PRELIMINARY PLAT – STAFF REPORT FOR

MUSSELSHELL COUNTY COMMISSIONERS FISCHER 2-LOT SUBDIVISION

Date: 06-30-15

Type of Subdivision: Expedited First Minor Subdivision

Name of Subdivision: Fischer Subdivision

Number of Lease Spaces: 2 lots

Legal Description: Tract 1 C/S 2013-5RB in NW1/4 of Section 20 T6N R24E, Musselshell

County

Land Owner(s): Dorothy Fischer, 591 Dean Creek Road, Lavina, MT 59046

Name of Subdivider: Same as Owner

Preparer: Sanderson Stewart, 1300 N. Transtech Way, Billings 59102, Peter Knapp

Surveyor: Sanderson Stewart

Public Hearing: Not Applicable to Minor Subdivisions

Staff Recommendation on Subdivision: Approve with Conditions

Submitted by:

06/30/15

Anne Cossitt

Musselshell County Subdivision Administrator

Aune Cossitt

Date

INTRODUCTION

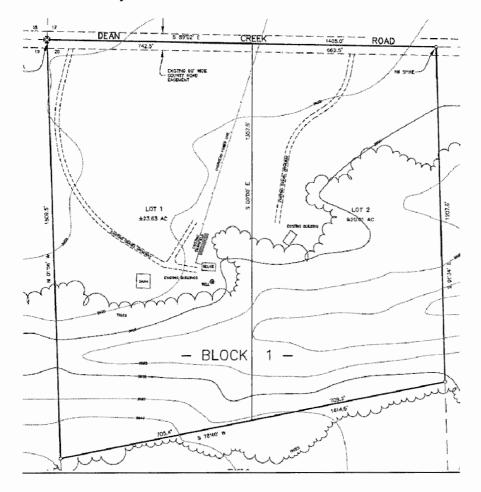
This report presents findings of fact and recommended conditions of approval for the subdivision. It is organized as follows:

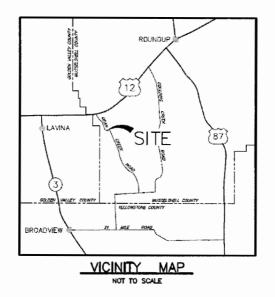
- I. Findings of Fact
 - Project Summary
 - Findings based on Review Criteria in the Musselshell County Subdivision Regulations (MCSR) and the Montana Subdivision and Platting Act (MSPA)
- II. Recommendations

I) FINDINGS OF FACT for the Subdivision

A) Project Summary

The Preliminary Plat shows the division of Tract 1 C/S 2013-5RB into two lots.





1) Project Characteristics

Location: Approximately 13 air-miles southwest of Roundup

Dean Creek Road

Size and Proposed Use: 43.6 acres proposed as two residential lots of 20.01

acres and 23.6 acres

Subdivision Population: One residence existing on Lot 1; the creation of

another lot would increase population by one

household

Present land use: Residential, agricultural (hay production)

Terrain/Topography Gradual slope on north portion or property (where

there appears to have been hay production in the past) and a forested coulee in the southern portion

Access: Dean Creek

Utilities: Gas – individual propane tanks

Electric – Fergus Electric Cooperative

Telephone - individual cell carriers (Mid-Rivers

also available)

Services Fire – Dean Creek Volunteer Fire Department

Schools – Roundup School District. Also within the Lavina Busing district –students can attend school in Lavina, if approved by both Roundup and

Lavina school districts

Law Enforcement –Musselshell County Sheriff Ambulance – Musselshell County Ambulance Solid Waste - Musselshell County Refuse District, (no collection in county outside city of Roundup)

Water/Sewer:

Lot 1 has an existing house, well, and septic/drainfield. Lot 2 has a one-room cabin with sleeping loft, a water cistern with hand-pump, and a privy. In January 2015, Central Montana Health District approved a sealed (vault) pit privy to replace the then-existing unsealed pit privy. The waiver specifies that if any changes are made to the existing water supply or facilities within the existing cabin, a septic and drainfield shall be required.

