regulations and the preliminary plat application did not contemplate non-residential uses and associated impacts, such as those on the education system and parks and recreation resources, no residential uses are allowed without further review and approval by the City of Miles City and if necessary, DEQ. *[Miles City Zoning Code, Staff Report III.A.9 and III.B.2]*

15. Prior to filing of the final plat, all improvements shall be installed or otherwise guaranteed as proposed and as outlined by these conditions, including as specifically identified by Condition #16. All improvements shall be completed in place or the developer shall enter into a written subdivision improvements agreement with City Council guaranteeing the construction and certification of such improvements and shall provide an acceptable financial security guarantee, in accordance with the Miles City Subdivision Regulations. *[Staff Report III.A, III.B.1 – 3, Sec. 21-14(b)(7) MCSR, and 76-3-507, MCA]*

16. A: The following improvements must be installed prior to final plat approval, as opposed to including said improvements in the SIA:
    - Site grading per the grading plans, including erosion control required by these conditions.
    - Reseeding and weed treatment associated with this list.
    - All water mains and fire hydrants.
    - All sewer mains and related facilities.
    - Stormwater conveyance and retention/detention facilities.
    - Horizon Parkway: widening, construction, curb and gutter, with the only exception of surface paving.
    - Sidewalk along Horizon Parkway.
    - Parkhill Drive: construction of full turnaround area to proper city street/turnaround standards within a public easement/right-of-way, with the only exception of surface paving/hard-surfacing.
    - Traffic signs.
    - All engineering costs (design, construction, and certification), permitting, and reseeding/weed treatment of the improvements <u>not</u> included in the SIA.

    B: The following could then be included in the SIA:
    - Remaining erosion control, reseeding and weed treatment.
    - Electrical and telecommunication utilities to each lot (if not in place currently)

- Paving of Horizon Parkway from current end of pavement to and including the approach to Lot 2D.
- Surface paving/hard-surfacing of the turnaround at the terminus of Parkhill Drive.
- Mail facilities.
- Remaining engineering costs (design, construction, and certification) and permitting (including all required by these conditions).

[Staff Report III.A, III.B.1 – 3, Sec. 21-14(b)(7) MCSR, and 76-3-507, MCA]

17. The proposed improvements to Horizon Parkway shall be completed by the subdividers, certified by the subdividers' engineer, and approved by the Miles City Public Works Department. The improvements shall include pedestrian facilities along the south side of Horizon Parkway adjacent to the subject property in accordance with Sec. 20-41 of the Miles City Code of Ordinances (MCCO). *[Sec. 21-18(a)(8) MCSR, Sec. 20-41 MCCO]*

18. All street, water, sewer, and stormwater improvement plans shall be reviewed and approved by the Miles City Public Works Department and be built to applicable city standards. All applicable specifications and requirements of the approved plans shall be met and certified by a professional engineer. *[Staff Report III.A & B; Sec. 21-18(a)(5), Sec. 21-18(a)(8), Sec. 21-18(a)(9) – (12), MCSR; and 76-3-608(3)(a), MCA, impacts on public health and safety]*

19. The proposed water and sewer systems within the Horizon Parkway right-of-way shall be dedicated to, taken over and maintained by the City of Miles City and the proposed water and sewer systems south of Horizon Parkway right-of-way shall be dedicated to, taken over and maintained by the Custer County Water & Sewer District. *(based on proposal in June 10, 2020 Water and Sanitary Sewer Engineering Report; Sec. 21-14(b)(1) MCSR; and 76-3-608(3)(a), MCA, impacts on local services)*

20. Parkhill Drive shall be improved with a turnaround area that meets Miles City standards within an adequate permanent or temporary right-of-way or easement for the turnaround area. A leg of the turnaround may also serve as the driveway approach to Lot 2A as long as parking is not allowed in the turnaround's easement area. Should such additional easement be nonperpetual, termination of the easement shall be contingent upon Parkhill Drive being established with another turnaround area at its terminus in compliance with Miles City standards. *[Staff Report III.A.2 & III.B, Sec. 21-18(a)(8) MCSR, and 76-3-608(3)(a), MCA, impacts on public health and safety]*

21. The subdividers shall file with the Custer County Clerk & Recorder an executed Waiver of Right to Protest Creation of Special Improvement District in a form acceptable to the City

stating that the subdivider and all heirs and assigns waive the right to protest creation of a Special Improvement District to provide a second or emergency access for the portion of Southgate Meadows that Block 5 is located in, in a manner that complies with Sec. 21-18(a)(8)(a)(8) MCSR for this subdivision. The improvement district may include all costs related to engineering, surveying, land, easement, and right-of-way acquisition, materials, construction, and all appurtenant costs necessary to build a roadway to be used for emergency ingress and egress from the subdivision to Highway 59. This waiver of the right to protest shall extend for 20 years beginning on the date the final subdivision plat is filed with the Custer County Clerk & Recorder. *[Staff Report III.A.2 & III.B, Sec. 21-18(a)(8)(a)(8) MCSR, and 76-3-608(3)(a), MCA, impacts on public health and safety]*

