

**BEFORE THE
BROADWATER COUNTY COMMISSION
BROADWATER COUNTY, MONTANA**

FINDINGS OF FACT AND ORDER

**IN THE MATTER OF THE APPLICATION Ruben Dominguez FOR PRELIMINARY
PLAT APPROVAL OF THE DRY GULCH ACRES TRACT B SUBSEQUENT MINOR
SUBDIVISION:**

PURSUANT to the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-614, Montana Codes Annotated, and the Broadwater County Subdivision Regulations, the Broadwater County Planning Board reviewed the proposed preliminary plat for 2 residential lots as submitted by the applicants, together with the required supplementary plans and information, to determine if the information submitted meets the requirements of the Montana Subdivision and Platting Act and the Broadwater County Subdivision Regulations. The Planning Board considered all submitted reports, exhibits, etc., and listened to public testimony and considered written comments if submitted.

THEREFORE, with completion of the review and the receipt of all public input the Planning Board being fully advised of all matter presented to it regarding this application, the Planning Board makes the following Findings of Fact:

Findings of Fact and Order Report
Dry Gulch Acres Tract B Subsequent Minor Subdivision
Preliminary Plat Dated 8/8/2014

To: Broadwater County Commissioners
From: Broadwater County Planning Board
Subject: A proposed minor subdivision preliminary plat to be known as the **Dry Gulch Acres Tract B Subsequent Minor Subdivision**

GENERAL INFORMATION

DATE OF APPLICATION: October 20, 2020
DATE OF SUFFICIENCY: January 8, 2021
REVIEW PERIOD ENDS: April 5, 2021

PUBLIC MEETING DATES:
Planning Board Public Hearing – February 17, 2021

APPLICANT:
Ruben Dominguez
P.O. Box 1182
Manhattan, MT 59741

LEGAL DESCRIPTION:
Northeast ¼ of Section 35 and Northwest ¼ of Section 36, Township 8 North, Range 2 East, P.M.M. Broadwater County, Montana

GENERAL LOCATION:
The proposed subdivision is located approximately 7.25 miles northeast of the town of Townsend, Montana

DESCRIPTION

PROPOSAL:
The Applicant proposes to develop two (2) residential lots from an existing 20.77-acre parcel. These lots will be served by individual wastewater treatment systems and individual wells. Access to the proposed subdivision will be off the existing county road, Dry Gulch Road. The required preliminary review fee of \$1700.00 and the weed inspection fee of \$180.00 have all been paid.

DISCUSSION:
The proposed subdivision is a second minor subdivision from a tract of record; therefore, a public hearing is required. The two lots created will range from 10.38 acres to 10.39 acres in size to be split off from an existing 20. acre parcel. The property is located in a rural area with a

few scattered homesites. These lots will have direct access on to Dry Gulch Road. Dry Gulch Road is a county road and the developer's representative has submitted two Driveway Approach Applications to the County Road Department.

Review is performed pursuant to the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-614. Montana codes Annotated and the Broadwater County Subdivision Regulations. The proposed preliminary plat, Dry Gulch Acres II Minor Subdivision, as submitted by the Applicant, together with the required supplementary plans and information, appear to satisfy the requirements of these regulations and comply with the Broadwater County Growth Policy Plan dated July, 2020.

PHYSICAL CONDITIONS:

A preliminary plat, vicinity map, topographic map, FIRM Floodplain map, lot layout and soils map of the proposed subdivision have been provided. No rock outcroppings or the presence of bedrock have been identified on the property. The proposed subdivision is not in an area subject to flood hazard according to FEMA's floodplain map. However, there is a drainage that traverses all lots. According to the Applicant, this is a dry drainage bed.

WATER SUPPLY and WASTEWATER TREATMENT:

These tracts will be served by individual wells and wastewater treatment systems. Since all parcels are less than twenty (20) acres, review and approval will be performed by the Department of Environmental Quality. A copy of the proposed septic system and well lot layout is included in the preliminary plat application as Item #30.

