

**SPECIAL MEETING OF THE CARBON COUNTY PLANNING
BOARD**

DECEMBER 15, 2022

THURSDAY 7:00 PM

CARBON COUNTY PERSONAL SERVICE BUILDING

10 OAKES AVENUE SOUTH

RED LODGE, MT

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF MINUTES OF PREVIOUS MEETING

September 15, 2022

D. PUBLIC HEARINGS

Elevated Signage Variance Request

E. REGULAR BUSINESS

Elevated Signage Variance – Recommendation to
Commissioners

Albin Subdivision – Recommendation to Commissioners

7D Subdivision and Variance Request – Recommendation
to Commissioners

F. PETITIONS & COMMUNICATION FROM AUDIENCE

G. WRITTEN COMMUNICATIONS

**H. REPORTS FROM PLANNING BOARD MEMBERS AND
COMMITTEES**

I. STAFF REPORTS

J. ADJOURN

Carbon County Planning Board
September Meeting
9-15-22

- A. Call Meeting to Order, 7:00 pm, Gordy Hill – Chairperson
- B. Roll Call
 - Present: Gordy Hill, Clinton Giesick, Skip Bratton, Mike Hayes, Clint Peterson, Dean Webb, Kim Ehrlich, Forrest Mandeville
 - Audience: see attached sign-in sheet
- C. Approval of 8-18-22 Minutes
 - Skip moved to approve. Dean second.
 - o Motion passed unanimously
- D. Public Hearings
 - *See Regular Business*
- E. Regular Business
 - *Royal Banco Subdivision & Variance Request*
 - o 2 lot subsequent minor subdivision
 - o 20.01 acre tract
 - o 9.98 and 10.03 acre lots
 - o East Bench Road
 - o Existing well and septic already on each lot
 - o Turnaround is proposed in middle of driveway vs. end of driveway, resulting in need for a variance
 - o Clint moved to recommend commissioners approval. Skip second.
 - Motion passed unanimously
 - *Switchback Ranch Conservation Easement*
 - o 9,650 acres proposed
 - o Subject acreage is in the process of being purchased
 - o Building envelope will allow for two residences on 40 acres
 - o Records indicate that the sale has not yet been finalized
 - o Planning Board would feel more comfortable providing comment once the purchase has been completed by the applicant
 - *Arthun Conservation Easement*
 - o 1,105 acres proposed
 - o 6 miles North of Joliet, MT
 - o Building envelope will allow for ag structures on 4 acres
 - o Easement is consistent with County Development Regulations

- *Study on Marijuana and Marijuana Businesses*
 - o Recommendation to Commissioners to extend Interim Zoning Regulations until 3-3-24

F. Audience Communication

- None

G. Written Communication

- Update on Group 2 Development Permits in the area

H. Committee Reports

- Carbon County Conservation District
 - o High amount of 310 permit applications in the Rock Creek drainage

I. Staff Reports

- None

J. Adjourn Meeting

8:45 pm

CARBON COUNTY
Planning Office
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PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: November 4, 2022; Revised December 2, 2022
RE: 7D Subdivision Preliminary Plat Application and Variance Request from Fire Protection Design Standards–Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and recommendation to approve, conditionally approve, or deny the proposed preliminary plat and variance request.

RECOMMENDATION: **Approval with Conditions**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments and all of the information presented, I hereby move to recommend **approval** of the 7D Subdivision and variance from fire protection design standards, with the findings and conditions included in the project memorandum.*

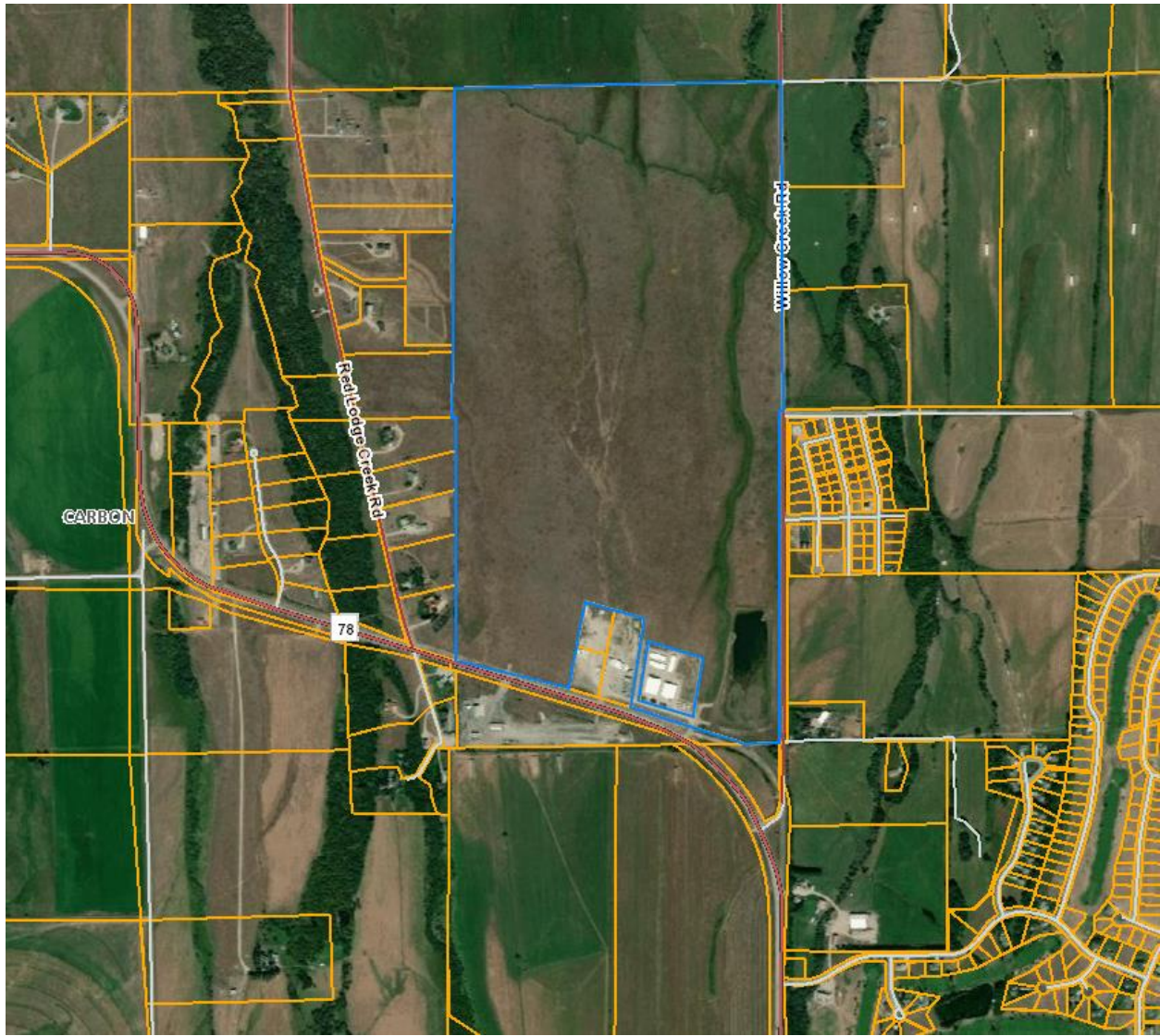
Project/Application Summary:

Red Lodge Surveying, on behalf of Draper Ranch Company (Edwin L. Draper), has submitted a preliminary plat application for a 10-lot subdivision, with lots designed for commercial use. Engineering West is providing engineering services for the proposed subdivision. The subdivision area is approximately 20 acres; proposed new lots will range from 1.63 acres to 2.65 acres in size. The property is located north of two previously developed commercial/industrial subdivisions: Schneider-Sheldon Subdivision (a one-lot subdivision filed in 2004) and Red Lodge Fire Rescue Foundation Subdivision (a three-lot subdivision filed in 2021). There is a remaining tract of record that would be created due to this subdivision. Since the remainder is greater than 160 acres, it is not subject to subdivision review.