22. Any intended or required traffic signs shall be installed by the subdivider with the street improvements. Traffic signs shall be of the size, shape, height, and placement in accordance with the Manual of Uniform Traffic Control Devices. Traffic sign plans shall be approved by the planning department, which may consult with other departments or contracted agents to ensure adequacy. [*Sec. 21-18(a)(8)(f) MCSR*]

23. Electrical and telecommunication utilities shall be installed to each lot in the subdivision in accordance with Sec. 21-18(a)(13) MCSR. Prior to final plat approval (unless secured by SIA), the subdividers shall submit letters from the utility service providers indicating utilities have been installed to their specifications and within appropriate easements as shown on the final plat. *[Sec. 21-18(a)(13) MCSR]*

24. In addition to showing the location of utility easements on the plat with dashed lines, the following statement shall be on the final plat:
"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, telecommunications, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'utility easement' to have and to hold forever." [Sec. 21-18(a)(13) MCSR]

25. The applicant shall meet the requirements of the United States Postal Service (USPS) for mail delivery. A plan for mail delivery shall be included with the final plat application with approval by the local United States Post Office. If postal service will not be provided to each individual lot within the subdivision, the subdividers must provide an off-street area for mail delivery within the subdivision in cooperation with the United States Post Office. If a CBU system is required, it shall be shown on the final plat with an appropriate

easement. If the plans call for a shared facility, responsibility for maintenance of the area and postal facilities shall be included as part a maintenance agreement. *[Sec. 21-18(a)(8)(h)(7) MCSR]*

26. The proposed noxious weed management plan shall be approved by the Custer County Weed District and filed with the final plat. The plan shall be implemented during development. *[Staff Report III.B.2 and 76-3-608(3)(a), MCA, impacts on the natural environment and agriculture]*

27. Statement(s) on the final plat and/or attached Conditions of Approval Sheets per the Uniform Standards for Final Subdivision Plats shall notify future property owners of the right to farm by surrounding agricultural landowners and measures that may be legally taken to prevent pets from harassing livestock. *[Staff Report III.B.2 and 76-3-608(3)(a), MCA, impacts on agriculture]*

28. If during ground disturbance and construction of subdivision improvements and individual lot development, if cultural materials are inadvertently discovered, the Montana State Historic Preservation Office (SHPO) shall be contacted to provide for site investigation and mitigation according to SHPO requirements or recommendations. Statement(s) on the final plat and/or attached Conditions of Approval Sheets per the Uniform Standards for Final Subdivision Plats shall notify future property owners of the requirement. *[Staff Report III.B.2 and 76-3-608(3)(a), MCA, impacts on the natural environment]*

29. The subdividers shall comply with all other standards and procedures of the Miles City Subdivision Regulations, which are applicable to this subdivision to obtain final plat approval, as well as all conditions and mitigations offered through the application which were not altered or amended during the review process. Any regulations, laws, procedures, mitigations, or provisions that are not specifically listed as conditions of approval are not waived or varied by omission. *[compliance with MCSR and MCA 76-3]*

