

CARBON COUNTY
Planning Office
P.O. Box 466, Red Lodge, MT 59068
Main: (406) 446-1694
Fax: (406) 446-2640

PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board
FROM: Forrest J. Mandeville – Contract Planner
DATE: August 10, 2018
RE: Windmill Farms Subdivision, 1st Filing Preliminary Plat Application – Subsequent Public Hearing on New Information

REQUIRED PLANNING BOARD ACTION: Review new information, receive public comment on the new information in a public hearing, determination of whether or not to amend finding and/or conditions based on the new information, and recommendation to Commission based on the new information.

RECOMMENDATION: Approval with Conditions

RECOMMENDED MOTION: *Having reviewed and considered the new information submitted since the initial public hearing, and public comments on the new information, I hereby move to **approve** the Windmill Farms Subdivision, 1st Filing, with the findings and conditions included in the project memorandum.*

Project/Application Summary:

Performance Engineering, on behalf of Windmill 312, LLC, Bruce Tonn, Partner, submitted a preliminary plat application for a 20-lot subdivision consisting of 43.41 acres. The original tracts were created utilizing an agricultural covenant (Certificate of Survey 2425 AG), which exempted the creation of the property from subdivision review. Placing an agricultural covenant on the property restricts the property from being utilized in a non-agricultural way. However, review and approval of the proposed subdivision will lift the agricultural covenant. Additional filings may follow, and will be reviewed as major subdivisions as well. A 13.20-acre tract (Lot 7, Block 1), will have restrictions limiting development, though it may be re-subdivided in the future.

The subject property is located on the southeast corner of the intersection of Highway 310 and E. Pryor Road/Elwell Street. The property is legally described as Tracts 2 and 3 of COS 2425 AG, located in Section 26, Township 4 South, Range 23 East, P.M.M., Carbon County, Montana.

The Carbon County Planning Board considered this preliminary plat application at their regular meeting of February 20, 2018 and, after a public hearing, recommended approval subject to 14 conditions. The vote was 5-4 in favor of recommending approval.

[The Board of County Commissioners considered this preliminary plat at their regular meeting of July 12, 2018. After evaluating written comments submitted since the public hearing conducted by the Planning](#)

Board, and after hearing public comments at the meeting, the Commission determined that some of the comments constituted new and credible information not previously submitted as evidence or considered at the public hearing. As such, the Commission directed the Planning Board to conduct a subsequent public hearing for consideration of only the new information. For a summary of the public comments submitted at the Commission meeting and what was determined to be new and credible information see *section e* below.

Required Planning Board Action:

Under the adopted Carbon County Subdivision Regulations, when a determination is made that information submitted following a public hearing constitutes new and credible information, the Planning Board will hold a subsequent public hearing within 45 working days of the determination. The determination was made by the Commission on July 12, 2018, so the deadline to hold a subsequent public hearing is September 14, 2018. The 60 working day timeline for a decision to approve, deny, or conditionally approve the subdivision is suspended until the subsequent public hearing is held. Sufficiency was determined on May 22, 2018, so 36 working days had elapsed prior to the Commission meeting. With a subsequent public hearing to be held on August 21, 2018, the deadline for the Commission to reach a decision on the subdivision is September 25, 2018.

The subsequent public hearing is limited to consideration of the new information. The Planning Board must consider this new information, hear public comments, and determine if/how the new information impacts the findings and conclusions upon which the Commission will rely when making its decision.

