

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

FINDINGS OF FACT AND ORDER

**IN THE MATTER OF THE APPLICATION Richard AND Jennifer Sparrow FOR
PRELIMINARY PLAT APPROVAL OF THE ASPEN ESTATES SUBSEQUENT
MINOR SUBDIVISION TRACT 4:**

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

Aspen Estates Minor Subdivision Tract 4 (A Subsequent Minor Subdivision) Preliminary Plat dated June 23, 2018

To: Broadwater County Commissioners
From: Broadwater County Planning Board
Subject: A proposed subsequent minor subdivision Preliminary Plat to be known as
Aspen Estates Minor Subdivision Tract 4

GENERAL INFORMATION

DATE OF APPLICATION: September 17, 2018
DATE OF SUFFICIENCY: August 26, 2019
REVIEW PERIOD ENDS: November 22, 2019

PUBLIC MEETING DATES:
Public Hearing – October 30, 2019

APPLICANTS: Richard and Jennifer Sparrow
95 LF Baum Rd
East Helena, MT 59635

LEGAL DESCRIPTION: SE ¼ of Section, T9N, R1W, P.M.M. Broadwater County,
Montana

GENERAL LOCATION: The proposed subdivision is located approximately 5 miles
northwest of Winston, MT off of LF Baum Road Broadwater
County, Montana.

DESCRIPTION

PROPOSAL:

The Applicant proposes to develop two (2) lots from an existing 58.54-acre parcel of land. Both lots are proposed as residential single-family lots. One of the lots has existing structures and is served by an individual well and septic system. The minimum size lot is 24.38 acres and the maximum size lot is 34.16 acres. Access to the proposed lots will be off of LF Baum Road, which is a county road. The required preliminary review fee of \$2,080.00 has been paid and includes the weed inspection fee.

DISCUSSION:

The proposed subdivision is a subsequent minor subdivision and an environmental assessment was prepared.

This subdivision is part of the previously approved minor subdivision, Aspen Estates Subdivision. Tract 4-B currently has a residence built upon it and sanitary facilities have been installed. The applicants are not proposing covenants for the subdivision, but existing covenants which are in effect state, "no such alterations shall create a tract consisting of less than twenty (20) acres and only one such division per original tract may occur."

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, Aspen Estates Tract 4 Minor Subdivision, as submitted by the Applicant, together with the required supplementary plans and information, appear to satisfy the requirements of these regulations and the Broadwater County Growth Policy Plan dated July 2007.

PHYSICAL CONDITIONS:

A preliminary plat, vicinity map and lot layout of the proposed subdivision has been provided. No rock outcroppings or the presence of bedrock have been identified on the property. The nearest open water body is the Canyon Ferry Lake Reservoir which is approximately 4 miles northeast. This property is not in an area subject to flooding. There is a designated wetland area along north-northeast portion of both tracts.

WATER SUPPLY and WASTEWATER TREATMENT:

Tract 4-B currently utilizes an individual well and has an existing individual wastewater treatment system. Since the newly proposed Tract 4-A will be greater than twenty (20) acres, it will not be necessary for this parcel to obtain DEQ approval prior to final plat approval, but rather will be reviewed by the Broadwater County Sanitarian.

SOLID WASTE:

Lot owners will be responsible for disposal of their own solid waste. Subdivision residents will have the option of hiring an independent contractor to pick up their solid waste or transport it themselves to the Winston Canister Site, approximately 3.5 driving miles southeast of the proposed subdivision.

EVALUATION CRITERIA

PRESENT LAND USE:

The proposed subdivision is currently residential property.

EFFECTS ON AGRICULTURE:

Based on the information provided, the subdivision will not have an effect on agricultural productivity as no acreage will be removed from the production of crops or livestock. The land is currently utilized by one (1) single-family residence and there are no proposed changes in use. The Applicant indicates that the land is compatible with surrounding uses since this is a relatively large parcel. The proposed subdivision does not present interference with agricultural operations in the vicinity.

The responsibility to control noxious weeds will be the developer's until it is turned over to any subsequent landowners.