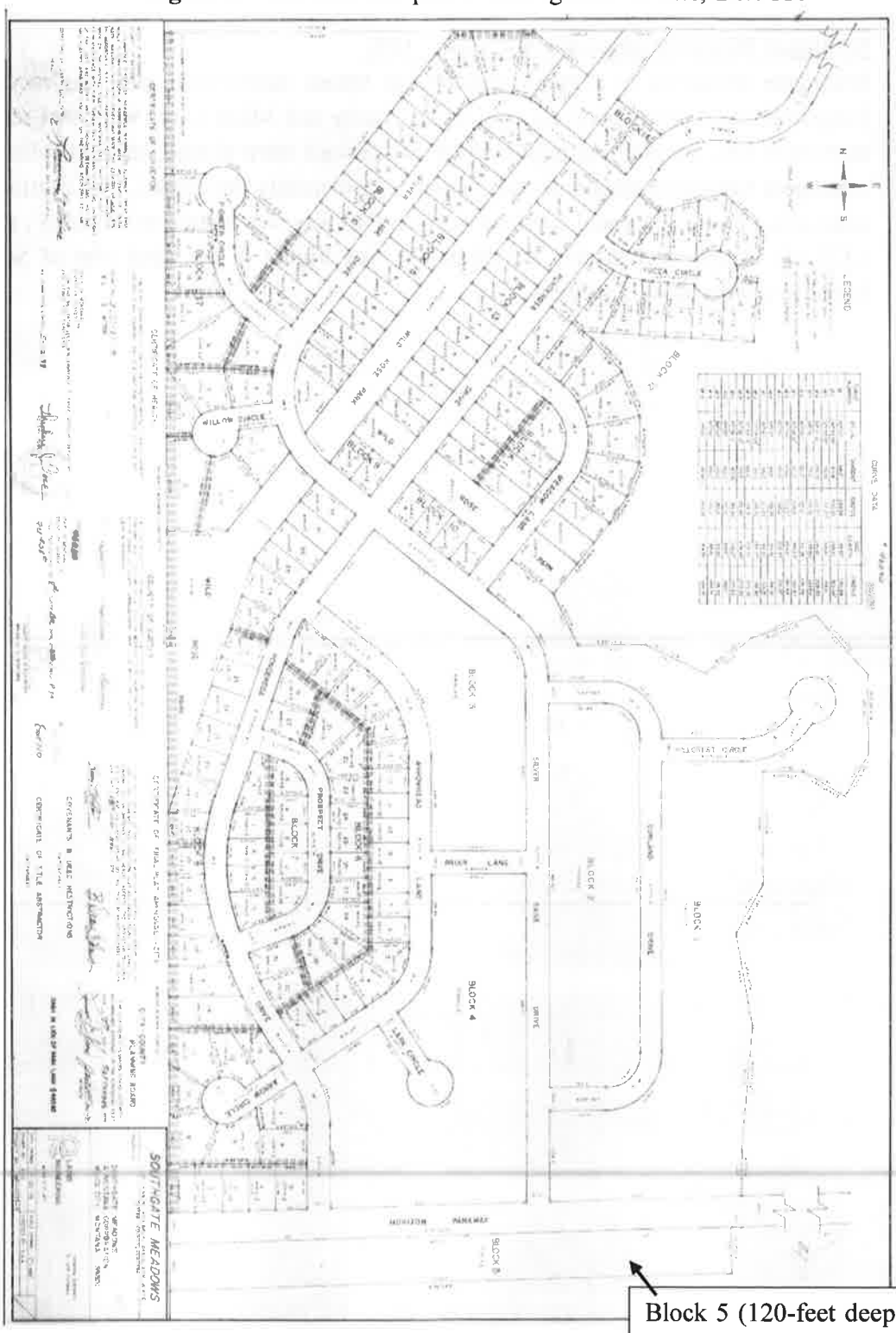
This recommendation for preliminary plat approval is for the creation of four lots to be used in compliance with the Miles City Zoning Code. Any changes to the approval would require additional review and approval by the City of Miles City.

Appendix A: Property and Project History

Southgate Meadows, original (1976), Env. 110:

Southgate Meadows is a major subdivision whose subdivision plat was recorded in December 1976 with approvals by Custer County and Miles City. With that recording, numerous lots, blocks, and public street dedications were platted, thus establishing the Southgate Meadows neighborhood, which is now mostly developed. The portion of the subdivided property located south of Horizon Parkway was platted as 'Block 5', a tract of ±177,531 square feet in size (±4.08-acres). See Figure 4, the final plat of Southgate Meadows, with Block 5 labeled.