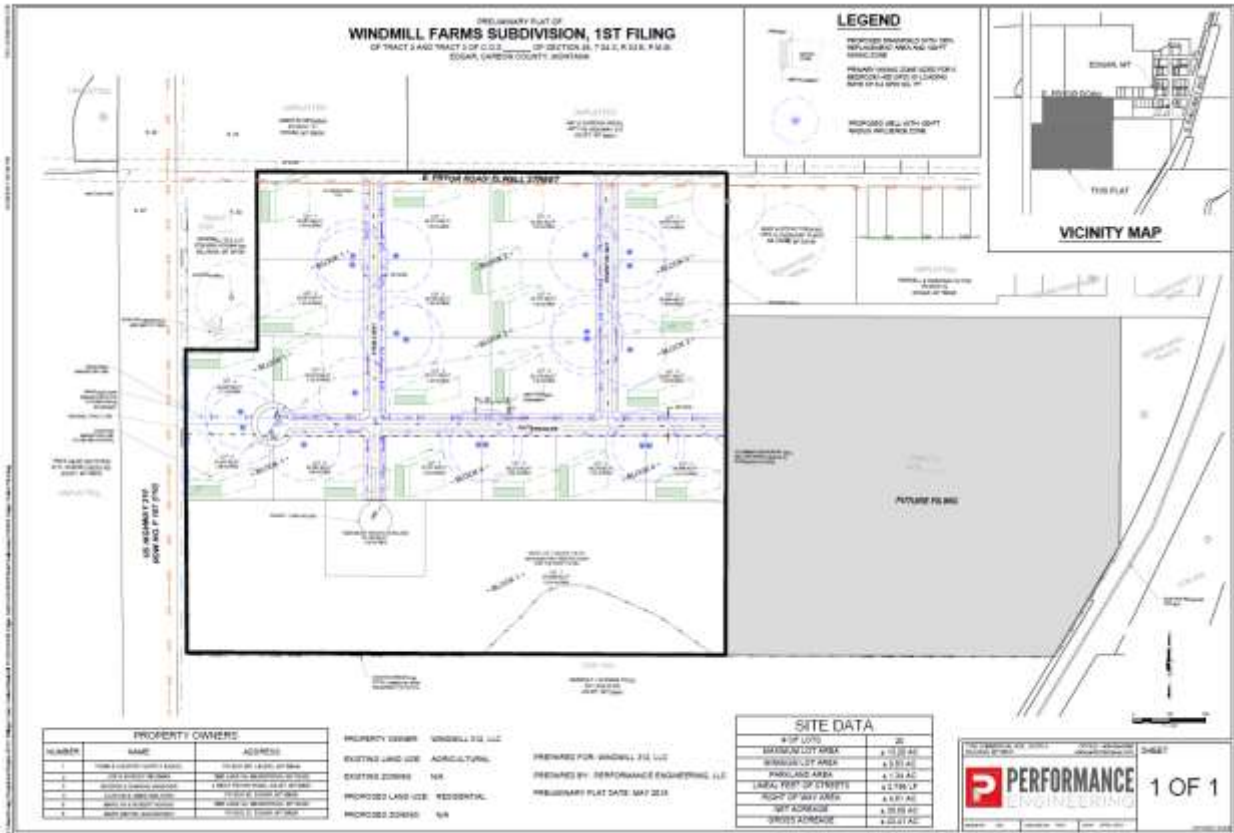
Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

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

New wells and drainfields are proposed for each lot, and should be submitted to and approved by The Montana Department of Environmental Quality (DEQ) and the Carbon County Sanitarian for review and approval (see condition number 1).

The subdivision will be accessed via two new access points from E. Pryor Road/Elwell Street and internal subdivision roads (Steele Way, Thornton Way, and Patterson Drive). The roads will be built to County standard. The developer is proposing to dedicate the roads to the County and to establish an RSID to provide necessary funds for maintenance.

A 30,000 gallon dry hydrant is proposed to provide on-site water for firefighting purposes within the subdivision. The developer is proposing to maintain the hydrant through the aforementioned RSID.



Preliminary Plat, Windmill Farms Subdivision, 1st Filing

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 classified as farmland of statewide importance. The property has been farmed, a use which will cease with the development of this subdivision. The property was recently divided using an agricultural covenants exemption, which restricts the use of the property to strictly agricultural uses. However, approval of the subdivision will lift the agricultural covenant on the property within the subdivision. Property to the north, west, south and east will continue to be utilized for agricultural purposes. Lot 7, Block 1, will have restrictions limiting development and may continue to be used for agricultural purposes. The community of Edgar is adjacent to the northeast corner of the subdivision.
- Effect on agricultural water user facilities: The New Prosperity Ditch runs along the west and south of the subdivision, with a portion extending into Lot 7, Block 1. Irrigation laterals currently exist on the property, with water rights associated with the New Prosperity Ditch. The applicant is proposing to relocate irrigation lateral alongside the internal roads to provide lawn irrigation water to each lot. Existing water rights will be

transferred to a Homeowners' Association, which will maintain and operate the irrigation system.



Looking Southeast (left) and Looking Southwest Across Proposed Subdivision

- Effect on local services: The Carbon County Sheriff's office is responsible for providing law enforcement services to the subdivision. Response times vary depending on patrol schedules, officers on duty, and location of officers at the time of the call. Under Sheriff Jeff Schmalz expressed concern regarding the subdivision adding pressure to the already understaffed department.

Fromberg School Superintendent Teri Harris reports the ability to serve students in the subdivision.