The subject property is located north of Highway 78, approximately ¼ mile west of the intersection of Highway 78 and Willow Creek Road. The property is legally described as part of the SE4 of Section 16, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

Required Planning Board Action:

Following a public hearing, the Planning Board shall make a recommendation to the County Commission to approve, conditionally approve, or deny the preliminary plat and variance request. 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.



Proposed Subdivision Location (Blue) and Vicinity

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

Each lot will utilize individual well and drainfield systems. DEQ review and approval is required.

Access is provided by Highway 78 via existing unnamed private roads, which also provide access to existing subdivided property. These private roads will be extended through the subdivision to provide access to each lot. Access will also be provided to Willow Creek Road to the east of the subdivision.

A variance request has been submitted to allow a deviation from the fire protection design standards. The developer has rights to a well within the Red Lodge Fire Rescue Foundation Subdivision. The proposed variance will allow the off-site well to provide water for fire-fighting purposes.

b. Summary of Probable Impacts

Except where exempt by state law, all subdivisions must be reviewed for the specific, documentable, and clearly defined 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 (approximately 20 acres) is currently part of an agricultural operation, and is primarily used for grazing. This use would cease as a result of this subdivision. There is remaining property in excess of 160 acres which will remain in agricultural production.

The site is classified by USDA as prime farmland if irrigated.

The property is adjacent to two commercial/industrial subdivisions. Lot 1 of the Schneider-Sheldon Subdivision consists of commercial storage units; Lot 1 of the Red Lodge Fire Rescue Foundation Subdivision contains training facilities owned by the Red Lodge Fire Rescue Foundation. There are two undeveloped lots in the Red Lodge Fire Rescue Subdivision, one owned by the Red Lodge Fire Rescue Foundation and one owned by Draper Ranch Company. The Montana Department of Transportation owns property across Highway 78 to the south. There are residential subdivisions to the west and northeast across the remaining lands of the developer.

Finding: Because the developer owns surrounding agricultural lands and the subdivision is adjacent to similar uses, there should be minimal adverse impacts on agriculture as a result of this subdivision.



Commercial/Industrial Uses Near Subdivision



Residential Uses Near Subdivision; New Road in Foreground

- Effect on agricultural water user facilities: There are no irrigation ditches within the proposed subdivision. According to the Environmental Assessment submitted as part of the subdivision application, no water rights will be transferred to lots within the subdivision, and the acquisition of water rights are not required for the subdivision.

Finding: Because there are no irrigation ditches on the property and no agricultural water rights associated with the subdivision, there should be minimal adverse impacts on agricultural water user facilities as a result of this subdivision.

- Effect on local services: The Carbon County Sherriff's office will provide law enforcement services to the subdivision. According to documents provided in the subdivision application, Sheriff Josh McQuillan reports that adequate law enforcement can be provided to the subdivision with existing personnel and equipment. A response time would be 15-20 minutes in most circumstances.

Finding: This subdivision will have minimal adverse impacts on law enforcement, since services can be provided using existing personnel and equipment.

The Red Lodge Fire District provides fire protection in the area. Chief Tom Kuntz in a phone conversation indicated that a dense (more than one lot per three acres) commercial subdivision creates a high fire hazard area, necessitating on-site water supply be provided. If the subdivision is approved without mitigating the increased fire hazard, it could impact area insurance rates due to the increased fire risk. The developer is proposing an off-site water supply to be provided by a well located on Lot 1 of the Red Lodge Fire Rescue Subdivision. A variance request has been submitted to address certain deviations from design standards as a result of this proposed mitigation.

The applicant submitted a Fire Prevention and Control Plan (FPCP) indicating recommendations and requirements relating to fire protection, which should be filed with the subdivision (Section V-A-21). The FPCP should be amended to discuss the hydrant.

Finding: This subdivision creates a potentially significant adverse impact on area fire protection due to the density and nature of the subdivision. This can be mitigated through the provision of a water supply (subject to variance approval) and the filing of a Fire Control and Prevention Plan. The Fire Department should review and approve of both the FPCP and the hydrant.



New Roads within Subdivision (Already Constructed)

Road names for the new internal subdivision roads are shown on the plat as Weaver Lane 1, Weaver Lane 2, and Weaver Lane 3. These will need to be approved by the County GIS Department and approved names shown on the final plat (Section V-A-10.a.xiii). A conversation with Tom Kohley, Carbon County GIS Coordinator, indicated the preferred option would be three unique road names; two running north and south and one for the east and west road.

Internal roads are proposed to be owned and maintained by a Lot Owners' Association through private covenants. Roads will be open and accessible to the public, but the County will not have any responsibility to maintain said roads. The following statement, to be modified as appropriate, should appear on the plat: "(I), (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots, parcels, blocks, roads and alleys, and other divisions and dedications, as shown by this plan hereunto included the following described tract of land (insert description). The above described tract of land is to be known and designated as _____, Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use."

Finding: Road names should be approved by the County GIS Department to ensure names are not duplicative and are easily located by emergency services. Roads should be dedicated to the public use but owned and maintained by a Property Owners Association. The standard road dedication language should be shown on the final plat.

Beartooth Electric Cooperative provides power in the area and reports the ability to serve the site through new easements from Willow Creek Road to the subdivision and along the internal subdivision roads. Northwestern Energy would be able to provide the subdivision with natural gas if an easement were extended from the south or east. Utility easements should be shown on the final plat per section V-A-15.a., and the standard utility language should be placed on the final plat, per section V-A-15.h. of the Subdivision Regulations: “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.”

Finding: There will be no significant adverse impacts on utility providers if utility easements are shown on the plat and the standard utility easement language is provided.

- Effect on the natural environment: New septic/drainfield systems will be utilized for each lot. Individual wells will serve each lot. Most wells will be located on the lot they serve, with the exception of Lot 2, which will use a well located on Lot 1, and Lot 4, which will utilize a well on Lot 6. Easements for off-site wells will need to be shown on the final plat. Review and approval of new septic, well, solid waste, and stormwater drainage is required by the Montana Department of Environmental Quality (DEQ) and the Carbon County Sanitarian, as appropriate. (See Sections III-B-11.c, V-A-11 through 14, and MCA 76-3-622). The acquisition of a new water right for the subdivision is not required unless the combined subdivision lots will use 10 acre-feet of water per year, or if a well will pump more than 35 gallons per minute.

There is a pond and intermittent drainage to the east of the subdivision on adjacent agricultural lands.