Figure 4: Final recorded plat of Southgate Meadows, Env. 110

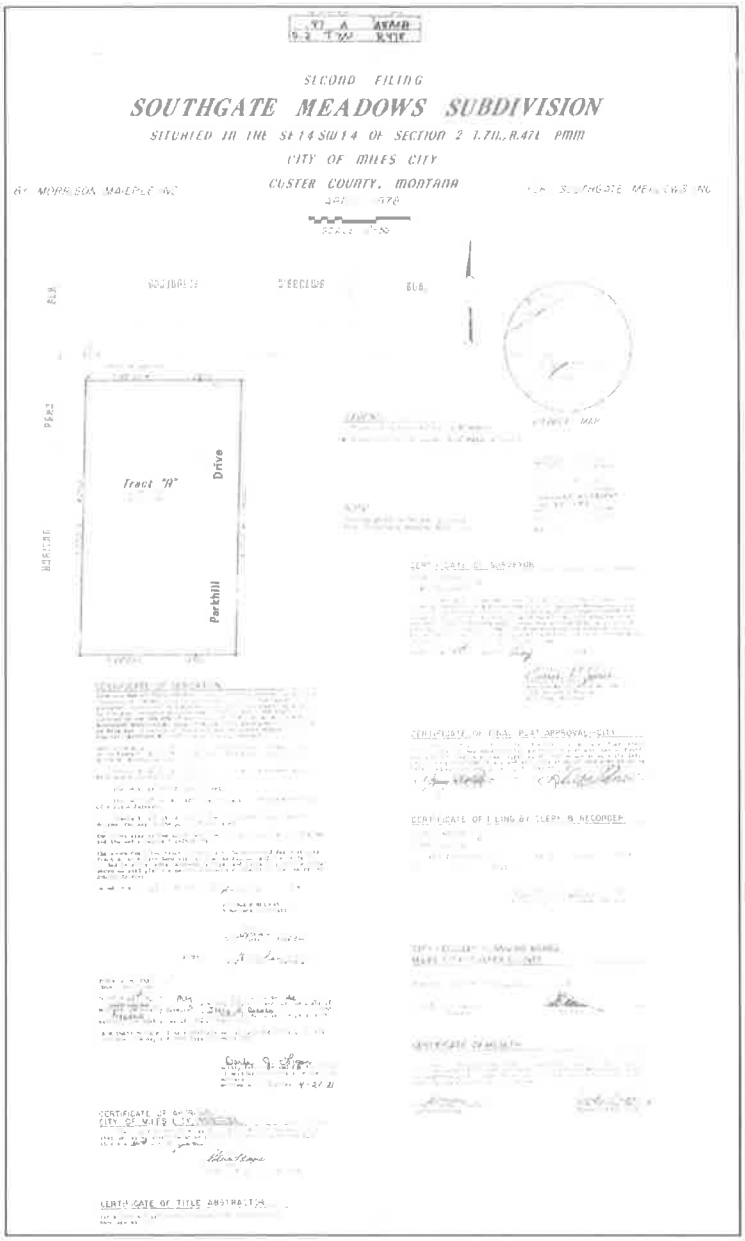


Block 5 (120-feet deep as measured from Horizon Parkway)

Second Filing of Southgate Meadows Subdivision, Tract "A" (1978), Env. 147A:

In July 1978, a plat entitled "*SECOND FILING SOUTHGATE MEADOWS SUBDIVISION*" was recorded, which created Tract "A" (from Block 5), which also included Parkhill Drive as a publicly dedicated street accepted by the City of Miles City. Tract "A" is now developed with the Assembly of God Church, located directly west of the subdivision, across Parkhill Drive. See Figure 5 below, the Second Filing of Southgate Meadows Subdivision.

Figure 5: the Second Filing of Southgate Meadows Subdivision, Env. 147A



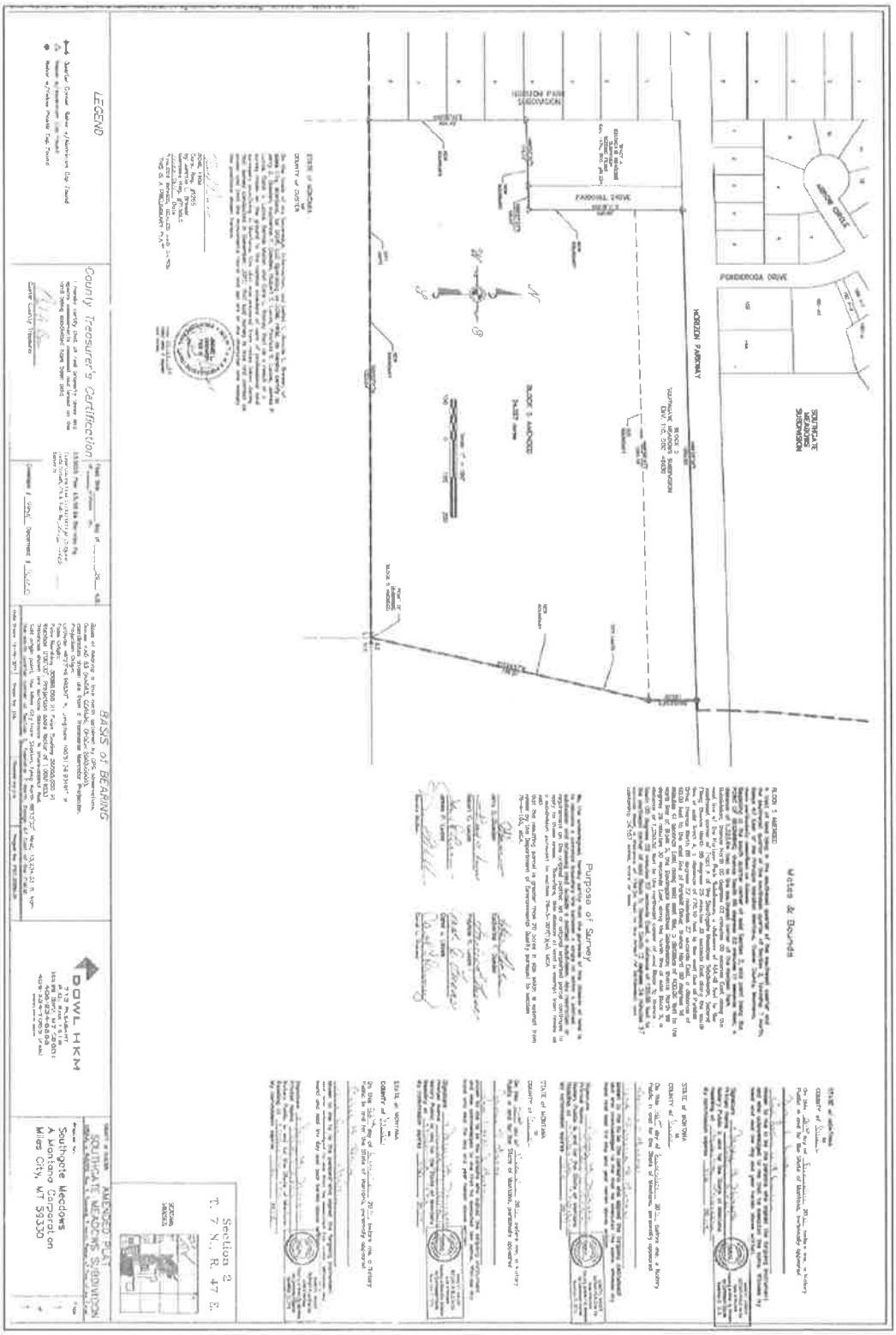
Amended Plats (1979-):

