

CARBON COUNTY
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PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: January 9, 2020
RE: Knifeman Subdivision Preliminary Plat Application and Variance Request–Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and action to approve or deny the requested variance, as well as the proposed preliminary plat.

RECOMMENDATION: **Approval with conditions; approval of variance from road design standards; denial of variance from fire protection requirements.**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, variance request, public comments, and all of the information presented, I hereby move to recommend approval of the requested variance from road design standards and the preliminary plat of Knifeman Subdivision, and denial of the variance from fire protection requirements with the findings and conditions included in the project memorandum.*

Project/Application Summary:

Red Lodge Surveying, on behalf of Jon and Rod Horst, has submitted a preliminary plat application for a one-lot minor subdivision on a 6.397 acre tract. The original tract was created using an exemption stating that the property will be used exclusively for agricultural purposes. In order to remove this agricultural covenant, a one-lot subdivision is necessary.

There are also two requested variances, one from road design standards, as the road accessing the property, Howell Gulch Road, is only 30-feet wide in places, and has portions with a grade of over 8% (Carbon County Subdivision Regulations, Section V-A-10.a). The second variance request is from fire protection standards, as the area has been determined to be a high fire hazard area, which requires two County-standard accesses into the subdivision (Carbon County Subdivision Regulations, Section V-A-21).

The subject property is located near the intersection of Howell Gulch Road and Bear Dance Trail, approximately 3.5 miles south of Red Lodge. The property is legally described as Tract 3C, COS No. 1591 4th Amended, located in Section 17, Township 8 South, Range 20 East, P.M.M., Carbon County, Montana.

Required Planning Board Action:

Following a public meeting, the Planning Board shall make a recommendation to the County Commission to approve, conditionally approve, or deny the variance requests and the preliminary plat. The Planning Board may recommend conditions for approval intended to ensure compliance with the Subdivision Regulations and to mitigate any anticipated impacts of the subdivision.

Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

a. Relevant evidence relating to the public health, safety, and welfare

Conditions should be required to mitigate potential adverse impacts on public health, safety, and welfare.

A well and drainfield is proposed, and has been approved by The Montana Department of Environmental Quality (DEQ) per EQ# 5-94-S11-564 011J. This approval is dated January 14, 1994 and references an HLC, Inc., one-lot minor subdivision. The proposed subdivision created a lot identical to the one proposed in Knifeman Subdivision. Though approved by DEQ, the subdivision was denied by the County due to access and public safety issues (see Carbon County Commission minutes dated March 7, 1994).

On October 2, 1997, COS 1591 4th Amended was filed, which created Tract 3C using an exemption to subdivision review pursuant to 76-3-207(1)(c), MCA. This exemption stated that Tract 3C would be used exclusively for agricultural purposes and a covenant recorded, revocable only by mutual consent of the landowner and governing body, that the land would be used exclusively for agricultural purposes.

On December 2, 1999, Mr. Jon Horst requested the Commission lift the agricultural covenant and grant a variance. After consideration and discussion, the Commission denied the request at their meeting of January 6, 2000.

Access will be by private driveway off of Howell Gulch Road and Bear Dance Trail. Howell Gulch Road has an easement of only 30 feet in places, and contains areas of greater than 8% slope. The County standard is that roads have a minimum easement of 60 feet and maximum grade of 8% (Carbon County Subdivision Regulations, Section V-A-10.a). A variance request has been submitted to allow the non-conforming access road.

The Red Lodge Fire Chief reports that the subdivision is in a “high fire hazard area and in very close proximity to several fires with extreme fire behavior and rapid uncontrolled growth.” The Carbon County Subdivision Regulations (Section V-A-21) requires two accesses for minor subdivisions in high fire hazard areas. A variance request has been submitted to allow for a single point of access.

b. Summary of Probable Impacts

Except where exempt by state law, all subdivisions must be reviewed for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

- Effect on agriculture: The site is not currently in agricultural production and is not classified as prime farmland. Surrounding property mostly consists of large residential development, though many adjacent parcels are currently undeveloped. As such, any negative impacts on agriculture should be minimal
- Effect on agricultural water user facilities: There are no agricultural water user facilities on the site or in the immediate vicinity of the proposed subdivision. This subdivision, if approved, would have no impacts on agricultural water use facilities
- Effect on local services: With conditions, impacts on local services should be adequately mitigated.