Finding: New water, wastewater, stormwater drainage, and solid waste disposal will not have an adverse impact on the natural environment if DEQ and County Sanitarian review and approval is required to be obtained prior to final plat.

Roads within the subdivision are proposed to be gravel-surfaced. Dust will be mitigated through the periodic application of water or magnesium chloride, according to the Environmental Assessment submitted as part of the subdivision application. As noted above under Effect of Local Services, roads will be maintained by a Lot Owners’ Association. Dust mitigation should be specifically addressed in the covenants per Section V-A-23.c.ix.

No paving was proposed as part of this subdivision, but may be required if determined to be necessary. The Subdivision Regulations, Section V-A-10.b.xvii, states that “Paving is recommended and may be required if it is deemed necessary in order to control erosion, dust, and preserve the natural environment.”

Finding: If provisions for dust control are included in the Property Owners’ Association covenants, adverse impacts on the natural environment from dust on the roads will be adequately mitigated.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated March 22, 2022. The report indicates there is spotted knapweed surrounding the project area, but no weeds were present within the project area. No weed bond was required by the Weed District.

Finding: There should be minimal impacts on the natural environment due to the proliferation of noxious weeds, since there were no weeds within the project area.



Drainage on East Side of the Subdivision

- Effect on wildlife: Wildlife does frequent the area. However, since the project is in close proximity to existing similar development, no significant adverse impacts on wildlife is anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife is anticipated due to the proximity of existing similar development.

- Effect on wildlife habitat: No critical wildlife habitat has been identified on the property. The site is not identified as sage grouse habitat by the Montana Sage Grouse Habitat Conservation Program.

Finding: There should be no significant impact on wildlife habitat since there is no identified critical wildlife habitat on the property.

- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area. See discussion and findings under Effect on Local Services.

Chief Tom Kuntz in a phone conversation indicated that a dense commercial subdivision, such as this proposal, creates a high fire hazard area, necessitating on-site water supply be provided. If the subdivision is approved without mitigating the increased fire hazard, it could impact area insurance rates due to the increased fire risk. The developer is proposing an off-site water supply to be provided by a well located on Lot 1 of the Red Lodge Fire Rescue Subdivision. A variance request has been submitted to address certain deviations from design standards as a result of this proposed mitigation. The hydrant is within the required ½ mile of any lot, but would provide approximately 500 gallons per minute instead of the required 1000.

The applicant submitted a Fire Prevention and Control Plan (FPCP) indicating recommendations and requirements relating to fire protection, which should be filed with the subdivision (Section V-A-21). The FPCP should be amended to discuss the hydrant.

See also the discussion and findings under Effect on Local Services.

Road names for the new internal subdivision roads are shown on the plat as Weaver Lane 1, Weaver Lane 2, and Weaver Lane 3. These will need to be approved by the County GIS Department and approved names shown on the final plat (Section V-A-10.a.xiii). See also discussion and finding under effects on local services.

DEQ and County Sanitarian approval of well and septic provisions is required. See discussion under effects on the natural environment.

The Traffic Analysis from A2Z Engineering, PLLC, submitted with the preliminary plat application recommends "consideration of placing a stop sign on the eastern existing approach to MT-78, and possibly on the access that Weaver Lane 2 makes out to Willow Creek Road. Doing this would make the approaches consistent with both the western approach and the other county road intersections in the area." The Subdivision

Regulations, Section V-A-10.b.xvi requires traffic control devices at all intersections. No other improvements were recommended. Traffic generated by the development is anticipated to mostly use the approaches to Highway 78, though the access to Willow Creek Road “provides a significant amenity, redundancy and safety to the users of the development. However this access point does not provide a “short cut” or other benefit to users of the development that would encourage a significant daily number of trips.”



East Approach to Highway 78

A professional engineer should certify that the subdivision roads have been constructed per the requirements in Table-1 of the Subdivision Regulations (Section V-A-10.c.iv). Roads appear to have largely been constructed already.

Finding: If stop signs are provided at the eastern approach to Highway 78 and at the new intersection with Willow Creek Road, and an engineer certifies that the roads have been constructed per the requirements in the Subdivision Regulations, it will mitigate to the extent possible any safety concerns with traffic and road design.



Looking North Across Subdivision from East Approach to Highway 78

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

- i. The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act (MSPA). The final plat should include a notation that each lot has legal and physical access (76-3-608(3)(d), MCA, and Section III-B-11.g.v of the Carbon County Subdivision Regulations).

Finding: Upon compliance with the recommended conditions of approval and adherence to the process outlined in statute, the subdivision will have complied with the MSPA.

- ii. Compliance with Survey Requirements: The final plat must be in compliance with the requirements of Title 76, Chapter 3, Part 4, MCA, as well as Uniform Standards for Final Subdivision Plats (24.183.1107, ARM). A requirement that, prior to filing, the plat be submitted to the County's Examining Land Surveyor (ELS), and that any comments of the ELS be addressed will ensure survey requirements are followed.

Finding: Upon review by the ELS and the addressing of any comments thereof, survey requirements will have been adhered to.

- iii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, will conform to the requirements of the adopted Subdivision Regulations, with the exception of the provision of an on-site water supply for fire protection.

The final plat must be substantially similar to the preliminary plat application, except as modified by conditions. If the final plat differs substantially from the preliminary plat, additional review may be required (Section III-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section III-B-12 states that a preliminary plat approval is in force for two years. If a final plat is not filed within that timeframe, an extension must be granted or a new application submitted. The County is under no obligation to grant such an extension.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, even if not specifically discussed in this memorandum.