ENVIRONMENTAL ASSESSMENT CRITERIA

An Environmental Assessment (EA) was prepared for the Aspen Estates Tract 4 Minor Subdivision.

GEOLOGY:

No hazards such as falls, slides or slumps are indicated on the plat. There is no known active seismic activity. No geological conditions, which might affect the development such as areas of bedrock or unsuitable soils, were identified within the proposed subdivision. The proposed subdivision is not within a designated 100-year floodplain.

VEGETATION:

There are some forested marshlands on Tract 4-A, but Tract 4-B is relatively free from vegetation. A majority of the acreage of Tract 4-A is identified as non-building zones per the recorded Aspen Estates Minor Subdivision; Book 45, Page 867. These non-building zones will also be shown on the final plat of the Aspen Estates Tract 4 Minor Subdivision. The property is mostly native grasses and some nuisance weeds. The Applicant indicates in the weed plan that they will spot spray, pull and mow the existing weeds. The County Weed Coordinator has not conducted a site inspection but it will be done prior to final plat approval. The Applicant is responsible for ensuring noxious weeds are controlled in the subdivision until the responsibility is turned over to any subsequent owners.

EFFECTS ON WILDLIFE AND HABITAT:

According to the preliminary plat application deer, grouse, fox and coyote have all been seen on the property. The effects on wildlife should be minimal since there is only one (1) new home being added to this property.

EFFECTS ON HISTORICAL FEATURES:

A letter was sent to the Montana Historical Society (MHS) to determine if there are known historical, archaeological or cultural sites, which may be affected by the proposed subdivision. A response letter dated January 29, 2019 was received from Damon Murdo, Cultural Records Manager of MHS stating that there have been a few previously recorded sites within the designated search locale. The cultural inventories discovered consist of tipi rings and a historic railroad. As long as there will be no disturbance or alteration to structures over fifty years of age, MHS feels that there is a low likelihood cultural properties will be impacted. However, should cultural resource be inadvertently discovered during this project, the developer will contact the office of the State Historic Preservation Office (SHPO).

EFFECTS ON ROADS:

There are no new roads proposed for the Aspen Estates Tract 4 Minor Subdivision. The Applicant will continue utilizing the one access onto LF Baum Road for both lots, thereby creating a shared driveway.

According to the Broadwater County Growth Policy Plan the two (2) lots will generate 16 vehicle trips per day.

UTILITIES:

Utilities supplied by Northwestern Energy and Century Link are in place and being utilized by the home on Tract 4-B. Utilities will be made available to Tract 4-A prior to final plat approval.

EFFECTS ON EMERGENCY SERVICES:

The Broadwater County Sheriff's Department will provide law enforcement and is located approximately eighteen (18) miles southeast of the proposed subdivision. A letter was sent to the Broadwater County Sheriff's Department and an email response was received on November 27, 2017. Sheriff Meehan indicated that he did not anticipate any concerns with this proposed subdivision in regards to emergency services.

The Broadwater Health Center also located in Townsend approximately eighteen (18) miles from the proposed subdivision, will provide both ambulance and emergency medical services. A letter was sent to the Broadwater Health Center and a response was received on November 25, 2017. Ambulance Manager Mary Mistek indicated that although the BHC Ambulance Service does not see any significant impacts from this development, response times are estimated at approximately 25-30 minutes.

Included in the Preliminary Plat Application, Item #26, is a letter from the Applicant to the Broadwater County Rural Fire Department along with a response from Fire Chief Ed Shindoll. Chief Shindoll states that this proposed subdivision will have no additional impacts to the Fire District.

EFFECTS ON SCHOOLS

The proposed subdivision is served by the Townsend Schools. Based on the Broadwater County Growth Policy, this subdivision could produce 1-3 new students. The effect on the school system should be minimal since the proposed subdivision is only adding one (1) additional home. A letter was sent to the Superintendent of Schools, and per the response included in the preliminary plat application as Item #23, the school does not have any concerns regarding this proposed development as it should not impact the school or the school bus system.

EFFECTS ON LAND USE:

Lands to the north, east and west are residential and to the south are agricultural/large residential parcels. The effect on land use should be minimal since the proposed subdivision is creating two (2) parcels with only one (1) additional home.

