

Glenda Wiles

From: C. Grandstaff <grandstaff@cybernet1.com>
Sent: Thursday, March 21, 2019 8:45 AM
To: Glenda Wiles
Cc: Terry Nelson
Subject: Morado Mountain Estates objection letter
Attachments: Morado MTN ext. objection.docx; MACo Ext. guidance copy.pdf

Glenda,

Would you please forward these documents to the commissioners prior to today's hearing at 1:30?

Thanks,
Carlotta

March 20, 2019

To: Ravalli County Commissioners

Re: Preliminary Plat Extension Approval Request by Stacey Dykeman for Morado Mountain Estates 58-lot major subdivision

Commissioners:

Bitterrooters for Planning objects to the preliminary plat extension request submitted by Stacey Dykeman for Morado Mountain Estates, a 58-lot major subdivision.

The developer has had nearly eight years to meet the required conditions set forth in the preliminary plat decision of July 2011. The Commission has granted two extensions 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, nor is there any indication that the Commission required any evidence or documentation of such from the developers.

Additionally, and most egregiously, the Commission paid the developer \$300,000 in a legal settlement with virtually no explanation to the taxpayers as to the reason, *and* approved a road variance, leaving all the county's taxpayers on the hook for county road

improvements that will benefit the developer, but not necessarily the people paying for it.

The Commission has set aside 60 minutes for this event, which does not provide enough time for substantive discussion on whether the developers have made a good faith effort to meet the requirements 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. We suspect that this public meeting is a pro forma event that has been scheduled simply to comply with state law requirements, and that the Commission has little or no interest in examining whether this subdivision still complies with the original conditions set forth in the preliminary plat decision, or whether and how neighborhood conditions have significantly changed.

In her request, the developer cites the failure of local real estate sales to rebound enough to warrant further improvements. Land speculation is exactly that: speculation. Developers voluntarily take a financial risk when they decide to enter into the real estate speculation market. Local governments should not be expected to approve extensions or variances to land speculators if and when real estate sales fall, remain flat or "fail to rebound enough." 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.

As the Commission undoubtedly knows, county variance requests as they pertain to land development do not allow for financial hardship as a reason to approve a variance. An extension request to a preliminary plat decision is nothing more than a variance and should be judged as such.

Bitterrooters for Planning is submitting for your review a document titled: **Non-Phased Subdivision Preliminary Plat Extension and Recommended Subdivision Regulation Amendments.** The Montana Association of Counties prepared this document for the 2017 Legislature and for their member counties to consider following the Legacy Ranch court decision that resulted in changes to state law as it pertains to phased development. We believe the same legal logic applies to unlimited preliminary plat extensions. Therefore, we recommend the Commission apply these guidelines to the third Morado Mountain Estates subdivision extension request before you. We ask that you schedule a public hearing in this matter, and following the hearing we ask that you determine "the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse

impacts that would support denial of the subdivision extension request” as described in the MACo guidelines.

Bitterrooters for Planning submitted elk migration data from Montana Fish, Wildlife and Parks for the Sand Hill Ridge, phase 1, final plat decision. We request that you apply that data and obtain similar, more recent, data for the Morado Mountain Estates request since this would constitute “new information not previously considered” as per MACo’s recommended guidelines. The Morado Mountain Estates site is directly adjacent to the Sandhill Ridge site and the referenced data shows utilization of both sites by elk, and also indicate both sites are important as part of a corridor linking habitat, and public lands, along an elevational and seasonal gradient. Additional mitigation is now required, if possible, to address the adverse impacts and effects of 58 more residences and the additional traffic, noise, domestic animals, and human-caused activity on wildlife and wildlife habitat. We are also aware that similar big game movement data is available for mule deer in this area. We ask that you contact Rebecca Mowry at FWP to obtain this data.

Undoubtedly, motor vehicle traffic volume has increased in the Morado Mountain Estates area since 2011. In 2013, the relevant section of road, S.R. 203 between Stevensville and Florence, was rated as one of the top 10 most severe crash corridors in the state of Montana. 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.

Thank you for your consideration in this matter.

Carlotta Grandstaff
Bitterrooters for Planning

Non-Phased Subdivision Preliminary Plat Extension Guidance and Recommended Subdivision Regulation Amendments

Guidance: Public participation and the public's right to know are increasingly the subject of litigation in land use processes and decisions. In Montana, the public's right to know and to participate are fundamental rights provided by the Montana Constitution (Art. II Sec. 8 and 9). The *Legacy Ranch* decision out of Ravalli County in July of 2015 focused on the public's constitutional right to know and participate in regards to phased developments. The public's right to know and participate in phased developments were addressed in the 2017 legislative session with a phased development bill, HB 445. However, during discussions on HB 445, concerns were raised that the same issues regarding public participation and the public's right to know exist in regards to extensions of preliminary plat approvals for non-phased subdivisions.

The following subdivision regulations amendments have been developed to assist local governing bodies in amending their subdivision regulations to address extensions of preliminary plat approvals within the context and limitations of Section 76-3-610, MCA. It is important to keep in mind that when considering an extension for a non-phased subdivision preliminary plat approval, the extension **cannot** impose new conditions that the subdivider must meet before final plat. Failure to meet preliminary plat extension criteria may, however, be factored in the decision to grant or deny a requested extension.

It is also important to note that while there is not a limitation on how long an extension can be granted for a non-phased subdivision, extensions should be granted to allow periodic review and evaluation of the preliminary plat extension criteria. Individual extensions of preliminary plat approval for non-phased subdivisions should be limited to no more than 3 years; with the total extensions for preliminary plat approval for non-phased subdivisions no more than ten years. The information regarding impacts of the subdivision - and mitigation of those impacts - becomes increasingly stale and meaningless after approval of the preliminary plat, denying the public its constitutional right to know and participate in local government decision-making.

Recommended Amendments to Subdivision Regulations for Extension of Preliminary Plat Approval under Section 76-3-610.

1. All requests for extensions must be in writing and must provide responses to the following criteria and supporting documentation, if any:
 - A. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
 - B. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
 - C. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision non-compliant with current design standards, such as road design, wildfire, or flood standards.
 - D. Consistency with adopted comprehensive planning documents, including but not limited to, the jurisdiction's growth policy, annexation policy, capital improvements plan, transportation plan, etc.
 - E. Impacts to public health, safety and general welfare.
 - F. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
2. Prior to granting any extensions greater than 3 years past original signed statement of original preliminary plat approval for a major subdivision, the governing body must hold a public hearing. Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
3. Prior to granting any extension of a preliminary plat approval for a minor subdivision, the governing body should hold a public meeting noticed in accordance with the standard practices of the governing body.
4. After the hearing or meeting, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request. Additional conditions may not be imposed as a condition of subdivision extension.