Adjacent land uses:

North: Large lot residential and

agriculture (dry land crop)

West: Agriculture (grazing)

South: Large lot residential and agriculture (crop)

East: Large lot residential

Zoning:

None

Annexation:

NA

Covenants/Restrictions:

Existing: Restrictions were placed on the land in 1975 with Document #219884. (Attached as supplement to this report) The document restricts

commercial and business activities, sets

requirements for minimum square footage and water supply and sewage systems. Musselshell County is not a party to the restrictions and is not

responsible for their enforcement.

Proposed: None

Special Improvement District: None Proposed

2) Proposal

Dorothy Fischer, the owner, proposes to create two lots from her existing tract of record, Tract 1 C/S 2013-5RB in NW1/4 of Section 20 T6N R24E. The land borders Dean Creek road and is on mostly level terrain, with a wooded coulee on the south side.

This subdivision meets the Musselshell County criteria in Section 3.3.1 for review as an expedited minor subdivision:

- i. No more than one additional lot is created and the remaining land is greater than 160 acres in size or two lots are created from a tract of record. Only one additional lot is being created and there is no "remaining parcel."
- ii. Each lot is 20 acres or greater in size. Yes, both lots are greater than 20 acres each
- iii. No variances are requested or required. No variances are needed.
- iv. No land is dedicated to the public for parkland, playgrounds, or other public uses and no additional streets will be created. Complies, no parkland dedication is required for minor subdivisions. No new streets or roads are needed for this subdivision.
- v. It is a first minor subdivision from a tract of record. The original tract of record created with survey was established as Tract 463 of C/S 1975-2, filed on March 18, 1975. Tract 463 was 80 acres, the W2 NW4 of Section 20 T6N R24E. Survey 1975-2 did not use any exemptions to create tracts. The tracts would have been exempt by definition, since in 1975 a subdivision was defined as creating parcels of less than 20 acres. In 2013, Tract 463 was altered to become Tract 1 C/S 2013-5RB per the exemption requirements under 76-3-207, MCA. Therefore the original tract of record as it existed on July 1, 1973, has never been subdivided, nor has it had more than five parcels created using exemptions under 76-3-201 or 76-3-207, MCA.
- 3) Site Visit Findings No site visit was conducted for this 2-lot minor subdivision. The review considered documents submitted by Sanderson Stewart, information from the Musselshell County Clerk and Recorder, Montana cadastral, Google Earth, and phone conversations with Pete Knapp (Sanderson Stewart), Susan Baldwin (County Sanitarian).
- B) Findings based on Review Criteria in the Musselshell County Subdivision Regulations (MCSR) and the Montana Subdivision and Platting Act (MSPA)

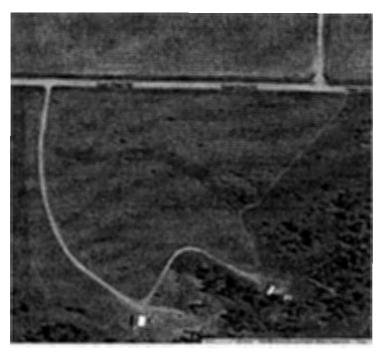
Findings stated below are based on the subdivision application materials and preliminary plat at the time the subdivision application was determined to be sufficient. The findings are presented for each review criteria in the Musselshell County Subdivision Regulations and the Montana Subdivision and Platting Act.

1) Compliance with Musselshell County Subdivision Regulations (MCSR) Chapter 5: Design Standards

The subdivision complies with design standards except as noted below. The following items include those that simply cannot be verified to comply with Design Standards except at the time of final plat or completion of improvements.