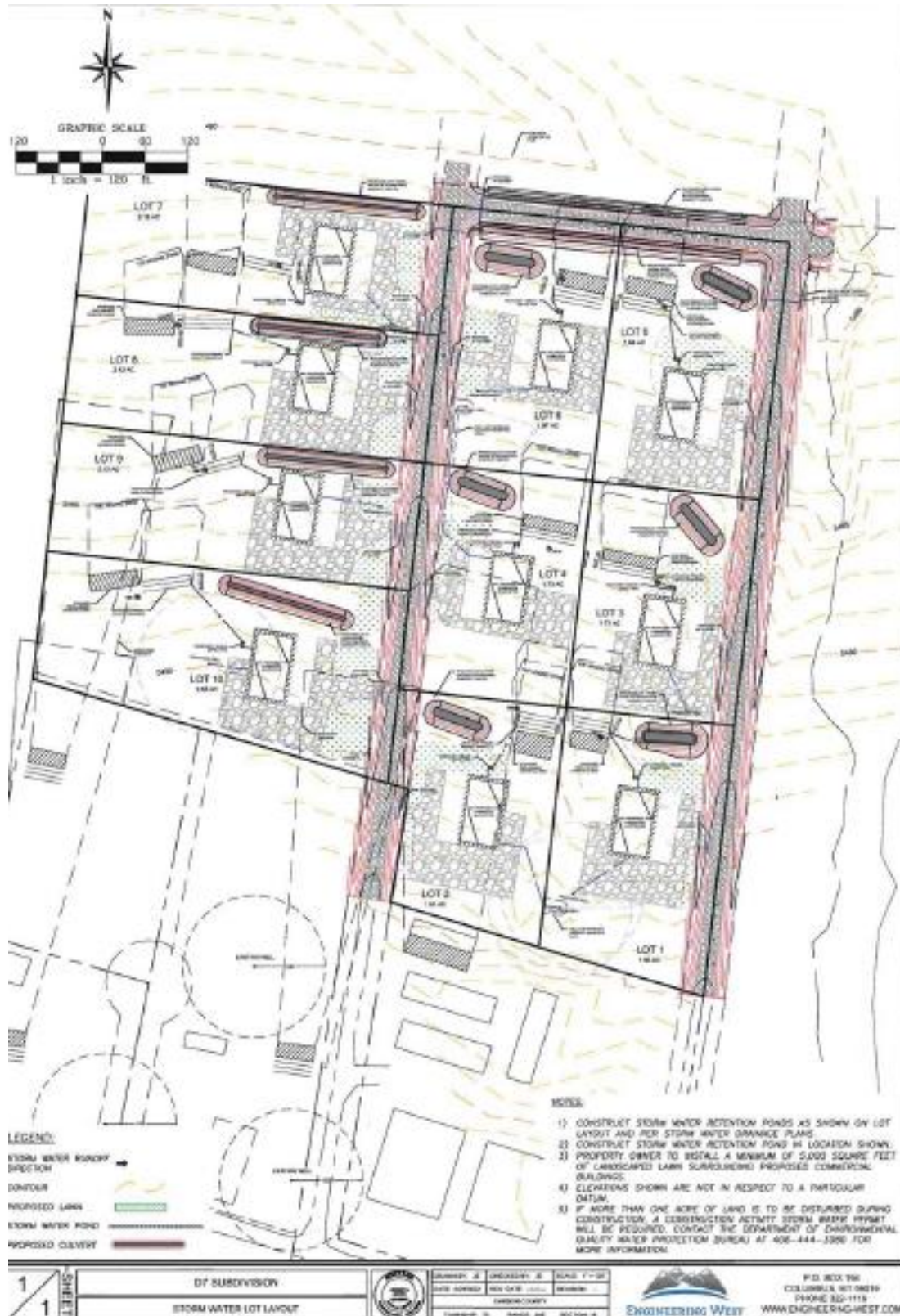
Finding: To ensure compliance with the Subdivision Regulations, conditions should be required to ensure the final plat is substantially similar to the preliminary plat and plans, that the final plat is filed within two years of preliminary plat approval, and that the final plat be submitted in conformance with the Subdivision Regulations.

A variance from design standards has been submitted to address the lack of compliance with on-site water supply requirements for fire-fighting purposes. The variance request has been submitted and reviewed as provided for in the Subdivision Regulations. If approved, there may be conditions specific to the granting of the variance. If the variance is denied, the subdivision would have to meet the strict requirements of the Regulations.

Finding: If a variance is obtained for a relaxation from design requirements relating to on-site water supply for fire protection and any conditions relating to the variance are met, the Subdivision will be in compliance with the Subdivision Regulations.

- iv. Applicable Zoning Regulations: The Carbon County Development Regulations require a Group 2 Development Permit or a Conditional Use Permit depending on the type of commercial/industrial development. A Development Permit is required to be obtained prior to development. The draft Declaration of Restrictions, Covenants, and Conditions provided with the subdivision application reference the current setback requirements of the Development Regulations, however, it may be more appropriate to reference the necessity of acquiring a Development Permit instead of referencing a current standard, in case the regulations are amended or greater setbacks are necessitated by building specifics. For example, commercial kennels and salvage yards require greater setbacks.

Finding: Compliance with zoning regulations would be ensured to the extent possible by requiring the covenants reference the County Development Regulations and state that there is a requirement to obtain a Development Permit prior to development.



Lot Layout/Drainage Plan

- v. Other regulations in effect in the area of the proposed subdivision: There are private covenants proposed for the subdivision (Declaration of Restrictions, Covenants and Conditions). The County does not typically enforce private covenants but may require that certain standards are met (Section V-A-23). No other known regulations are in effect to which the subdivision would be subject.

Finding: Private covenants should be filed with the final plat and prepared to the standards required in the Subdivision Regulations.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: DEQ approval is required prior to final plat, as all lots are under 20 acres. (Sections III-B-11.C.ii and V-A-11, 12,13, and 14 of the Carbon County Subdivision Regulations).

Finding: DEQ review and approval of the subdivision should be a condition of final plat approval.

- vii. 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: No proposed lots are over 20 acres.

Finding: There are no lots over 20 acres in the proposed subdivision.

d. Compliance with Growth Policy:

State law, 76-1-605, MCA, requires that after the adoption of a growth policy, the governing body must be “guided by and give consideration to the general policy and pattern of development set out in the growth policy” in the “authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities; authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and adoption of zoning ordinances or resolutions.” However, statute also states that “A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy [...]” It is, though, beneficial to examine the proposed subdivision in consideration of the adopted growth policy.

Carbon County adopted the 2020 Growth Policy in March of 2020. Chapter 6 contains goals and objectives for the implementation of the Growth Policy. The following goals and objectives may be relevant to the proposed subdivision:

- Objective 1.4: Encourage development in areas that are not in agricultural production
 - 1.4.A. As authorized by the state legislature in 2003, in 76-3-509 MCA, formulate and adopt regulations to encourage cluster development for those developments that meet the definitions.
- Objective 1.7: Direct growth to existing communities, incorporated towns and cities, or platted unincorporated places.
 - 1.7.A. Explore the potential for future land use mapping in areas immediately adjacent to existing communities
 - 1.7.B. Discourage development within the wildland-urban interface.
- Objective 4.1: Direct development to existing communities.
 - 4.1.A. Coordinate the review of subdivision and development permit applications within one mile of incorporated community boundaries, or in any cases where municipal services are being requested.

e. Variance Request:

The variance request is to allow an alternative form of fire risk mitigation. Section V-A-21 of the Subdivision Regulations requires high fire risk subdivisions to provide an on-site water supply with a connection to municipal water supply or by constructing a 30,000 year-round water source capable of flowing 1000 gallons per minute not located more than ½ mile from any structure. The variance request proposes to utilize an existing off-site well, located on Lot 1 of the Red Lodge Fire Rescue Foundation Subdivision, which would be attached to a hydrant and capable of flowing 500 gpm. The hydrant would have approved fittings and is within ½ mile of proposed structures in the subdivision.

Reasonable variances may be granted from the design and improvement standards of the Subdivision Regulations where it is found that strict compliance with the specific standard would result in undue hardship and strict compliance is not essential to the public health, safety, and welfare. Pursuant to Section VIII-B.c., a variance shall be based upon specific variance criteria, and may not have the effect of nullifying the purpose of these Regulations. Variances may not be approved without findings based upon the evidence presented in each specific case that:

- i. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. The requirement for providing an on-site water supply is directly related to findings that the proximity to a water supply reduces fire risk (as well as insurance rates). In this case, the proximity to an existing 500 gpm well owned by the developer may provide similar protection for the area. The applicant has indicated that in a conversation with the Fire Chief, the Chief was not opposed to the proposal.
- 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. The existing well may create an efficiency with water

supply in the area. If the existing well can adequately provide fire protection it may create an undue hardship to require an additional water supply within the subdivision.