Several amended plats of Southgate Meadows have been recorded for various purposes. Most of the amended plats are essentially inconsequential to the current project, until the following amended plats of Block 5.

Amended Plat of Southgate Meadows, Block 5 (2011), Env. 499A:

In December 2011, an amended plat of Southgate Meadows was recorded, which amended Block 5 using a boundary line relocation exemption to make Block 5 (less Tract "A" of the Second Filing) larger, becoming Block 5 Amended, at 24.557 acres in size. See Figure 6 below, the Amended Plat of Southgate Meadows, Block 5, Env. 499A.

Figure 6: the Amended Plat of Southgate Meadows, Block 5), Env. 499A



Certificate of Survey filed in Env. 511A: Retracement/Easements (2013):

In February 2013, a Certificate of Survey (COS) was filed in Env. 511A, with purposes being to retrace the boundaries of existing tracts of land and to provide material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States Bureau of Land Management. The COS depicted several easements granted to and accepted by the City of Miles City, and referenced easements previously recorded. See Figures 7A, 7B, and 7C below, the Certificate of Survey filed in Env. 511A.

Figure 7A: Certificate of Survey filed in Env. 511A (Page 1 of 3)

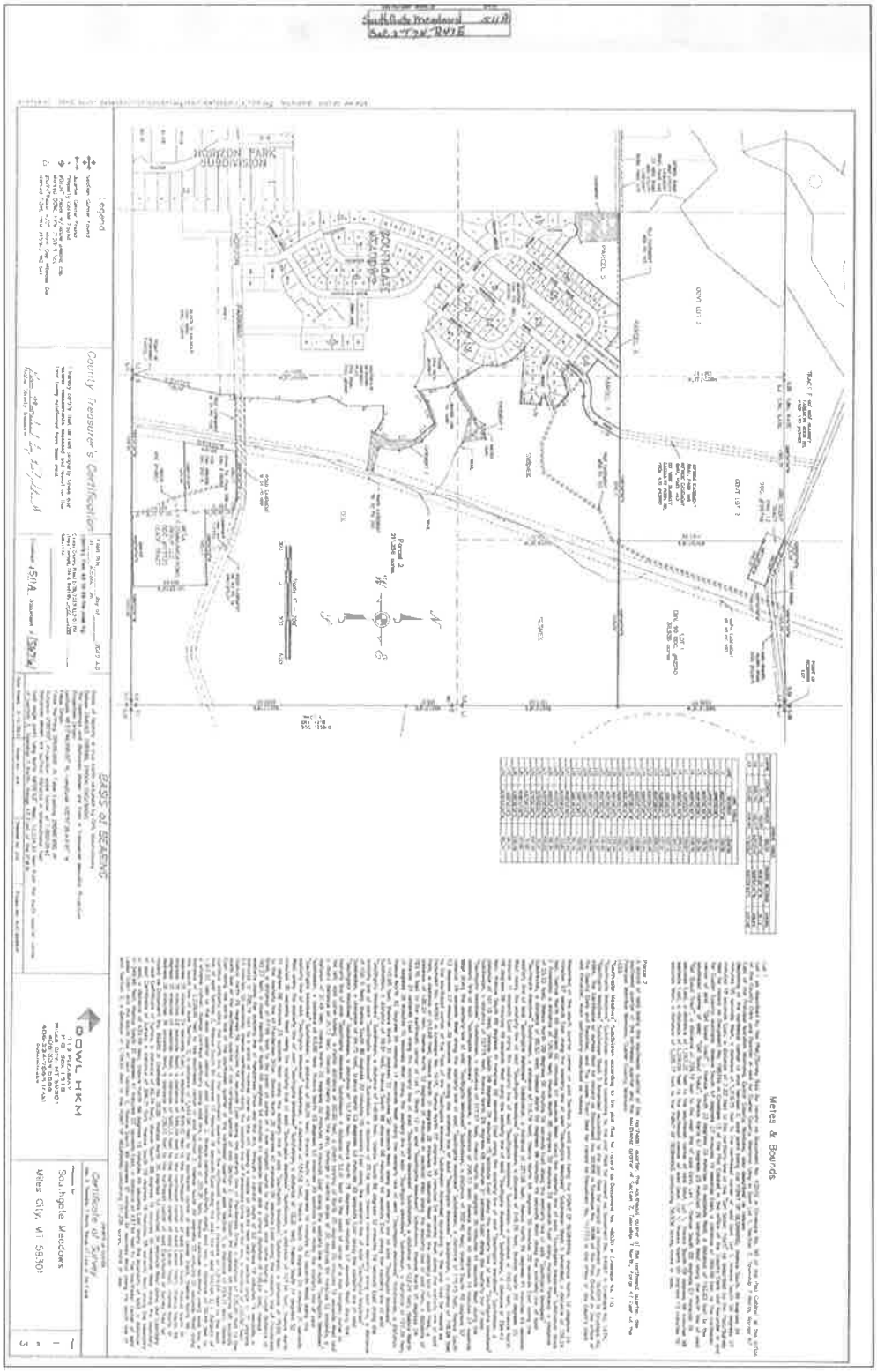


Figure 7B: Certificate of Survey filed in Env. 511A (Page 2 of 3)