SOLID WASTE:

The lot owners will be responsible for disposal of their own solid waste. The subdivision residents will have the option of hiring an independent contractor to pick up their solid waste or transport it themselves to the Dry Gulch Canister Site which is approximately 0.4 miles west of this proposed subdivision.

EVALUATION CRITERIA

PRESENT LAND USE:

The property is currently utilized as farmland outside of the pivot overspray.

ADJACENT LAND USE:

North – Agricultural

South – Agricultural

East – Agricultural

West – Subdivision residential property

EFFECTS ON AGRICULTURE:

This two (2) lot subdivision will have a minimal effect on agricultural productivity since no land is being removed from agricultural productivity. According to the Applicant, the proposed

subdivision is not located on prime farmland as defined by the Natural Resource Conservation Service (NRCS).

This subdivision is considered to be compatible with surrounding uses since the surrounding area is agricultural with some scattered residences. No conflicts between the proposed subdivision and adjacent farm operations have been identified. This proposed subdivision should not interfere with the movement of farm machinery, operation of any irrigation systems or diminish the availability or quality of water in the surrounding area.

ENVIRONMENTAL ASSESSMENT CRITERIA

An Environmental Assessment (EA) is included as Item #22 of the preliminary plat application.

GEOLOGY:

No hazards such as falls, slides or slumps are indicated on the plat. There is no known seismic activity. No geological conditions which might affect the development, such as unsuitable soils, were identified within the proposed subdivision.

VEGETATION:

There are no areas of marsh, grassland, shrub or forests located on the property. According to the Weed Management Plan, Canada Thistle and Houndstongue has been identified on the property in the past. In the future, any noxious weeds are identified they will be sprayed with the appropriate herbicide.

EFFECTS ON WILDLIFE AND HABITAT:

According to the preliminary plat application, this subdivision should have no impact on wildlife areas such as big game wintering range, migration routes, nesting areas, wetland or important habitat for rare or endangered species. Because of the size of the parcels and the fact that only two (2) homesites are being constructed on the property, any effects on wildlife should be minimal.

EFFECTS ON HISTORICAL FEATURES:

A letter from the Montana Historical Society (MHS) is included in the preliminary plat application, as item #33. According to Damon Murdo, MHS Cultural Records Manager, there have been a few previously recorded cultural sites within the designated search locale; however, a cultural resource inventory is unwarranted at this time. If any historical, paleontological, archeological or cultural sites, structures or objects are identified during construction, the Applicant will notify MHS.

EFFECTS ON ROADS:

No new roads are proposed for this subdivision. A sixty (60) foot easement for Dry Gulch Road is shown on the preliminary plat. It is estimated that the Dry Gulch Acres Tract B Subsequent Minor Subdivision will generate sixteen (16) vehicle trips per day per the Broadwater County Growth Policy Plan.

UTILITIES:

Vigilante Electric Cooperative will provide electrical service to this proposed subdivision. A letter to Justin Bair, Engineer with Vigilante Electric Cooperative is included in the preliminary plat application as item #23. Phone service will be provided by Century Link. It is assumed that all utilities will be installed underground.

EFFECTS ON EMERGENCY SERVICES:

The Broadwater County Rural fire District (BCRFD) will serve the proposed subdivision. A letter written to the Broadwater County Rural Fire District (BCRFD) is included in the preliminary plat application as item #26. The developer is proposing to pay the per lot cash-in-lieu fee to the BCRFD. The nearest fire station is the Duck Creek Fire Station which is located approximately 5.3 miles northwest of this proposed subdivision.

The Broadwater County Sheriff, located in Townsend, will provide law enforcement and the Broadwater Ambulance Service, also located in Townsend will provide both ambulatory and emergency services. The Sheriff's Department and Broadwater Ambulance Service are both located approximately 10.5 miles southwest of the proposed subdivision. According to letters received from both the Sheriff and the Ambulance Manager, neither of these entities anticipates any significant negative impacts to their ability to service the residents of this proposed subdivision. These letters are included as item #23 of the preliminary plat application.