The subdivider did have the well drilled, creating the potential for a self-imposed hardship. However, the well was drilled in 1997 so it is unlikely the well was drilled in its current location to circumvent the regulatory requirements for a subdivision proposed 25 years later and after several amendments to the Subdivision Regulations.

There may be some cost savings to utilizing the existing off-site well instead of a new dry hydrant or water line extension into the subdivision, but the financial implications should not be considered a hardship.

- iii. The variance will not cause a substantial increase in public costs. If this variance is granted it should not substantially increase any public costs. The developer will be responsible for installation of the hydrant.
- iv. The variance will not place the subdivision in nonconformance with any adopted zoning regulations. Carbon County has no zoning regulations with which this variance would not conform if granted.

Finding: The granting of the variance request is compliant with the Subdivision Regulations as long as conditions are imposed requiring the installation of the hydrant prior to final plat, and that evidence is provided that the Fire Department has tested and approved of the functionality of the hydrant.

f. Summary of Public Comment and Board Discussion:

The Planning Board held a public hearing on the proposed subdivision on November 17, 2022. Prior to the hearing written comments were received from Connie Baehr and Theodore Munsch; the Beartooth Recreational Trails Association (BRTA); Don Carrol; the City of Red Lodge Planning Director, Courtney Long; Jeff DiBenedetto, Barbara Pitman, and Angie Hazelswart; Andrew Evans; Scott and Julie Hancock; Bob and Mary Johnson; Maggie Karas; Lemuel “Chip” Miller and Peggy Miller; Mark Moak; Brent Nearpass; Marjorie Nearpass; Aimee Romeijn; Michael Schwab and Kathryn Kleinman; Nick Staynor, Kate McDevitt, Dell Staynor, and Pete Staynor; Corey Thompson; Bill Tucker; and Theresa Whistler. Chris and Kathy Benton and Theresa Whistler submitted additional written comments at the hearing. All written comment was made available to the Board members present.

There were comments received after the public hearing as well. Mark Allen submitted written comments received after the public hearing, which was not made available or discussed at the public hearing. Similarly, Kay Williams submitted comments postmarked November 16, but not received until November 28, which were not available or discussed at the hearing.

Individual written comments differed in some respects, but primarily focused on lighting and requested an additional condition or conditions requiring subdivision lighting be required to be

compliant with International Dark-Sky Association (IDA) recommendations, shielded, downward facing, only in use when needed, etc. There were also several comments expressing concerns about the possibility of noise and requesting hours of operation be established.

During the public comment portion of the public hearing, Ed Draper stated that the proposed well probably has better capacity than the City's hydrants. Lee St. Clair noted that lighting is important, as there have been several break-ins at the storage unity facility. Bev Draper stated the proposed covenants say there will be no residential use and no dogs on the site.

Theresa Whistler noted that the local Dark Skies Organization has worked on a revision of the Red Lodge ordinances regarding lighting within the past year and noted a desire to be designated as a Dark Skies Community. She also noted her group is working on building an observatory. She would like a lighting plan for the proposed subdivision that is IDA compliant.

Maggie Karas indicated a desire for shielded lighting that is downward facing. She also asked about limiting the height of light poles and the possibility of restricting noise. Ms. Karas did note that development is needed in the area.

Kay Williams indicated she agrees with the comments regarding dark skies, as did Scott Hancock who asked that the cumulative impacts of lights in subdivisions be considered.

There was no quorum of the Planning Board present, but members did discuss the subdivision and public comments. Betsy noted that lighting and hours of operation can be evaluated through the Development Permit process.

Mr. St. Clair noted that most businesses would operate during normal business hours. Mrs. Draper pointed out that the proposed covenants, Section XVII.B. addresses 'Lights, Sounds and/or Odors', and noted that business in the area will likely be plumbers, contractors, and similar professions. Mr. Draper that the Owners' Association has enforcement mechanisms that may have more teeth than a County subdivision condition regarding the contents of private covenants. Mr. Draper also noted that good lighting keeps people out that shouldn't be there.

Clint asked about the origin of irrigation wastewater on the property and was told it comes from other Draper properties. He also asked about well design and whether or not a cistern will be utilized. Staff indicated the final design will need to meet the 500 gallon per minute standard, and a cistern might be necessary to meet that criteria, but otherwise was not required. Clint indicated he is generally skeptical of covenants due to possible impacts on agriculture.

Skip indicated that this type of subdivision is needed, and noted that shielded lighting works really well.

g. Planning Staff Recommendation:

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional

information demonstrates that development of the proposed subdivision is in compliance with the Montana Subdivision and Platting Act and the adopted Subdivision Regulations.

In consideration of the findings included in this Memorandum, Planning Staff recommends approval of the 7D Subdivision and variance from fire protection design standards, 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 and Carbon County Sanitarian, as appropriate, for water, wastewater, solid waste, and stormwater drainage provisions. (Sections III-B-11.C.ii and V-A-11, 12,13, and 14; Effect on the Natural Environment; Effect on Public Health and Safety)
2. The Fire Prevention and Control Plan shall be filed with the subdivision. This Plan should reference the hydrant, it's location, and design criteria. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
3. A water supply shall be provided that meets the requirements of Section V-A-21, with the exception that the flow rate shall be a minimum of 500 gpm instead of 1000 gpm. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety; Variance Request)
4. Evidence shall be provided that the local Fire Department has reviewed the Fire Prevention and Control Plan, tested the hydrant, and approved of each. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety; Variance Request)
5. Road names shall be approved by the Carbon County GIS Department. Approved names shall be shown on the final plat. (Section V-A-10.a.xiii; Effect on Local Services)
6. Private covenants shall provide for road maintenance and the following dedication language shall appear on the final plat: “(I, (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots , parcels, blocks, roads and alleys, and other divisions and dedications , as shown by this plan hereunto included the following described tract of land (insert description) . The above described tract of land is to be known and designated as _____, Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.” (Section V.A-10.a.vi.; Effect on Local Services)
7. Private covenants shall provide for dust mitigation through application of water and/or magnesium chloride. (Section V.A-23.c.ix.; Effect on the Natural Environment)
8. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
9. The final plat 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.” (Section V-A-15.h; Effect on Local Services)

10. Stop signs shall be installed at the eastern approach to Highway 78 and at the new intersection with Willow Creek Road. (Section V-A-10-b.xvi; Effect on Public Health and Safety)
11. Prior to final plat, the roads shown on the preliminary plat shall be constructed to the standards required in the Subdivision Regulations and the construction shall be certified by a registered professional engineer. (Section V-A-10.c. and Table 1; Effect on Public Health and Safety)
12. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section III-B-11.g.v; Compliance with the Montana Subdivision and Platting Act)
13. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section III-C-3.b.vi; Compliance with Survey Requirements)
14. The Declaration of Restrictions, Covenants, and Conditions for 7D Subdivision shall include language referencing the Carbon County Development Regulations and that a Development Permit must be obtained prior to development. (Section III-C-2; Compliance with Applicable Zoning Regulations)
15. The Declaration of Restrictions, Covenants, and Conditions for 7D Subdivision shall be filed with the final plat and meet the standards of Section V-A-23. (Other regulations in effect in the area of the proposed subdivision)
16. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section III-C-5.b; Compliance with the Subdivision Regulations)
17. The final plat shall be submitted within two years of the date of preliminary plat approval, or an extension(s) to the approval period obtained. (Section III-B-12; Compliance with the Subdivision Regulations)
18. The final plat shall be prepared and reviewed in accordance with Section III-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

CARBON COUNTY
Planning Office
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PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: December 5, 2022
RE: Albin Subdivision Preliminary Plat Application–Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and recommendation to approve, conditionally approve, or deny the proposed preliminary plat.