The Carbon County Sherriff's office will provide law enforcement services to the subdivision. Sherriff McQuillan has expressed no concerns with this subdivision.

The Red Lodge Fire District provides fire protection in the area. The developer has submitted review material to the Fire District. Chief Kuntz reports that this subdivision is in a "high fire hazard area and in very close proximity to several fires with extreme fire behavior and rapid uncontrolled growth". As a minor subdivision in a high fire hazard area, the subdivision should provide at least two accesses that meet the road design criteria in the Subdivision Regulations and provide covenants requiring all buildings to be constructed of fire-resistant material (see section V-A-21). The variance request, if granted, would allow Howell Gulch Road to exist in its current non-conforming state.

Beartooth Electric Co-op provides electrical service to the area via underground power lines. The developer will need to work with Beartooth Electric to facilitate service to the site within a 20-foot easement.

CenturyLink provides telephone service in the area via underground lines.

Northwestern Energy provides natural gas to the area and reports the ability to serve the site with an 8-10 foot easement along the front of the lot.

- Effect on the natural environment: Impacts to the natural environment are expected to be minimal if required conditions are met.

DEQ issued an approval for the site in 1994. This existing approval is adequate for this development.

The Carbon County Weed District has inspected the property and reports that four acres are infested with noxious weeds, on the hillside and under a tree, and that the road had been recently sprayed. A weed bond is required.

Howell Gulch runs through the property and any additional drainage would likely run into the gulch.

- Effect on wildlife: While wildlife does frequent the area, there are several similar uses on surrounding properties, and the development of this subdivision should not have a significant adverse impact on wildlife.
- Effect on wildlife habitat: No critical wildlife habitat has been identified on the property.
- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area and reports no concerns with the subdivision.

The subdivision is located within the Red Lodge Fire District and is within a high fire hazard area. Wider than standard road and driveway surfaces in the area should help mitigate concerns regarding public health and safety, especially if the variance from road design standards is granted.

c. Whether the application and plat conform to the provisions of the following:

- The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act.
- The Carbon County Subdivision Regulations: The application conforms to the requirement of the adopted Subdivision Regulations with the exception of access requirements. A variance request has been submitted to allow the subdivision access via an existing road, Howell Gulch Road, which does not meet County standards. Also, since the subdivision is located in a high fire hazard area a second access must also be provided, and a variance has been submitted for this requirement as well.
- Applicable Zoning Regulations: A Group 1 Development Permit will need to be obtained for new residential construction.
- Other regulations in effect in the area of the proposed subdivision: There are no known regulations in effect for the area with which this subdivision would conflict.
- Whether DEQ has approved the proposed subdivision, for proposed subdivisions that will create parcels of less than twenty (20) acres: A DEQ approval (EQ# 5-94-S11-564 011J) was submitted with the subdivision application.
- Whether the subdivider has demonstrated that there is an adequate water source and at least one are for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more: There are no proposed lots over 20 acres.

d. Variance Request-Roads and Streets:

The developer has requested a variance from Section V-A-10, Roads and Streets. The Subdivision Regulations require a right of way/easement to be 60 feet in width with a maximum grade for more than 100 feet of 8%. The variance is requested because a portion of Howell Gulch Road only has a 30 foot right of way and portions of Howell Gulch Road exceed 8% grade.

Reasonable variances may be granted from the design and improvement standards of the Subdivision Regulations where it is found that strict compliances with the specific standard would result in undue hardship and strict compliance is not essential to the public health, safety, and welfare. A variance must be based upon the following criteria:

- i. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties: Granting the variance without conditions may be detrimental to the public health, safety, or general welfare unless specific conditions are placed on the granting of the variance. Per a conversation with Fire Chief Kuntz, requiring the driveway be built 24-feet wide and the road being improved to 24-feet wide for 90 feet each side of the driveway should be a minimum requirement. Granting of the variance should not be injurious to adjoining properties.
- ii. 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: Portions of the non-compliant road are located outside of this subdivision's boundaries. Howell Gulch Road is an existing road and the conditions on the road have been present for some time. The road currently provides access to several other properties in the area, including the Yellowstone Bighorn Research Association (YBRA) facilities, which according to its website, hosts a variety of groups annually, totaling over 350 participants. The hardship is not self-imposed and is due to the existing conditions of the property.