The Edgar Volunteer Fire District provides firefighting services in the area, and is located within ½ mile of the subdivision. A 30,000 gallon dry hydrant is proposed to provide on-site water for firefighting purposes. The dry hydrant is proposed to be maintained by an RSID. The design submitted as part of the preliminary plat indicates PVC pipes will be utilized. ~~However, metal piping may be more desirable to ensure the hydrant works as intended.~~

- Effect on the natural environment: Review and approval of new septic, well, solid waste, and stormwater drainage systems is required by the Montana Department of Environmental Quality (DEQ).

The developer will be required to enter into a weed management agreement with the Carbon County Weed District prior to filing the final plat.

The developer has reported that the Montana Department of Natural Resources and Conservation has indicated that the subdivision as proposed would need to acquire additional water rights for residential wells. To mitigate this issue the developer has proposed to reduce the number of lots proposed in the subdivision by seven, eliminating the lots south of Patterson Dr. (Lots 5, 6, and 7 of Block 1, and Lots 1, 2, 3, and 4 of



E. Pryor Road/Elwell Street on North Side of Proposed Subdivision Looking East (left) and Looking West Towards Edgar (right)

- Effect on public health and safety: The applicant estimates the subdivision will generate approximately 228 daily trips on Pryor Road/Elwell Street from the two new subdivision roads (Steele Way and Thornton Way), with am and pm peaks of 25 trips. The applicant has stated that this increase should have marginal impact on area roads. According to MDT traffic estimates, Highway 310 has between 3,900 and 4,600 daily trips in the vicinity of the subdivision. Steele Way and Thornton Way will be constructed to County standard with asphalt surfaces and proper signage.

In order to minimize potential impacts to pedestrian safety, pedestrian crossing signs may be erected near the subdivision entrances.

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.
- Applicable Zoning Regulations: Prior to construction, a Group 1 Development Permit must be obtained for new homes.
- Other regulations in effect in the area of the proposed subdivision: There are no regulations in effect for the area with which this subdivision would conflict.
- Whether DEQ has approved the proposed subdivision for proposed subdivision that will create parcels of less than twenty (20) acres: DEQ approval is required prior to final plat.
- 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: All parcels are less than 20 acres and are subject to review and approval by DEQ.

d. *Summary of Public Comments at Planning Board Meeting:*

The following public comment was received at the public hearing held June 19, 2018. The Planning Board's evaluation of the comments follows each comment:

1. Several comments expressed concern about existing shallow wells in Edgar that may go dry with the development of new wells in the proposed subdivision. *The Planning Board agreed this was a concern and discussed potential ways to minimize the impact, such as utilizing cisterns in the subdivision or the formation of a new water and sewer district. The Board felt that requiring DEQ review and approval prior to final plat would adequately mitigate concerns about the subdivision's impact on existing wells, but did modify Condition #1 to add reference to the public's concerns.*
2. Several comments also noted concern about the potential impact from effluent from new drainfields infiltrating the underlying aquifer, potentially contaminating existing wells in Edgar. *The Planning Board agreed this is a concern, but noted that current DEQ requirements for drainfield design should prevent adverse impacts if DEQ review and approval is required. Condition #1 was modified to add reference to the public's concerns.*
3. Concerns were expressed by the public that the DNRC water right process would not measure the true impact of the subdivision and not take all data into account when evaluating the subdivision. *The Planning Board felt this was State policy and best left to the State regulating agencies to evaluate. No findings or conditions were amended to reflect these comments.*
4. Public comments indicated past issues with contaminants, including high nitrates in the school well and bacteria in private wells, which created the impetus for creating the existing Edgar sewer system. However, connection to the existing sewer system was not feasible due to size issues. *The Planning Board expressed interest in hearing the background and history of Edgar, but did not make any changes to findings or conditions based on these comments.*
5. Concerns were expressed about the staffing issues noted by the Sheriff's Department and discussed in the findings. *The Planning Board felt this was a County-wide issue, not unique to this subdivision, and did not make any adjustments to the findings or conditions based on these comments.*
6. The proposed RSID for maintenance of the roads was mentioned, with comments in favor of the RSID as opposed to relying on an HOA for maintenance, and comments opposed to the RSID as potentially leading to a burden on County resources. *The Planning Board noted that RSIDs have not been used for subdivision roads in Carbon County in the past, but felt it may be a better way to ensure continued maintenance of roads. The establishment of an RSID to provide for dry hydrant maintenance was more desirable, with Planning Board discussion focusing on the public safety benefits of having a well-maintained hydrant, while an under-maintained road can still be utilized. The Board felt*

this issue would best be decided by the Commission, and added language to Condition #5 allowing an HOA to maintain the road if a satisfactory RSID could not be developed.