5.3.3 Each lot must abut and have access to a public or private street or road.

The lots have physical access to Dean Creek Road, which is a county road. However, in order to have clear legal access, the approaches for each driveway must be approved for the proposed use of each lot. The driveway to Lot 1 appears quite established and may already have an existing approach permit. The main access to the cabin on Lot 2 appears currently to be from Lot 1, although there is also a separate two-track access. The two-track may be an approved approach, but likely for agricultural purposes only. Both lots will need approved approach permits for the proposed use as residential.



5.5.11 Rural addressing must be developed in conformance with the addressing requirements of the Musselshell County rural addressing system. Lot purchasers must be informed of the rural addressing assignment procedures and requirements.

There is one current address for the property –591 Dean Creek Road. A new separate address will be needed for Lot 2 when it is established. In order to comply with this

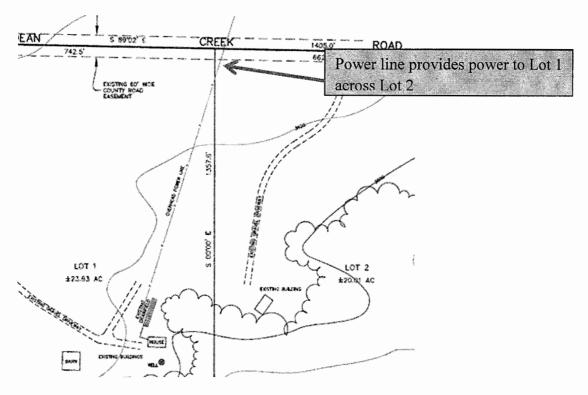
requirement, a notice regarding rural addressing will be required on the face of the plat.

5.10.1 Utilities shall be placed underground.

An overhead power line crosses both properties. Any new power systems will be required to be installed underground in order to comply with this requirement. In order to notify lot owners of the requirement, a notice will be required on the face of the plat.

5.10.5 Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body. Provisions for guy wires on sharp corners must be included. Power poles must be in the ROW, but provisions may be included for wire encroachment out of the ROW.

The final plat will be required to show an easement on Lot 2 for the power line that provides power to Lot 1.



2) Compliance with Review Criteria for Impacts to Agriculture, Agricultural Water User Facilities, Local Services, Natural Resources, Wildlife, Wildlife Habitat and Public Health and Safety (608(3)(a),MCA)

(a) Effect on Agriculture

The subdivision will have an insignificant effect on agriculture. The proposed uses are nearly the same as existing uses.

(b) Effect on Agriculture Water User Facilities

The subdivision will have no effect on agricultural water user facilities because there ae no such facilities within or in the vicinity of the proposed subdivision.

(c) Effect on Local Services

The subdivision will have an insignificant effect on local services. The proposed uses are nearly the same as existing uses.

(d) Effect on Wildlife

The subdivision will have an insignificant effect on wildlife. The proposed uses are nearly the same as existing uses.

(e) Effect on Wildlife Habitat

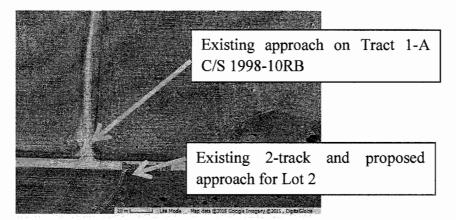
The subdivision will have an insignificant effect on wildlife habitat. The proposed uses are nearly the same as existing uses.

(f) Effect on Public Health and Safety

The waiver granted by the Central Montana Health District for the vault privy on Lot 2 specifies that if any changes are made to the existing water supply or facilities within the existing cabin, a septic and drainfield shall be required. However, it does not further specify that such a system is allowed only for seasonal recreational use, not as a permanent year-round residence. Comparable state rules allow for sealed vault privies only when there is no piped water supply and the parcel is a seasonal-use recreational site. Having a permanent year-round residence with a privy, even if sealed, could create issues later.

The other potentially significant public health and safety issue with this property is the driveway access to proposed Lot 2. This approach will need to be approved by the county for residential purposes if it has not been approved for that purpose. The existing approach for Lot 2 is separated by about 100 feet from the approach to the property on the north side of Dean Creek Road. Aligning the two

approaches could result in greater safety along the road, particularly if traffic volume and speed increase in the future.