Howell Gulch Road Near Intersection with Highway 212 (left) and Approximately 550 feet from Bridge at “Private Road” Sign (right)

- iii. The variance will not cause a substantial increase in public costs: Howell Gulch Road is a private road and is not maintained by the County. As such, there should be no increase in public costs.
- iv. The variance will not place the subdivision in nonconformance with any adopted zoning regulations: Granting the variance will not result in any violations of adopted zoning regulations.

e. Variance Request-Fire Protection:

The developer has requested a variance from Section V-A-21, Fire Protection. The Subdivision Regulations require minor subdivisions located in high fire risk areas to provide a minimum of two accesses that meet County design standards, and to provide covenants requiring all buildings to be constructed of fire-resistant material. The developer has requested a variance from the first of these requirements.

Reasonable variances may be granted from the design and improvement standards of the Subdivision Regulations where it is found that strict compliances with the specific standard would result in undue hardship and strict compliance is not essential to the public health, safety, and welfare. A variance must be based upon the following criteria:

- i. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties: Granting the variance may be detrimental to the public health, safety, or general welfare. Per a conversation with Fire Chief Kuntz, the Chief does not support “watering down” the second access requirement. That being said, there has already been substantial development in this high fire hazard area with 25 other parcels potentially having the same single access. About nine of these parcels have dwellings on them currently, including the YBRA, and one parcel was created using an agricultural covenant exemption and would be subject to subdivision review prior to development. The granting of this variance will unquestionably create additional public health and safety concerns, though the degree of the impact can be debated.



Knifeman Subdivision and Surrounding Area

- ii. 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: There is an access easement per COS 1631 AM that gets close to an easement shown on COS 1609 (Greenough Lane). However, neither the easement nor Greenough Lane are constructed to County standard, and the Greenough Lane easement is in a 20 to 30-foot easement. An additional connecting easement would also be required. The hardship is not self-imposed
- iii. The variance will not cause a substantial increase in public costs: All roads and easements involved are private and not maintained by the County. As such, there should be no increase in public costs.
- iv. The variance will not place the subdivision in nonconformance with any adopted zoning regulations: Granting the variance will not result in any violations of adopted zoning regulations.

f. Planning Staff Recommendation:

Planning Staff recommends approval of the Knifeman Subdivision and variance from road design standards, pursuant to the following conditions:

1. A notation shall be provided on the final plat that legal and physical access is provided to each lot per 76-3-608(3)(d) MCA.

2. The final plat shall contain the following or similar language in order to remove existing agricultural restrictions: “Purpose of Plat: to remove an agricultural covenant on Lot 3C per COS 1591 4th Amended in accordance with the provision of the State of Montana and Carbon County Subdivision Regulations in order to remove an agricultural exemption/restriction.”
3. The final plat shall be submitted in compliance with Section IV-C of the County Subdivision Regulations as applicable.
4. Easements as requested by the utility companies should be shown on the final plat, which should include the following statement: “The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, 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.”
5. A weed bond as required by the Weed District should be submitted prior to final plat.
6. A second access to the subdivision meeting the road design criteria in Section V-A-10 should be provided.
7. Covenants for the property should be submitted and filed with the final plat requiring all buildings to be constructed of fire resistant material.
8. Due to the high fire hazard in the area, to protect the public health and safety, prior to filing of final plat, the driveway must be built 24-feet wide, and Bear Dance Trail must be constructed to 24-feet wide for 90 feet each side of the driveway.

Staff recommends denial of the variance from Fire Protection requirements due to the potential adverse impacts on public health and safety. If the variance from Fire Protection requirement is granted, Condition #6 should be removed. The findings should also be amended to say that the variance would not be detrimental to public health and safety. Additional conditions should also be considered, such as a hold-harmless agreement.