RECOMMENDATION: **Approval with Conditions**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments and all of the information presented, I hereby move to recommend approval of the Albin Subdivision with the findings and conditions included in the project memorandum.*

Project/Application Summary:

Red Lodge Surveying, on behalf of Cory Albin, has submitted a preliminary plat application for a four-lot minor subdivision, with lots designed for residential use. Engineering West is providing engineering services for the proposed subdivision. The subdivision area is approximately 82.679 acres; proposed new lots will range from 20.05 acres to 21.45 acres in size. The property was previously divided using an agricultural covenant (Certificate of Survey 1761 AG), which restricted the property to agricultural-use only. This subdivision would lift the agricultural covenant on the property and allow for residential use.

The subject property is located on Zumbrun Road southwest of the intersection of Zumbrun Road and Hyvonen Road, approximately five miles north of Red Lodge. The property is legally described as Tact 2, COS 1761 AG, Section 34, Township 6 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 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.



- LEGEND**
- SET HOLE NEARBY WITH 1" DIA YELLOW PLASTIC CAP
 - 1/4" DIA YELLOW PLASTIC CAP
 - FOUND YELLOW PLASTIC CAP
 - FOUND UNIDENTIFIED ALUMINUM CAP
 - FOUND REBAR
 - NO MOVEMENT SET OR FOUND
 - HOLE
 - TEST PIPE
 - POWER POLE
 - OVERHEAD POWER LINE
 - SEWER
 - BARRIERS FENCE
 - ELECTRIC FENCE
 - TREE LINE
 - GRAVEL
 - SECTION AND QUARTER CORNER

PLAT NO. PRELIMINARY

PRELIMINARY PLAT OF ALBIN SUBDIVISION

A FIRST MINOR SUBDIVISION LYING IN TRACT 2 OF CERTIFICATE OF SURVEY NO. 1761 AG LYING IN TRACT W1/2NW1/4 OF SECTION 34, T.6S, R.20R, P.M.M., CUSTER COUNTY, MONTANA

PREPARED BY RED LOGGE SURVEYING LLC
 PO BOX 881 AND S DRAST AVE
 RED LOGGE, MT 59066

DRAWN: JULY 2022
 LANDOWNER: CORY ALBIN

STATEMENT OF PREPARATION AND LEGAL RESPONSIBILITY

We, the undersigned landowners, do hereby certify that we have caused to be surveyed, established and plotted on this plat the plat herein included, the particular boundary thereof as defined as follows:

The plat of the NW1/4 of Section 34, T.6S, R.20E, P.M.M., Custer County, Montana, shown as Tract 2 of Certificate of Survey No. 1761 AG, as filed in the office of the Clerk and Recorder of Custer County under Certificate No. 279465, containing 62.68 acres more or less and according to the attached plat, subject to easements and other rights of record, apparent on the ground, within relevant part of the map.

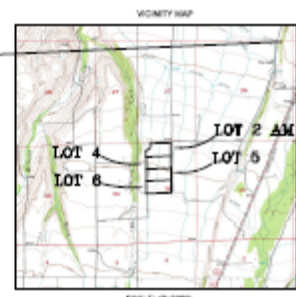
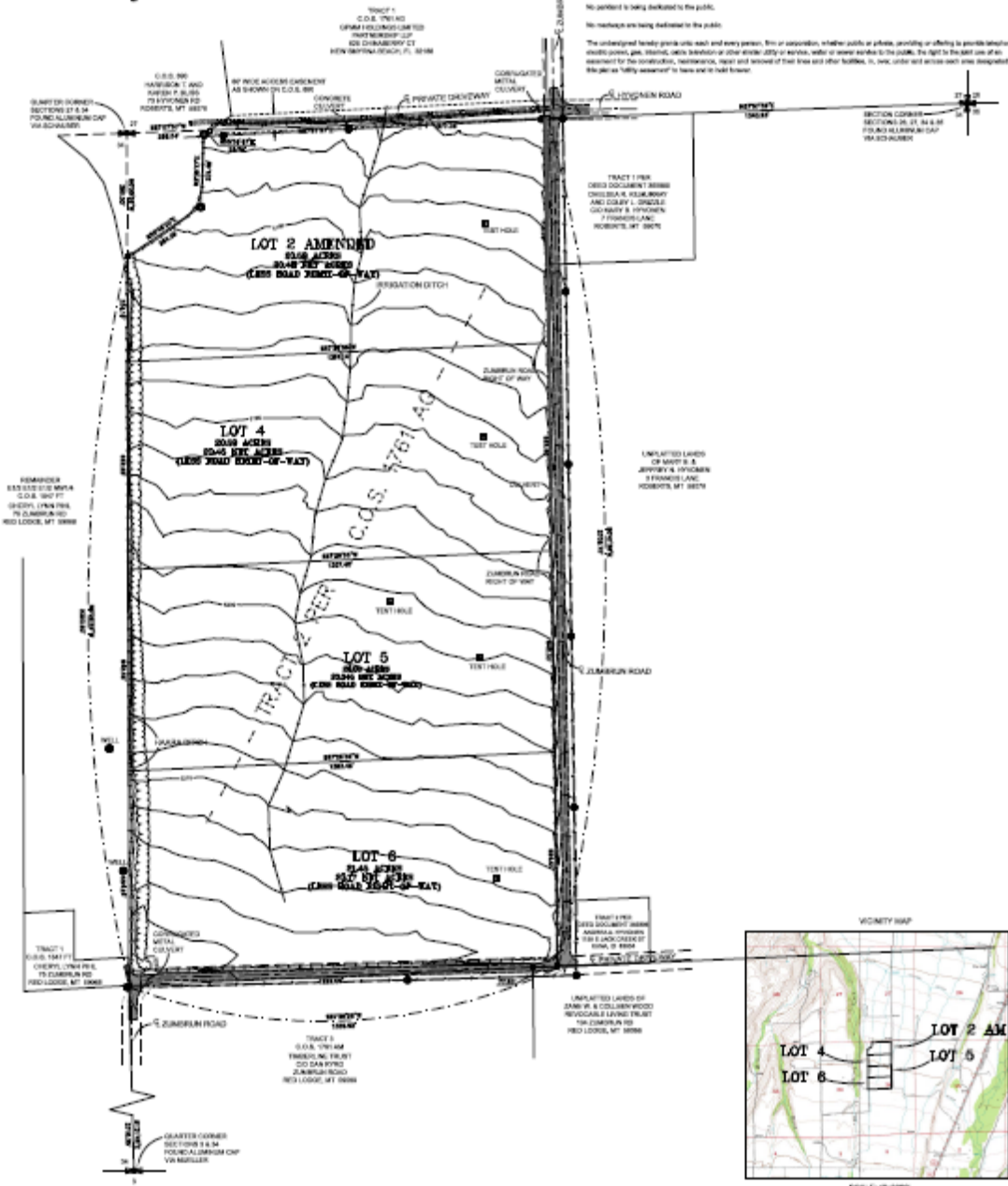
Legal and physical access is provided as set per 78-3-402(3)(1) MCA.

