

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
NEW INFORMATION REVIEW ADDENDUM # FPP-16-01
WHITEFISH RIVER TRAILS PHASE 2-5
OCTOBER 26, 2016**

The Flathead County Board of Commissioners reviewed the Whitefish River Trails Ph. 2-5 preliminary plat subdivision proposal on October 13, 2016 at 10:30 AM in the Commissioners Chambers of the Main Courthouse. Board members present included Commissioners Holmquist, Krueger and Mitchell.

Staff presented a brief overview of the concerns of the Commissioners as discussed at the previous Commissioner's meeting on September 15, 2016. After staff's presentation the Commissioners discussed options for moving forward. At that time the developer presented information determined by the county attorney present to be "new information" per Section 4.4.6 FCSR. The Commissioners were provided with a copy of an email from MDT regarding approach permit process and a proposal to create a HOA owned common area along the 10' strip to the open space lot. The Commissioners directed the Planning Office to schedule a public hearing with the Planning Board to review only the new information presented at the Commissioners meeting on October 13. Attached are the minutes from the September 15 and October 13 County Commissioners meetings.

I. GENERAL INFORMATION

A. Project Personnel

i. Applicant/Owner

Conservation Land Use LLC
31 Bar H Drive
Kalispell, MT 59901

ii. Technical Assistance

Sands Surveying, Inc.
2 Village Loop
Kalispell, MT 59901

B. Project Description

The proposed subdivision would create 17 single-family residential lots with 16 of the lots clustered toward western side of the property. A 42.48 acre parcel located along the Whitefish River serves as the open space lot and can be developed with 1 single family dwelling per the Flathead County Zoning Regulations. The clustered lots would be served by shared wells and individual wastewater treatment systems and the open space lot will utilize an individual well and septic system. Primary access to the subdivision would be from Mannington Road. Four additional lots, known as Whitefish River Trails Phase 1/Subdivision #292, were granted preliminary plat approval on November 12, 2015 and final plat approval on September 13, 2016. The proposed subdivision lots would be developed in 4 phases by the year 2020 according to the phasing plan provided.

C. New Information

1. MDT approach permit process

The applicant's provided an email between James Freyholtz, the Kalispell area traffic engineer for MDT, and the applicant, John Schwarz. The email is dated June 23rd and 24th, 2016 and confirms that the process to obtain an approach permit at the intersection of Mannington Street and Whitefish Stage would involve a minor impact review and no additional signatures or neighborhood approval would be required. A copy of the email was provided to the Planning Department on August 18, 2016 but it was not determined to be "new information" at the time as the email simply explained MDT's process and did not influence staff's recommendation that a new approach permit be obtained. The letter was provided to the Commissioners who determined that this information was not reviewed by the Planning Board and therefore could be considered "new information."

2. Common area/flag lot

In addition to the letter, the applicants explained to the Commissioners that they would place the 10' strip along Lot 21 within a separate common area lot so as to avoid the appearance of a "flag lot". This .486 acre Common Area A would be owned by the Homeowners Association and therefore the CC&Rs should be amended to include maintenance language of this common area. While the lot does not meet the 3:1 lot depth to width ratio noted in Section 4.7.7 FCSR, the lot is a common area which are historically not required to meet this section. Staff believes that any question of a "flag lot" should be completely resolved by the proposed common area lot. No significant impacts to the primary review criteria are expected as a result of the common area lot.

II. FINDINGS OF FACT

Below are the Findings of Fact adopted at the **August 10, 2016** Planning Board Meeting and updated draft findings pertaining to the new information.

Finding #1- Impact on agriculture would occur because approximately 26 acres of land previously utilized for crops of alfalfa, hay and winter wheat would be transitioned to residential use, however the quality of the soils indicate that they are not prime farmland or of a soil capability class that should be specifically preserved.

Finding #2- There would be minimal impact to agricultural water user facilities because the subject property does not contain any shared agricultural water works, canals, irrigation ditches or located within an agricultural water district, the irrigation water right associated with the subject property will be severed and transferred to adjacent agricultural land and easement exists to protect the neighbor's access to the irrigation pump located on the proposed open space lot.

Finding #3- The proposal for water, wastewater, and solid waste management for the proposed Whitefish River Trails development appears to be appropriate because the first phase has received and permitted by the Montana Department of Environmental Quality (EQ#16-1296) and adequate water quantity and quality appears to exist for Phase 2-5 proposed wells, sufficient soils and depth to water table exist for individual wastewater treatment systems, the water proposal would be required to be reviewed by the Department of Natural Resource Conservation for applicable water rights, and the water and wastewater systems for Phase 2-5 would be required to be reviewed and permitted by the Montana Department of Environmental Quality as applicable prior to their installation and operation.

Finding #4- Impacts on local services would be acceptable with the imposition of standard conditions because the proposed subdivision would be located within the Kalispell School District #5 and Flathead High School which has indicated ability to accommodate students, a centralized mailbox is proposed and shall be approved by the postmaster, and cash-in-lieu of parkland for the 16 residential lots will be provided at the time of final plat of Phase 2.

Finding #5- The road system appears to be acceptable with the imposition of standard conditions as primary access would be from Mannington Road, a new approach permit would be required for the access off Whitefish Stage, each lot has legal and physical access provided by internal subdivision roads that will be built to Flathead County Road and Bridge Department standards ~~with the exception of access to Lot 21 if the variance is granted~~, and the draft CC&Rs will be acceptable if language is included for pro-rata maintenance of the primary access road, Mannington Street.

