

Aug. 19, 2019

To: Ravalli County Commissioners

Re: Preliminary Plat Extension Approval Request for Grantsdale Addition 181-lot major subdivision

Commissioners:

Bitterrooters for Planning objects to the preliminary plat extension request submitted by Territorial Landworks on behalf of developer Brad Mildenberger for the Grantsdale Addition 181-lot major subdivision.

Grantsdale Addition received preliminary plat approval more than eight years ago on March 3, 2011. The Preliminary Plat Decision (PPD, attached) lists 32 mitigating conditions of approval. It appears that, other than the posting of a “for sale” sign, nothing has been done on the property to advance the subdivision. The land is still under cultivation and irrigation, as it has been for decades. Elk herds numbering as many as 75-100 still use the property for winter range.

However, in the request for extension (attached), Territorial Landworks Land Use Planner Paul Forsting, AICP, lays the blame for the developer’s inaction on the Montana Department of Environmental Quality. He states: “A major factor for the extension relates to delays from the Montana Department of Environmental Quality (MDEQ) permitting review. As you may be

aware, the MDEQ approved the Montana Ground Water Pollution Control System Permit (aka Discharge Permit) for the Grantsdale Addition wastewater system on 5/1/2014. After they issued the approval, **they determined that they incorrectly processed the review of the application.** (Emphasis BfP's). The result of this determination is that the property owner is seeking re-approval of the Discharge Permit. The MDEQ has assured the property owner that the permit is in a good position to be re-approved."

Forsting's statement about DEQ's ostensible "delays" is untrue. In fact, Lewis and Clark District Judge Kathy Seeley invalidated the permit in a June 2016 decision following a lawsuit BfP filed in 2014 charging DEQ with failure to review the effect wastewater from Grantsdale Addition would have on surface water, and for inadequately considering "the cumulative impacts to the environment . . ." (Cause No. CDV-2014-505 attached)

I spoke with DEQ groundwater section supervisor Eric Sivers on Aug. 5, 2019 to determine whether the applicant had reapplied for the discharge permit. Mr. Sivers acknowledged that permit #MTX000163 had been invalidated by a 2016 court decision and that no one has reapplied for a discharge permit for Grantsdale Addition since then. Mr. Forsting's statement that DEQ has assured his client that the permit "is in a good position to be re-approved" must, therefore, also be

untrue, given that the applicant has not reapplied for the permit. Mr. Sivers generously suggested that the applicant “interpreted” a court order as an “incorrect processing” by DEQ. BfP considers it an attempt to gloss over the facts of a court ruling by falsely blaming DEQ for developer inaction.

In addition to consideration of the factually inaccurate statement about the discharge permit, BfP urges the Commission to follow MACo’s guidelines (attached) for extending preliminary plat decisions, and thoroughly review the Montana Subdivision and Platting Act’s seven criteria to determine whether information has changed and whether information submitted more than eight years ago is stale. It is the responsibility of the Commission to determine if impacts to the community and the environment of Grantsdale Addition have been adequately mitigated. To fulfill your statutory responsibility, the Commission must obtain data from the following agencies:

- **Montana Department of Transportation.** Undoubtedly, motor vehicle traffic volume has increased in the Grantsdale area since 2011. In light of the Legacy Ranch court decision that determined that traffic data was stale beyond seven years, we believe it would be prudent for you to consider additional traffic data, and we ask that you request an additional traffic impact study from the Montana Department of Transportation.

- **Montana Fish, Wildlife and Parks.** An agency biologist observed elk on the property on three occasions in the 2010, and recommended wildlife movement corridors within the subdivision to connect open space areas. This has not been done. As a neighboring landowner who passes the Grantsdale Addition property twice a day most days, I have witnessed 75-100 elk on the property numerous times over the years. Montana Fish, Wildlife and Parks has conducted research on this migratory herd and has substantial data available for your review.
- **DEQ.** It is estimated that at build out, Grantsdale Addition will add the equivalent of 50% of the city of Hamilton's total effluent discharge to the Bitterroot River. Montana DEQ has developed Total Maximum Daily Load (TMDL) data for the upper Bitterroot River but the developer has not addressed this. Any excess to the TMDL levels will have to be adequately mitigated.
- **DNRC.** The Commission must determine whether water is physically and legally available to this property.

Ravalli County has asked the developer to list circumstances that have changed beyond his control, and to state how the new deadlines can be met. In his response, Territorial Landworks planner Forsting states, "We understand that the housing units in this project are important for the county. This subdivision includes numerous amenities (community parks, a fire

dept. lot, etc.) that will be a great addition to the Grantsdale and greater Hamilton communities.” This does not answer the essential question about whether conditions established by the Commission in 2014 have been met.

The Commission must take into account, at a minimum, four considerations when discussing the extension request from Grantsdale Addition:

- Grantsdale Addition lost its discharge permit in a court decision and the developer has made no attempt to obtain a new permit;
- The Legacy Ranch subdivision approval was overturned by court order in part due to the failure of the developer and the Commission to give due consideration to wildlife habitat and migration corridors;
- Ravalli County is currently facing two land use lawsuits, one of which concerns the same extension issue;
- Your own organization, MACo, has set forth voluntary guidelines designed to help county commissioners make critical land use decisions, but you have chosen not to use them.

The developer has had more than eight years to meet the required conditions set forth in the preliminary plat decision of April 2011. The Commission granted one extension since the preliminary plat was approved, but to our knowledge, the developer did not submit any

evidence or documentation indicating progress on meeting the conditions established in the preliminary plat - not in 2012 or now - nor is there any indication that neither the Commission nor the Ravalli County Planning Department required any evidence or documentation of such from the developer in 2012. Not only has the developer done nothing on the project since receiving the last extension in May 2012 - a mere 13 months after receiving preliminary plat approval - but the developer's consultant has attempted to place the blame for the delay on a state agency which bears no responsibility for it.

The Commission is required to hold a substantive discussion on whether the developer has made a good faith effort to meet the conditions of the preliminary plat approval; whether there have been any significant changes in the area of the subdivision; and, if so, whether the preliminary plat conditions mitigate those changes; or whether the subdivision is still compliant with conditions established eight years ago; or whether and how neighborhood conditions have significantly changed.

Meeting conditions established in a preliminary plat decision designed to protect the taxpayers' interest is the mutual responsibility of the developer and the local government.

The ultimate responsibility for mitigation is on the Commission, which is obliged to take a "hard look" at all

the available data. It is not the responsibility of the taxpayers to obtain this data rather, it is the responsibility of the Commission to protect the public's interest. The Commission is tasked with reviewing the request for extension, evaluating the developer's progress, and determining whether the developer "has been working in good faith to complete the subdivision." Clearly, the answer is no.

The Montana Constitution, MACo guidelines, the Montana Subdivision and Platting Act and your own county subdivision regulations require you to deny this request for the reasons set forth above.

If the developer decides to reapply for a new preliminary plat approval, the Commission should require him to obtain the necessary permits from the state agencies first so the Commission can perform its statutory obligation to determine whether adverse impacts exist that require mitigation.

Thank you for your consideration in this matter.

Carlotta Grandstaff  
Bitterrooters for Planning