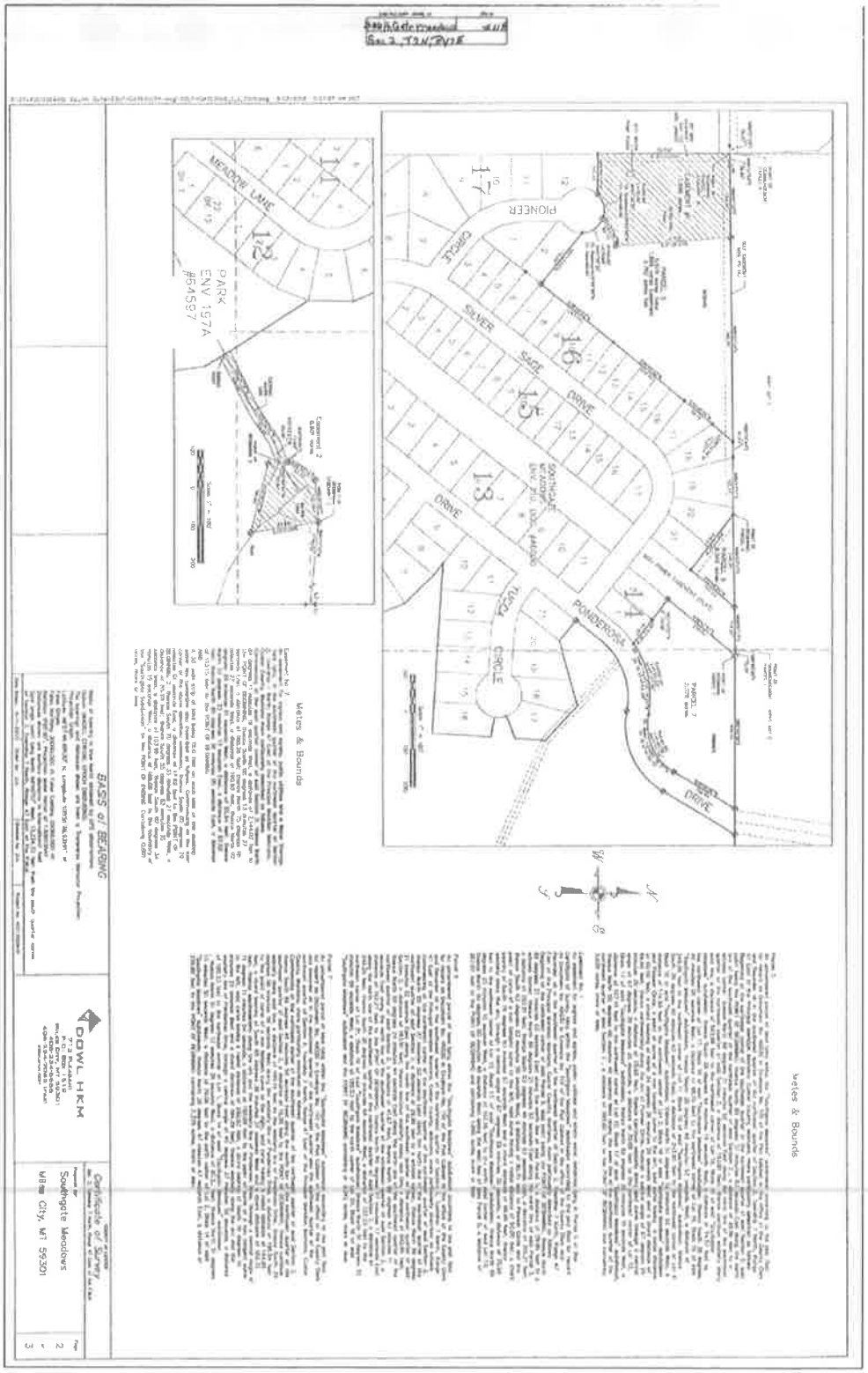