7. Public Comment indicated concerns for ditch maintenance in the area. *Planning Board discussion noted that the ditch would be maintained by the Homeowners' Association. However, the Board amended Condition #11 to increase the required easement from 10 to 15 feet from the centerline of the ditch.*
8. Concerns were raised about potential safety issues resulting from increased traffic as a result of the subdivision. *The Board discussed possibilities of requiring a widening of East Pryor/Elwell Road, turn lanes into the subdivision, and improvements to the intersection of East Pryor Road and Highway 310, but ultimately decided that the existing road system was adequate and did not make any changes to the findings or conditions.*

e. Summary of Public Comments at Commission Meeting:

The following is a summary of public comment received at the County Commission Meeting held July 12, 2018. Copies of the written comments are also available. The Commission's evaluation of the comments constituting new and credible information follows (also see Commission minutes of July 12, 2018):

1. Craig Dalton of Performance Engineering submitted an email on June 28, 2018, stating that they had contacted Aaqua Drilling and were told that the Clarks Fork Valley has a strong aquifer; conditions of individual wells are generally the cause of water issues and not the aquifer; gravel layers are targeted by well drillers and adjusted/re-drilled if necessary. Mr. Dalton also submitted a well log (GWIC 263997).

Mr. Dalton submitted additional email on July 11 and 12, 2018, stating that they had conducted a water availability test by drilling three wells in the subdivision area which yielded 60 gpm at a depth of 30 feet, 60 gpm at 30 feet and 20 gpm at 26.5 feet.

The Commission determined this to be new information necessitating a subsequent public hearing before the Planning Board.

2. Mr. Nevins Harding submitted an email on June 21, 2018 as an attachment and correction to his previously submitted testimony to the Planning Board, stating that holding tanks were likely not an option for the subdivision but suggesting spray irrigation as an alternative to drainfields. Mr. Harding also supplemented his previous testimony with additional written comments providing additional information on potential groundwater use.

Mr. Harding also submitted a petition to the Commission signed by 17 individuals questioning the availability of irrigation water rights and suggesting the use of a surge pond to stockpile water.

The Commission determined this to be new information to be considered in the aforementioned subsequent public hearing.

3. Public testimony received at the Commission meeting questioned the adequacy of the submitted Environmental Assessment in not mentioning a 30-acre pond between the subdivision and the Clarks Fork River.

The Commission determined this to be new information to be considered in the aforementioned subsequent public hearing.

4. Several public comments at the Commission Meeting expressed concern about groundwater contamination from septic systems.
5. Several public comments at the Commission Meeting expressed concern about impacts on existing wells, and potential to go dry.
6. Public comment expressed concerns over safety on roads.
7. Public comments discussed the RSID proposal and snow plowing in Edgar.
8. Public comments expressed concern over viewshed impact on neighboring property as well as impacts on wildlife.

The Commission determined that new information relating to water, wells, septic systems, water rights, and a 30-acre pond constituted new information not previously considered at a public hearing and directed the Planning Board to schedule a subsequent public hearing for consideration of only the new information relating to wells, septic systems, water rights, and a 30-acre pond.

Other public comments were determined to not constitute new, credible information necessitating consideration at the subsequent public hearing.

f. Findings on new information

- Wells: Individual wells are proposed to provide potable water to each lot. Additional evidence submitted by Mr. Dalton regarding test wells indicated ample supply, ranging from 20 gpm at 26.5 feet to 60 gpm at 30 feet. However, testimony from area residents report lack of water has been an ongoing concern. A conversation with DNRC indicated that a controlled groundwater area (CGWA) has been requested for the Edgar area, which, if implemented, would require DNRC to adopt rules specific to water use within the CGWA. Also see discussion under water rights below.
- Septic Systems: Area residents have expressed repeated concerns with the potential of proposed individual septic systems contaminating area wells. As all proposed lots are less than 20 acres in size, the subdivision is subject to DEQ review and approval of septic system design and must be installed per the approved design. DEQ's Enforcement Division will respond to complaints and open an investigation, if warranted, and may assess monetary penalties. Existing finding and conditions relating to the need to obtain

DEQ approval for the subdivision prior to final plat should adequately mitigate this concern.

- Water Rights: The applicant submitted evidence of existing irrigation water rights associated with the property, which are proposed to be transferred to a Homeowners' Association as part of the subdivision process and used as lawn irrigation. Irrigation water rights can be used if on same property and using the same diversion, which is the case with this subdivision.