Finding #6- Impacts on local services would be acceptable with the imposition of standard conditions because the lots within the proposed subdivision would utilize contract haul services for solid waste management, would be served within an acceptable response time by the West Valley Fire District and Flathead County Sheriff's Department in the event of an emergency, and would have access to phone, cable TV, gas and electric utilities extended underground in conformance with the applicable regulations.

Finding #7- Adverse impacts to water quality as a result of the subdivision are not anticipated because all proposed lots or building envelopes would be situated on higher ground well away from Whitefish River, all lots would be served by individual septic systems designed in accordance with applicable state and county regulations, stormwater management would prevent direct discharge of stormwater from entering area surface waters, and the water supply, wastewater treatment, and stormwater management would be required to meet applicable requirements of the Flathead County Environmental Health Department and the Montana Department of Environmental Quality.

Finding #8- Adverse impacts to air quality and of noise are anticipated to be minimal and acceptable with the imposition of conditions as all roads accessing the subdivision will be paved and short term construction related noise is the only anticipated noise to be generated by the subdivision development.

Finding #9- Impacts to flora are anticipated to be minimal and acceptable as the majority of the clustered residential lots are located on flat open, agricultural land, the wetlands and forested hill on the Lot 21 open space are protected from further subdivision and development, and management of wetland and riparian vegetation is protected by a Riparian Resource Management Plan and CC&Rs.

Finding #10- Although the subject property contains floodplain designated 'Zone AE', there is no anticipated impact to floodplain because proposed building sites would be located outside of the 1% annual chance flood area (100-year floodplain) and no further development would be allowed in the SFHA because of the zoning regulations, CC&Rs, and Riparian Resource Management Plan.

Finding #11- While the submitted application materials identify jurisdictional wetlands and riparian vegetation onsite, adverse impacts to riparian and wetland vegetation would be minimized and adequately mitigated because the area is encompassed within a Conservation Easement, the CC&Rs include maintenance provisions for the riparian and wetland area, and the Riparian Resource Management Plan notes that the area is intended to remain in the current undeveloped and natural state.

Finding #12- Minimal impacts to wildlife and wildlife habitat are anticipated because the proposed subdivision would incorporate clustering of residential development resulting in less fragmentation of wildlife habitat, the majority of the species of concern will not be impacted by the development of the open agricultural land, and the open space lot will be preserved in an undeveloped natural state.

Finding #13- Although the subject property contains floodplain designated 'Zone AE', impact to public health and safety relating to flood risk will be minimal because the proposed building envelope on Lot 21 will be at least 97 feet above the BFE and no other subdivision improvements ~~besides primitive trails~~ will be developed near the 100 year floodplain.

Finding #14- The effects of this proposed subdivision on public health and safety in regard to the proposal for water, wastewater treatment, and stormwater management is acceptable because the shared wells, individual wastewater treatment systems and stormwater management plan would be required to be reviewed and approved as applicable by the Flathead County Environmental Health Department and the Montana Department of Environmental Quality.

Finding #15- Impacts of the proposed subdivision on the area road network appear to be acceptable because adequate legal and physical access exists to the subdivision and comments from the Flathead County Road and Bridge Department indicate the proposal is acceptable in regard to the capability of the road network.

Finding #16- Minimal risks to public health and safety are anticipated with the imposition of conditions because there are no high voltage electric or high pressure gas lines on or around the subject property, the bluff located on Lot 21 is susceptible to sloughing but will be maintained per CC&Rs, there are no avalanche or airport influence areas, and soils on the subject property appear to be appropriate for development of residential use and associated infrastructure.

Finding #17- The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contains all elements required to meet state survey requirements, which would be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval.

~~**Finding #18—** The requested variance meets some but not all of the criteria required for a variance to be granted because granting the variance would not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties; would not cause a substantial increase in public costs, now or in the future; and would be consistent with the surrounding community character of the area, however there is not proof of undue hardship and may be out of conformance with the Flathead County Zoning Regulations and Flathead County Growth Policy.~~

Finding #19- The proposal has been reviewed as a major subdivision in accordance with statutory criteria and standards outlined in Section 4.4 of the Flathead County Subdivision Regulations effective December 1, 2014.

Finding #20- The preliminary plat identifies adequate easements for utilities to serve the subdivision. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations.

Finding #21- Mannington Road would provide legal and physical access to the subdivision, and the proposed internal road system consisting of Mannington Street and the currently named “Maudie Street North” and “Maudie Street South” would provide legal and physical access to the individual lots. The internal road system would be privately maintained, occurring within a 60 foot wide private road and utility easement, would be constructed and paved in compliance with applicable Flathead County standards and an updated approach permit would be required for the access at Whitefish Stage for the additional lots.

Finding #22- The proposed subdivision is located in an area zoned SAG-5 and the proposed subdivision appears to meet the requirements for Residential Clustering in AG and SAG Districts outlined in FCZR Section 5.09.

~~**Finding #23-** The configuration of Lot 21 has an extended strip of land that appears to be a ‘flag lot’ if the access to the building envelope is not constructed to Flathead County Road and Bridge Department standards.~~

Updated Finding #23- The creation of the 0.486 acre Common Area A would eliminate the appearance of a “flag lot” on the open space (Lot 21) and would not create significant impacts to the primary review criteria if the CC&Rs are amended to include maintenance provisions.