EFFECTS ON SCHOOLS:

The proposed development could generate approximately three (3) school age children whom will attend school in Townsend. There is an existing school bus route that serves this area and the addition of three (3) bus riders should not have an impact on the school or the bus route. A letter from the Townsend Schools Superintendent, also included in item #23 of the preliminary plat application, reiterates this presumption.

EFFECTS ON LAND USE:

Lands in all directions are agricultural with some residences. This subdivision should be compatible with surrounding land uses since there will be only two (2) homesites constructed.

EFFECTS ON PUBLIC HEALTH AND SAFETY:

Dry Gulch runs along the south portion of this proposed subdivision. However, in the recent past, water has not been present in this dry drainage way. Also, the Dry Gulch Canister Site is located west of this proposed development. There may be an odor from this Canister Site that could negatively impact future lot owners in this subdivision. Because of the location of the Canister Site and the signage posted any future lot owner will be made aware of the close proximity to this potential nuisance.

PARKS AND RECREATION FACILITIES:

Since this proposed subdivision proposing to develop lots into parcels greater than five (5) acres each, no parks or recreation facilities are required.

ORDER

IT IS HEREBY ORDERED that the preliminary plat for Dry Gulch Acres Tract B Subsequent Minor Subdivision is approved, subject to the conditions listed below. Final plat approval shall be contingent upon completion and compliance with these conditions:

1. Plans for sewage treatment and water supply shall be submitted to the Montana Department of Environmental Quality for review and approval. The Certificate of Approval shall be filed with the final plat. All specifications in approved plans shall be met. (*Sections 76-4-101, et. Seq., MCA; Sections 17.36.101, et. seq., ARM; Sections 76-3-102(4), 501(1) (f) (iii), and 608(3) (a), MCA; Sections IV-A-10. and IV-A-11., County Subdivision Regulations*)
2. Prior to any development and/or soil disturbance, a Weed Management Plan for the proposed development shall be submitted to the County Weed District for review and approval. All specifications and requirements of an approved plan shall be met (*Sections 76-3-102(5&6), 501(1) and 608(3)(a), MCA; Section IV-A-18, County Subdivision Regulations*).
3. The Applicant will be required to submit the final plat drawings in electronic format to Broadwater County in ArcGIS, AutoCad or Microstation format. Additional materials may be requested by the County in electronic format to facilitate review of application materials.
4. The Applicant and Fire Protection Authority Having Jurisdiction (FPAHJ) shall use their best efforts to draft a fire protection plan (the "Plan"), specifically for this Subdivision, in accordance with the Broadwater County Subdivision Regulations. The Plan shall be equally acceptable to the FPAHJ, the Applicant and the County governing authority. The Plan shall adequately address the Fire Risk Analysis, all Findings of fact and appropriate Mitigation Measures. In the event the parties are unable to come to an agreement by the time of final plat submittal, the Applicant shall become eligible to provide the per lot cash-in-lieu fee for water supply as may be defined in the Broadwater County Subdivision Regulations in effect at the time of submittal. (*Section 76-3-608(3), MCA; Section VI-Q, County Subdivision Regulations*)
5. The final plat shall be prepared in accordance with the applicable State survey requirements, Montana Subdivision and Platting Act survey requirements and the County Subdivision Regulations. (*Section 76-3-102, 402, 501, 504 and 608(3), MCA; Section 8.94.3003, ARM; Section IV-A-5, County Subdivision Regulations*)
6. The Book and Page reference to the restrictive covenant (filed with the County Clerk and Recorder) shall be indicated on the face of the final plat. In addition, restrictive covenants, revocable or alterable only with the consent of the Board of County Commissioners, shall be placed upon the property and shall provide for the following (*Section 76-3-608(3)(a), MCA; County Subdivision Regulations*)
 - a. Per the subdivision application, both lots shall be used for residential purposes only.
 - b. Notification of the potential health risk from radon concentrations and that such risk can be evaluated through soil tests and mitigated through radon abatement techniques incorporated into structures. (*Section 76-3-608(3)(a), MCA*)