3) Requirements of Montana Subdivision and Platting Act 76-3-608(3)(b)

(a) Compliance with survey requirements

The subdivision plat must comply with the Administrative Rules of Montana (ARM) before it can be filed with the clerk and recorder. This is something that gets reviewed when the surveyor submits the final subdivision plat along with any other information needed for final plat approval.

(b) Compliance with subdivision review procedure of the Musselshell County Subdivision Regulations

The following provides the dates of required procedures for this subdivision as an expedited minor subdivision.

2014

- 06/12 Request for pre-application meeting
- 07/10 Pre-application meeting held

2015

- 04/16 Request for 2nd pre-application meeting (Note: no application had been received within the 6 month deadline)
- 04/17 2nd Pre-application meeting held
- 05/21 Application Received
- 05/28 Element Review Complete (4 working days)

- 05/28 Sent notice that paper version and dropbox versions slightly different and need to be fixed
- 05/28 Sent link to sanitarian, clerk, assessor, fire, fwp, Ambulance, DES, post office, schools for their review and comment
- 06/09 Sufficiency Review Notice Sent (8 working days)
- 06/11 Subdivider's Response
- 06/15 Sufficiency Review Notice Sent Application Sufficient (2 working days)
- 06/29 Preliminary Plat Report Prepared
- NA Planning Board Review --- No Planning Board Review is required for an Expedited Minor Subdivision
- 07/21 Deadline for Commissioners' Decision
- 4) Requirements of Montana Subdivision and Platting Act 76-3-608(3)(c) and (d)
 - (a) Easements required for the location and installation of any planned utilities, both on and off site.

The requirement for easement on Lot 2 for the power line to Lot 1 will be addressed with a Condition of Approval.

(b) Legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.

The lots abut Dean Creek Road, which is a public road, and are thus provided physical access. Legal access will be addressed with the requirement for road approach approvals from the county.

(c) Required public or private improvements to be installed before final plat approval, or guaranteed with a Subdivision Improvements Agreement (MCSR 2.3.5 and 76-3-507, MCA)

No improvements are necessary for this property to be divided. If the driveway approach for Lot 2 requires a move to the west, that can be accomplished by the lot purchaser.

(d) Requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights.

This provision is not applicable to this subdivision as the lot size average is greater than five acres.

(e) Requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements.

This requirement is not applicable as there are no watercourse or irrigation easements on the subject parcel.

5) Conformance with the Growth Policy

The subdivision appears to be in compliance with provisions of the *Musselshell County Growth Policy Update – June 2011*.

II) RECOMMENDATION

Approve the Subdivision with conditions as noted below.

1. Compliance with Subdivision Design Standards

FINDINGS	CONDITIONS
A. Legal Access MCSR 5.3.3 Each lot must	1. Prior to final plat, the subdivider shall
abut and have access to a public or private	provide approved approach permits from
street or road. Currently, there is a question as	Musselshell County Road Supervisors for each
to whether both lots have legal access with	lot's proposed residential use.
approved county road approaches.	Tot b proposed residential ase.
B. Rural Addressing MCSR 5.5.11 Rural	2. Include a notice on the face of the plat that
addressing must be developed in conformance	states, "The owner of Lot 2 shall contact the
with the addressing requirements of the	Musselshell County Rural Addressing
Musselshell County rural addressing system.	Coordinator to obtain a street address."
	Coordinator to obtain a street address.
Lot purchasers must be informed of the rural	
addressing assignment procedures and	
requirements. Lot 1 appears to have a rural	
address but not Lot 2.	
C. Underground Utilities MCSR .10.1	3. The following notice to be placed on the
Utilities shall be placed underground.	face of the plat: "Installation of new utilities,
Existing utilities on the subdivision appear to	including phone, cable, power, etc., shall be
be primarily above-ground. If new utilities are	underground, and designed and installed in
placed at some time in the future on the	coordination with the utility provider."
property, they should be underground to	
comply with this requirement.	
D. Utility Easements MCSR 5.10.5 Utility	4. The final plat shall clearly delineate an
easements must be a minimum of 15 feet wide	easement width and dedication on Lot 2 for