The above described tract of land to be known and designated as "ALBIN SUBDIVISION" and the lands included in all easements are hereby granted and dedicated to the use of the public forever. I have specifically listed herein the lands included in all easements shown hereon and to the public use and convenience for public use, but the County accepts no responsibility for maintaining the same. The owner agrees that the County has no obligation to maintain the lands included in all easements shown hereby dedicated to public use.

No portion is being dedicated to the public.

No easements are being dedicated to the public.

The undersigned hereby grants unto each and every person, firm or association, whether public or private, permitting or affecting its possible location, location, use, sale, transfer, lease, location or other disposal, utility or service, water or sewer service to the public, the right to the said use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each one designated on this plat as being necessary to have such use hereon.





Proposed Subdivision Location (Blue) and Vicinity

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

Each lot will utilize well and drainfield systems. Wells will be located on each lot; a common drainfield area will be provided on Lot 1 due to high groundwater in the area. County Sanitarian review and approval is required.

Access is provided by Zumbrun Road, a County-owned and maintained road providing access to Willow Creek Road to the west and Hyvonen Road to the east.

b. Summary of Probable Impacts

Except where exempt by state law, all subdivisions must be reviewed for the specific, documentable, and clearly defined 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 (approximately 82.679 acres) is currently in agricultural production. This use would likely cease as a result of this subdivision, though the lots are large enough to potentially allow for some small-scale agriculture practices.

The site is classified by USDA as prime farmland if irrigated.

The area in which the subdivision is located is primarily agricultural with farmsteads and large-lot residential uses.

Finding: Because the subdivision is adjacent to similar uses and given the small scale of the subdivision, there should be minimal adverse impacts on agriculture as a result of this subdivision.

- Effect on agricultural water user facilities: The Haara Ditch runs along the west side of the subdivision and should be provided an easement on the final plat. There appear to be irrigation laterals on the property as well. If any of these laterals convey water to other properties, easements will need to be provided for these as well. The following language should also appear on the final plat: “Nothing herein nor any covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent or to beyond the subdivision in quantities and in a manner that are consistent with historic and legal rights.” (Section V-A-18 of the Carbon County Subdivision Regulations)

The subdivider holds four water rights on the property. Because the proposed lots are greater than five acres the subdivider is not required to submit a plan to consolidate, transfer or sever these rights. (Section V-A-19)

Finding: Adverse impacts on agricultural water user facilities should be adequately mitigated in easements are provided for the Haara Ditch and any other ditch that conveys water to other properties, and if the required irrigation ditch language appears on the final plat.

- Effect on local services: The Carbon County Sherriff’s office will provide law enforcement services to the subdivision. According to documents provided in the subdivision application, Sheriff Josh McQuillan reports that adequate law enforcement can be provided to the subdivision with existing personnel and equipment. A response time would be 15-20 minutes in most circumstances.

Finding: This subdivision will have minimal adverse impacts on law enforcement, since services can be provided using existing personnel and equipment.

The Red Lodge Fire District provides fire protection in the area. The applicant submitted a Fire Control and Prevention Plan (FCPP) indicating recommendations and requirements relating to fire protection, which should be filed with the subdivision (Section V-A-21). The application included email correspondence with Deputy Chief Tim Ryan indicating approval of the FCPP.

Finding: Adverse impacts on area fire protection can be mitigated through the filing of a Fire Control and Prevention Plan.

Zumbrun Road is a gravel-surfaced County road, approximately 24-feet in width. Assuming eight trips per residence, the subdivision could generate 32 additional vehicle trips per day at full build out. The applicant included a copy of an approach permit application for the subdivision and an email from Commissioner Bullock indicating he had no concerns. There are currently no provisions for dust mitigation on Zumbrun Road.

Finding: There should be minimal impacts on the County road system due to the small scale of the subdivision and generally satisfactory condition of Zumbrun Road. Without dust control, complaints about dust could increase as a result of the subdivision.

Beartooth Electric Cooperative provides power in the area and reports the ability to serve the site via existing overhead power lines. Utility easements should be shown on the final plat per section V-A-15.a., and the standard utility language should be placed on the final plat, per section V-A-15.h. of the Subdivision Regulations: “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.”

Finding: There will be no significant adverse impacts on utility providers if utility easements are shown on the plat and the standard utility easement language is provided.

- Effect on the natural environment: A shared elevated sand mound drainfield system will be provided on Lot 1 for waste water disposal. This option was apparently chosen due to high groundwater in the subdivision. Groundwater monitoring data submitted as part of the subdivision application indicates water was encountered within four feet of the surface on Lots 2-4. The high water mark on Lot 1 was 4.34 feet on July 15. The Montana Department of Environmental Quality (DEQ) rules do not allow septic systems to be installed if there is less than four feet separation to groundwater. Sanitary sewer easements will be provided to access the multi-use drainfield and a Declaration of Multi-User Drainfield System has been prepared, as required by DEQ.

Individual wells are proposed for each lot. No additional subsurface water rights are required for this subdivision.

Review and approval of new water and wastewater systems are required by the Carbon County Sanitarian. (See Sections IV-B-8 and MCA 76-3-622).

Finding: New water and wastewater will not have an adverse impact on the natural environment if County Sanitarian review and approval is required to be obtained prior to final plat.

Zumbrun road is a gravel-surfaced County road. There are currently no provisions for dust mitigation on the road. Increased traffic could result in an increase in dust-related

complaints, though due to the small scale of the subdivision additional mitigation may not be justified.

Finding: Dust may increase somewhat on Zumbrun road due to the increase in traffic, but not likely to the extent to justify off-site dust mitigation.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated July 11, 2022. The report indicates there were no weeds visible at the time and that the property was heavily grazed. No weed bond was required by the Weed District.