- c. A notification that all dwelling units within the subdivision should be constructed to specifications which meet or exceed equivalent provisions in the applicable state building code for this seismic zone; (Zone 3)
 - d. Any additional, replacement or relocated utility lines shall be installed underground, in accordance with the County Subdivision Regulations, unless otherwise determined by the utility provided. (*Section 76-3-608(3)(a), MCA; Section IV-A-13(b), County Subdivision Regulations*)
 - e. Any exterior lighting shall be directed downward to minimize visibility beyond the property lines. (*Section 76-3-608(3)(a), MCA*)
 - f. A waiver of the right to protest to join a special district for the purpose of providing community water and/or wastewater treatment system improvements and/or maintenance. (*Section 76-3-608(3)(a), MCA*)
 - g. A restrictive covenant, binding the landowner, any heirs, successors and assigns, and all future owners of property within the subdivision, agreeing therein to hold Broadwater county harmless and indemnify Broadwater County from all claims, demands, obligations, suits, causes of action, damages and liability, including the County's costs and attorney's fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair and/or maintenance of the following. (*76-3-608(1)and (4), MCA*)
 - i. Earthquake fault zone and any seismic activity;
 - ii. Water availability
 - h. All cats and dogs must be restrained, penned, or otherwise under the control of their owner at all times. (*Section 76-3-608(3)(a), MCA*)
 - i. Notification of the presence of agricultural operations in the vicinity. (*Section 76-3-608(3)(a), MCA*)
 - j. Each lot shall be maintained in a clean, attractive and weed-free manner; Noxious weeds must be pulled, sprayed or cut prior to seed maturity. (*Sections 76-3-102(5&6), 501(1)and 608(3)(a), MCA; Section IV-A-18, County Subdivision Regulations*)
 - k. A waiver of right to protest joining a rural improvement or maintenance district for the purpose of road maintenance, mosquito control, or equitably funding parks and maintenance of parks. (*Section 76-3-102(4), 501, 504(7) and 621 MCA*)
 - l. Address numbers shall be clearly marked at the driveway entrance to each lot and be easily identified from the road.
 - m. A notification that lots in this subdivision may be subject to impact fees if in place prior to lot sales.
 - n. A notification that each driveway access for individual lots to the County road will require a culvert that meets the minimum Broadwater County Road Standards for driveway approaches and a Driveway Approach Permit must be requested from the County Road Department for each individual driveway.
7. Prior to filing the final plat, the Applicant shall:
- a. Provide proof that all taxes and special assessments assessed and levied on the property are paid for the current tax year, including any past delinquencies. (*Section 76-3-611(1)(b), MCA*)
 - b. Provide documentation (abstract of title or platting certificate) showing that the Applicant is the lawful owner of the property with the apparent authority to

subdivide the same, showing the names of lien holders or claimants of record and the written consent to the subdivision by the owners of the land, if other than the Applicant, and any lien holders or claimants of record against the land. (*Section 76-3-612, MCA*)

The Applicant is financially responsible for actual outside engineering, consulting, professional and/or contracted service fees, etc. at the sole discretion of the County for additional review and/or final plat approval of the proposed subdivision.

Preliminary plat approval of Dry Gulch Acres Subsequent Minor Subdivision shall be in force for three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

A party, as defined by 76-3-625 M.C.A., who is aggrieved by a decision of the governing body may, within thirty (30) days after this decision, appeal to the Broadwater County district court.

DATED this _____ day of April, 2021

BROADWATER COUNTY COMMISSION

ATTEST:

Michael Delger, Chairperson

Ann Rauser, Deputy Clerk &
Recorder

Darrel Folkvord

Debi Randolph