unless otherwise specified by a utility company or the governing body. Provisions for guy wires on sharp corners must be included. Power poles must be in the ROW, but provisions may be included for wire encroachment out of the ROW. The line that provides power to Lot 1 crosses over Lot 2, but there is no easement identified on the	power to Lot 1.
preliminary plat.	

Conclusion for Item #s 1 thru 4 above: The subdivision does not currently comply with all design standards in the Musselshell County Subdivision Regulations, but will comply by final site plan with the above conditions.

2. Effect on Public Health and Safety (76-3-608(3)(a), MCA)

FINDINGS	CONDITIONS
A. Vault Privy Lot 2 is proposed with a	5. Place a notice on the face of the plat that
sealed vault privy rather than a septic-	states, "Lot 2 is served with a sealed vault
drainfield. This is the existing system but it is	privy intended for seasonal recreational use
not a system for a permanent residence.	only. Any change in use from seasonal
Having a vault privy for year-round residential	recreational or installation of piped water
use has potential health and safety	requires the lot owner to install a
implications. State law allows for such	septic/drainfield system approved by the
systems only when there is no piped water and	Central Montana Health District."
the site is seasonal-use recreational.	
B. Driveway Alignment The existing 2-	6. If the County Road Supervisors require the
track driveway access on Lot 2 is offset by	driveway approach for Lot 2 to align with the
about 100 feet from the approach for Tract 1-A	approach on the north side of the road, the plat
C/S 1998-10RB on the opposite side of Dean	shall include the following notice: "Purchaser
Creek Road. This may be a potential safety	of Lot 1 is responsible for developing a
issue in the future.	driveway approach in accordance with the
	county approved approach for Lot 1."

Conclusion for Item #s 5-6 above: The subdivision could have a potentially significant impact on public health and safety, which would be mitigated to acceptable levels with the conditions of approval above.

16. Final Site Plans and Preliminary Plat Approval Period (MCSR 2.3 and 4.4)

FINDINGS	CONDITIONS
A. Material changes to the subdivision after	7. Changes to the site plan and application
preliminary plat approval are contrary to the	after preliminary approval by the county
intent of public review in the subdivision	commissioners will trigger review to determine
process.	if the changes are material and if the
	subdivision application must be re-submitted
	as a preliminary site plan.

B. Preliminary plat does not meet all requirements for a final site plan.	8. The final site plans shall meet requirements of the Musselshell County Subdivision Regulations. All easements of record on the property shall be identified on the survey and labeled with recorded document number. The final plat application shall include a statement that all easements of record for the subject property are identified on the plat.
D. The Subdivision Regulations establish requirements for final plats.	9. The final plat application and related materials shall meet the requirements of the regulations.
E. Preliminary plat approval must be in force for not more than 3 calendar years or less than 1 calendar year (76-3-610, MCA)	10. The time frame for completing the subdivision shall be two years from the time of conditional approval.

Conclusion for Item #s 7-10 above: The subdivision does not currently comply with all requirements in the Musselshell County Subdivision Regulations or in the Montana Subdivision and Platting Act, but will comply by final site plan with the above conditions.

SUMMARY CONCLUSION:

The subdivision will comply with requirements of Musselshell County Subdivision Regulations and the Montana Subdivision and Platting Act with completion of the conditions of approval.