EFFECTS ON PUBLIC HEALTH AND SAFETY:

The potential hazard is the Burlington Northern – Santa Fe Railroad which lies just south of the southern property line could potentially pose a serious risk to the safety of the subdivision residents; especially to children and domestic animals. Also, the approach from LF Baum Road to US Highway 287 could pose a hazard, which again will require homeowner awareness when leaving the area of the development.

PARKS AND RECREATION FACILITIES:

Parkland is not required for the proposed Aspen Estates Tract 4 Minor Subdivision.

ORDER

IT IS HEREBY ORDERED that the preliminary plat for the Aspen Estates Tract 4 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 Broadwater County Environmental Health Department for review and approval. The Letter 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 the approved plan shall be met (*Sections 76-3-102(5 and 6), 501(1), and 608(3)(a), MCA; Section VI-S., County Subdivision Regulations*)
3. The applicant will be required to submit the preliminary plat and 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 the 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 agreement by the 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)(a), MCA; Section VI-Q., County Subdivision Regulations*)
5. The 'No-Build Zones' shown on the filed Aspen Estates Minor Subdivision plat shall be shown on this final plat.
6. 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; County Regulations*)
7. Prior to any development, an Approach Permit shall be requested from the County Road Department for the access point off of LF Baum Road. All requirements of the approved permit shall be met. (*Sections 76-3-102(3 and 4), 501(1), 504(1)(f)(i), and 608(3)(a), MCA; County Regulations*)
8. The Book and Page reference to the restrictive covenants (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, all lots shall be used for residential purposes only;
 - b. No build zones shall apply to 'Structures' as defined in the Broadwater County Subdivision Regulations in effect at the time of submittal;
 - c. 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*)
 - d. 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); (*Section 76-3-608(3)(a), MCA*)
 - e. A notification that lots in this subdivision may be subject to impact fees if in place prior to lot sales.
 - f. 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 VI-M, County Subdivision Regulations*)
 - g. Any exterior lighting shall be directed downward to minimize visibility beyond the property lines; (*Section 76-3-608(3)(a), MCA*)
 - h. 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*)
 - i. 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:
 - i. Earthquake fault zone and any seismic activity;
 - ii. Water availability;
 - j. Notification of the presence of agricultural operations in the vicinity; (*Section 76-3-608(3)(a), MCA*)
 - k. Lots shall only allow for livestock if a small acreage livestock management plan is reviewed and approved by the County Extension Agent and submitted to the county. Each lot owner shall be required to create and adhere to their own livestock management plan.
 - l. 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 and 6), 501(1), and 608(3)(a), MCA; Section VI-S, County Subdivision Regulations*)
 - m. A prohibition of the storage of foods, garbage, or other activities that creates an attractive nuisance for wildlife species (hay or alfalfa storage and feeding

are not prohibited where livestock are permitted) (*Section 76-3-608(3)(a), MCA*)

- n. 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*)
 - o. Address numbers shall be clearly marked at the driveway entrance to each lot and be easily identified from the road.
 - p. 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, and 621, MCA*)
9. Prior to filing the final plat, the following improvements shall be installed or otherwise guaranteed:
- a. Any necessary improvements required by the stormwater drainage plan, weed management plan, or approach permits;

If said improvements are not installed prior to final plat, then the Applicant shall enter into a written subdivision improvements agreement with Broadwater County, guaranteeing the construction and installation of such improvements and shall provide an acceptable financial security guarantee, in accordance with County Subdivision Regulations (Appendix E)

10. 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 of 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 Four Springs Estates 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

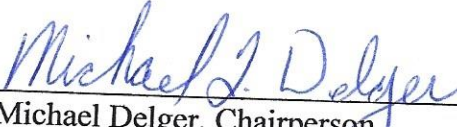
more than one extension.

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 18 day of November, 2019

BROADWATER COUNTY COMMISSION

ATTEST:



Michael Delger, Chairperson



Ann Rauser, Deputy Clerk &
Recorder



Laura Obert



Darrel Folkvord