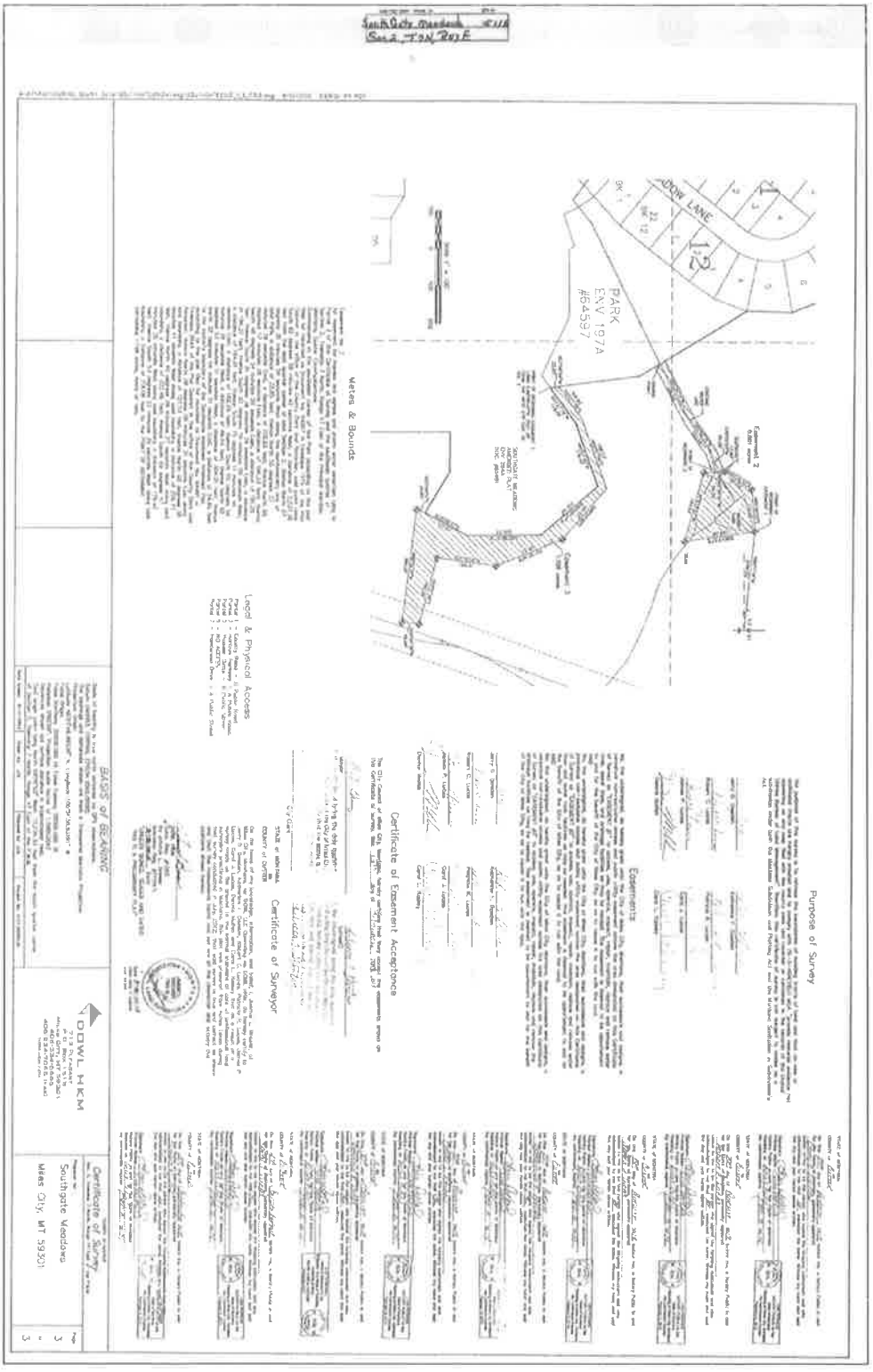