WARRANIY DEEL

City, Mis GARY VAN	INDEVIURE, made the 15th day of <u>September</u> , 197 5, between IMPAIS, DNC., a corporation with offices at 612 West 47th Street, Kansassouri, as Party of the First Part, and grantor herein and IMPAIN
	of 116 Burlington, Billings, Montana 59101
herein,	, as Part y of the Second Part and grantee WITNESSETH:
and more, valuable (Party, the warrant ar forever,	and in consideration of the sur of Ten and no/100 (\$10.00) Dollars current lawful money of the United States of America, and other consideration, receipt of which is hereby acknowledged by First e said grantor herein does hereby grant, bargain, sell, convey, and confirm unto the said grantee, and tohis_heirs and assigns the following described real estate situated in the County of 11, State of Montana, to-wit:
	Township 6 North, Range 24 East, M. P. M.
Sec	ction 20: W1/2NW1/4 (Tract 463)
Too be: in abo and not	teining 80 acres, more or less. gether with the tenements, hereditaments and appurtenances thereunto longing or in anywise appertining, and an easement from the County Road Section 18 and 19, Township 6 North, Range 24 East, M. F. M., to the over described premises, and reserving unto the Seller and its successors of assigns, an easement for County roads and summer access road which are w constructed over and across said tract for a full width of 60' and an sement for all utilities.
	AVE AND TO HOLD unto the Second Party and to his heirs and orever, subject however, to:
(a)	Reservations and exceptions contained in the patents from the United States of America;
(b)	Existing rights of way and easements for roads, ditches, canals, power lines and telephone lines;
(c)	Mineral and royalty interest in said lands owned by others than the Grantor;
(d)	Excepting and reserving unto Grantor and its usccessors and assigns an undivided one-half of all oil, gas and other minerals in and under the above described land which were comed by Grantor on the date of this contract, together with a right of ingress and egress for the purpose of exploring for, mining and removing the same (with all existing outstanding royalty burdens being borne and shared equally by Grantor and Grantee from their respective interest as the same are hereby granted and reserved);
(e)	
(£)	1. Said land shall not be eccupied or used for any commercial or business purpose including any commercial cattle feeding, hog raising, poultry or any other animal; nor for any nexicus or offensive activity and nothing shall be one or permitted to be done on said land which is a nuisance or might become a nuisance to the owner or owners of any surrounding land including the disposal of trash or junk cars. All domestic animals must be fenced within the boundaries of said property.

FIGURE & RECORDS

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- Any structure commenced must be completed on the exterior within one
- All building sites must be located so as not to block the view or take away the adjoining landowners' amenities.
- No structure of a temporary nature: trailer, basement, tent or accessory building shall be used on any lot as a residence except that a trailer, tent or pickup camper may be maintained on a lot for not to exceed 30 days during any calendar year.
- 5. Any residence constructed on any lot shall have a minimum square footage excluding porches, basements, garages or carports as follows: 700 square feet; and all construction of mobile or modular homes must be on a permanent foundation.
- No lot shall be used or maintained as a dumping ground for rubbish, trash or other waste. Refuse shall not be kept except in sanitary containers. All incinerators for the storage and disposal of other garbage shall be kept in a clean and sanitary condition.
- No individual water supply system or sewage disposal system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with standards and requirements which meet with the state or county health laws pertaining thereto.

EXCEPT with reference to the time referred to in paragraphs (a) through (f), inclusive, this deed is given with the usual covenants expressed in Section 74-110, R. C. M. 1947.

IN WITNESS WHEREOF, said grantor has caused its corporate name to be subscribed and its corporate seal to be affixed by its proper officers thereunto duly authorized this 31st day of October . 197 s

RLC INVESTMENTS, INC., a corporation

T. H. Smith, Vice President

ATTEST:

Secty.

STATE OF I SSCURI

County of Jackson

On this 31stday of October , 197 5 , before me, the undersigned, a Notary Public for the State of Missouri, personally appeared T. H. SMITH, known to me to be the Vice-President of the comporation that executed the foregoing instrument and acknowledged to me that said instrument was the free and voluntary act and deed of said comporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Given under my hand and official seal the day and year first above

Notary Public for the State of Missour Residing at Kansas City, Missouri

My commission expires