Subdivisions are required to obtain new water rights through the Montana DNRC if the entire subdivision uses more than 10-acre feet of water per year. To quantify water use, DNRC uses Form 615, which assumes a family of up to five people will use one acre-foot/year, and a one-acre lawn and garden will use 2.5 acre-feet/year. However, DNRC will accept variations from these standards on a case by case basis. The DEQ standard for domestic water use is .28 acre-feet/year per household. The developer of Windmill Farms Subdivision proposes 13 lots to use .77 acre-feet/year for each lot. All subdivisions are required to allocate the full 10 acre-feet across the subdivision.

Once approved DNRC does not measure water use, nor does the Department enforce penalties on overuse. However, the County may require a subdivision to put certain requirements in its covenants.

The following condition is recommended: "The Declaration of Restrictions and Homeowners' Association Document must include a requirement that the Homeowners' Association annually publish and make available to the public all ground water monitoring data for the preceding year. This data must be collected annually, certified by a licensed professional engineer, and submitted to DNRC and DEQ no later than December 31 of each year."

- 30-Acre Pond: The 30-acre pond mentioned in public testimony at the Commission meeting is likely an unnamed feature associated with the Clarks Fork of the Yellowstone River. DNRC and DEQ mapping do not show a name for this feature. While mention of this nearby water feature could be mentioned in the staff report, the subdivision is unlikely to impact this feature in any way due to its distance from the proposed subdivision.



DNRC (right) and DEQ (left) Mapping Services Showing Location of Pond

eg. Planning Board Recommendation:

The Planning Board recommends approval of the Windmill Farms Subdivision, 1st Filing, pursuant to the following conditions (section references are to the Carbon County Subdivision Regulations unless otherwise noted):

1. Filing of the final plat shall be subject to the review and approval by the Montana Department of Environmental Quality after considering the- public comments and documents indicating significant concerns with potential impacts on area wells and the possibility of drainfields adversely affecting the underlying aquifer.
2. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA.
3. Per Section V-A-15., the final plat shall show the location of all existing and required utility easements, and must 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 the lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and hold forever.”
4. The final plat shall be prepared and reviewed in accordance with Section III-C of the Carbon County Subdivision Regulations and the Uniform Standards for Final Subdivision Plats (24.183.1107, ARM).
5. Developer must establish an RSID acceptable to the County to provide for maintenance of roads and the dry hydrant within the subdivision. Alternatively a Homeowners’ Association may be established to maintain the road.
6. New roads (Steele Way, Thornton Way, Patterson Drive) must be constructed per Section V-A-10 prior to filing of final plat. As-built documents certified by a professional engineer licensed in the State of Montana must be submitted with the final plat.
7. A temporary cul-de-sac or hammerhead turnaround shall be installed at the ~~west-east~~ terminus of Patterson Drive. This may be of gravel surface.
8. Developer shall install one or more pedestrian crossing signs near the access of the subdivision.
9. Developer shall install a 30,000 gallon dry hydrant prior to final plat. Installation of the hydrant shall be supervised a professional engineer and as-built documents filed with the final plat. ~~The hydrant shall be built with metal piping instead of PVC.~~
10. Developer must enter into a weed management plan with the Carbon County Weed District.
11. Per Section V-A-18, an easement shall be provided and shown on the final plat for the irrigation ditch on the west and south of the subdivision. The easement should be ~~40~~15-feet each side of the centerline of the ditch.
12. The final plat shall reflect the reduction in lots by seven, eliminating Lot 5, 6, and 7 of Block 1, and Lots 1, 2, 3, and 4 of Block 4. This will also remove Tract 3, COS 2425 AG from the subdivision. An easement for use by members of the Homeowners’ Association

of a parkland area at the south terminus of Steele Way must be filed with the final plat as well.

13. The Declaration of Restrictions and Homeowners' Association Document must be filed with the final plat.

14. The Developer shall sign a waiver of the right to protest the creation of one or more special improvement districts for the purpose of street lights, street light energy, street light maintenance, and the construction and/or maintenance of streets, alleys, traffic control devices, curb, gutter, sidewalks, drive approaches, survey monuments, water mains, sanitary sewer mains, and storm drain line, parks and park maintenance, and any other incidental improvements which Carbon County may require.

~~14.~~15. The Declaration of Restrictions and Homeowners' Association Document must include a requirement that the Homeowners' Association annually publish and make available to the public all ground water monitoring data for the preceding year. This data must be collected annually, certified by a licensed professional engineer, and submitted to DNRC and DEQ no later than December 31 of each year.

~~15.~~ ~~The plat shall contain a statement that no development may occur on Lot 7, Block 1.~~