Figure 7C: Certificate of Survey filed in Env. 511A (Page 3 of 3)



Amended Plat of Block 5 Amended, Southgate Meadows Subdivision (2014), Env. 530B: In November 2014, the Amended Plat of Block 5 Amended, Southgate Meadows Subdivision, was filed in Env. 530B. This subdivision was completed following subdivision review, with preliminary plat review occurring in November 2014 and the final plat also being approved and recorded in November 2014. The plat created Lots 1 and 2; Lot 1 is developed with a ministorage facility and the subject property proposed for the City View subdivision is Lot 2. See Figure 8 below.

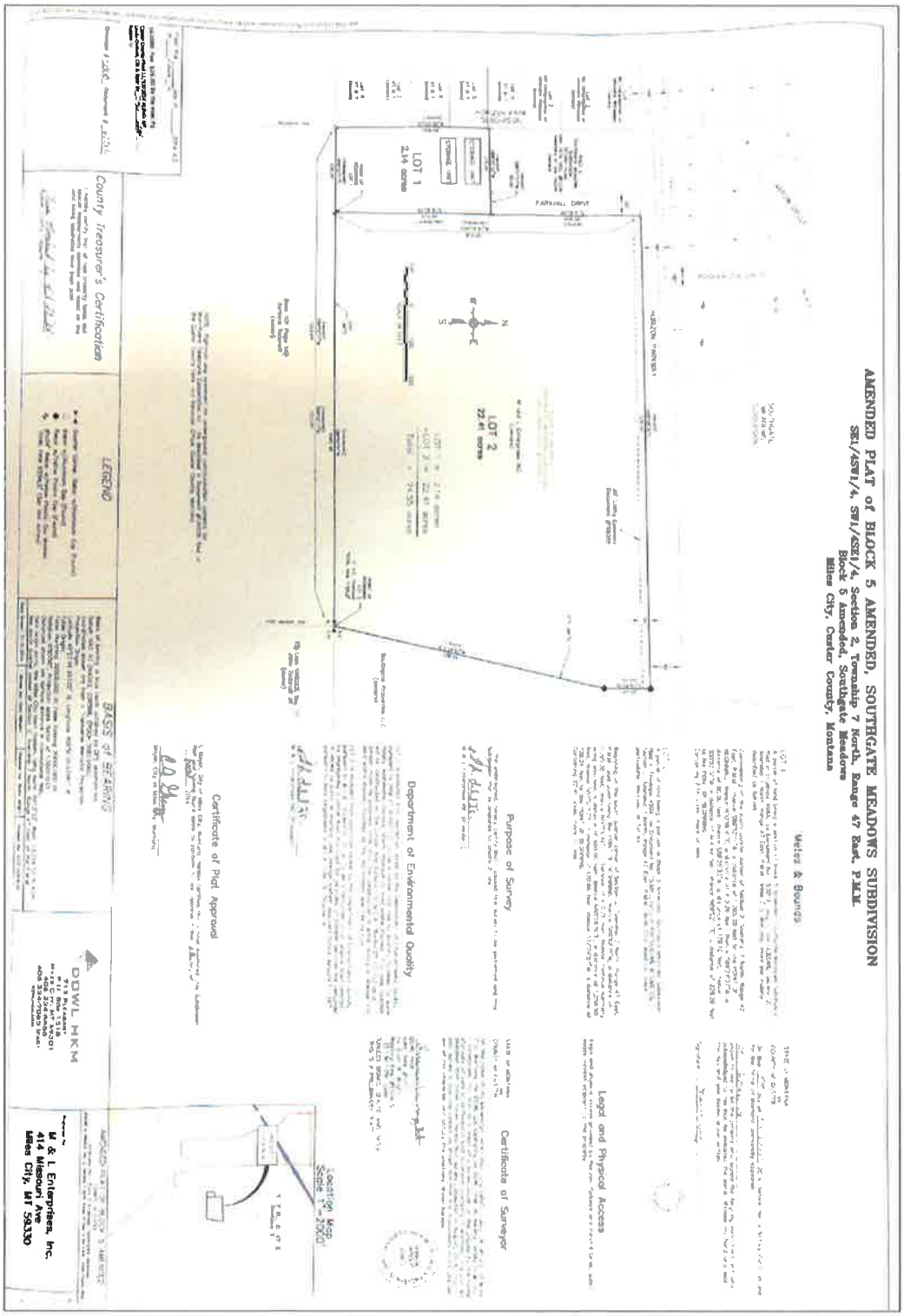



Figure 8: the Amended Plat of Block 5 Amended, Southgate Meadows Subdivision (2014), Env. 530B