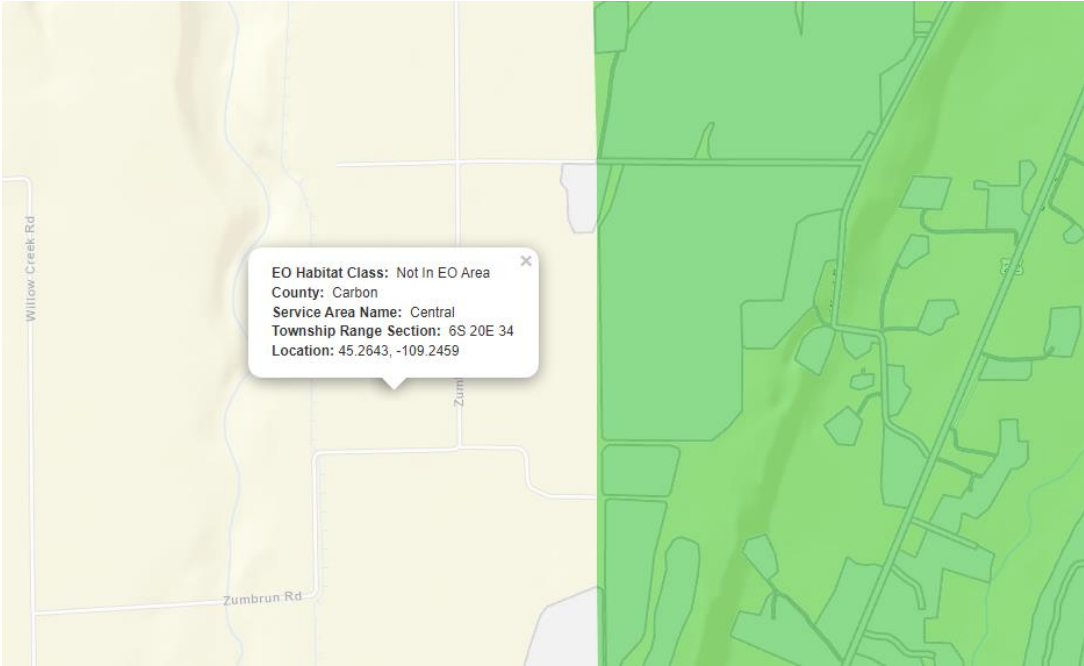
Finding: There should be minimal impacts on the natural environment due to the proliferation of noxious weeds, since there were no weeds within the project area.

- Effect on wildlife: Wildlife does frequent the area. However, since the project is in close proximity to existing similar development, no significant adverse impacts on wildlife is anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife is anticipated due to the proximity of existing similar development.

- Effect on wildlife habitat: No critical wildlife habitat has been identified on the property. The site is not identified as sage grouse habitat by the Montana Sage Grouse Habitat Conservation Program.

Finding: There should be no significant impact on wildlife habitat since there is no identified critical wildlife habitat on the property.



Sage Grouse General Habitat (Green) and Subdivision Vicinity

- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area. See discussion and findings under Effect on Local Services.

The Red Lodge Fire District provides fire protection in the area. Deputy Chief Tim Ryan has indicated approval of the Fire Control and Prevention Plan. See also the discussion and findings under Effect on Local Services.

County Sanitarian approval of well and septic provisions is required. See discussion under effects on the natural environment.

Finding: There should be no significant adverse impacts on public health and safety as long as conditions relating to the Fire Control and Prevention Plan and Sanitarian review of water and wastewater provisions are enforced.

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

- i. The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act (MSPA). The final plat should include a notation that each lot has legal and physical access (76-3-608(3)(d), MCA, and Section IV-B-10.f.v of the Carbon County Subdivision Regulations).

The property was originally divided using an agricultural covenant pursuant to 76-2-207(1)(c), MCA, and IX-K of the Subdivision Regulations. A change in use to anything other than agricultural subjects the property to subdivision review (76-3-211, MCA). A revocation of the agricultural covenant signed by the landowner and Carbon County Commissioners should be filed with the subdivision.

Finding: Upon compliance with the recommended conditions of approval and adherence to the process outlined in statute, the subdivision will have complied with the MSPA. A document revoking the agricultural covenant should be filed with the subdivision.

- ii. Compliance with Survey Requirements: The final plat must be in compliance with the requirements of Title 76, Chapter 3, Part 4, MCA, as well as Uniform Standards for Final Subdivision Plats (24.183.1107, ARM). A requirement that, prior to filing, the plat be submitted to the County's Examining Land Surveyor (ELS), and that any comments of the ELS be addressed will ensure survey requirements are followed.

Finding: Upon review by the ELS and the addressing of any comments thereof, survey requirements will have been adhered to.

- iii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, will conform to the requirements of the adopted Subdivision Regulations.

The final plat must be substantially similar to the preliminary plat application, except as modified by conditions. If the final plat differs substantially from the preliminary plat, additional review may be required (Section IV-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section IV-B-11 states that a preliminary plat approval is in force for two years. If a final plat is not filed within that timeframe, an extension must be granted or a new application submitted. The County is under no obligation to grant such an extension.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, even if not specifically discussed in this memorandum.

Finding: To ensure compliance with the Subdivision Regulations, conditions should be required to ensure the final plat is substantially similar to the preliminary plat and plans, that the final plat is filed within two years of preliminary plat approval, and that the final plat be submitted in conformance with the Subdivision Regulations.

- iv. Applicable Zoning Regulations: The Carbon County Development Regulations require a Group 1 Development Permit prior to development. The draft Declaration of Covenants, Conditions, and Restrictions indicates use and building restrictions that meet or exceed the requirements in the Development Regulations.

Finding: While not specifically referenced, the subdivision and the Declaration of Covenants, Conditions, and Restrictions do not appear to be in conflict with the County Development Regulations.

- v. Other regulations in effect in the area of the proposed subdivision: There are private covenants proposed for the subdivision (Declaration of Covenants, Conditions, and Restrictions). The County does not typically enforce private covenants but may require that certain standards are met (Section V-A-23). No other known regulations are in effect to which the subdivision would be subject.

Finding: The proposed private covenants should be finalized and filed with the final plat. The covenants should be prepared to the standards required in the Subdivision Regulations.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: All lots are 20 acres or more, so DEQ approval is not required.

Finding: DEQ review and approval of the subdivision is not required, as the proposed lots are greater than 20 acres.

- vii. 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: The proposed lots are over 20 acres, so approval of the water and wastewater provisions by the Carbon County Sanitarian is required. (Section IV-B-8.b.ii of the Carbon County Subdivision Regulations)

Finding: Approval by the County Sanitarian will ensure water and wastewater provisions are adequate.

d. Compliance with Growth Policy:

State law, 76-1-605, MCA, requires that after the adoption of a growth policy, the governing body must be “guided by and give consideration to the general policy and pattern of development set out in the growth policy” in the “authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities; authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and adoption of zoning ordinances or resolutions.” However, statute also states that “A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy [...]” It is, though, beneficial to examine the proposed subdivision in consideration of the adopted growth policy.

Carbon County adopted the 2020 Growth Policy in March of 2020. Chapter 6 contains goals and objectives for the implementation of the Growth Policy. The following goals and objectives may be relevant to the proposed subdivision:

- Objective 1.2: Increase understanding of present land use change trends and consequences. Develop factual information upon which to base regulations that will guide growth in a manner consistent with residents’ vision for the future.
 - 1.2.B. Track the number of acres of agricultural land converted to different uses. Report this number to the citizens of the county annually.
 - 1.2.C. Cooperate with other agencies to track the effects on agricultural lands, tourism, and wildlife associated with new development including, infrastructure, property value, water, air, and soil impacts
- Objective 1.4: Encourage development in areas that are not in agricultural production
 - 1.4.A. As authorized by the state legislature in 2003, in 76-3-509 MCA, formulate and adopt regulations to encourage cluster development for those developments that meet the definitions.
- Objective 1.7: Direct growth to existing communities, incorporated towns and cities, or platted unincorporated places.
 - 1.7.A. Explore the potential for future land use mapping in areas immediately adjacent to existing communities

e. Planning Staff Recommendation:

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision is in compliance with the Montana Subdivision and Platting Act and the adopted Subdivision Regulations.

In consideration of the findings included in this Memorandum, Planning Staff recommends approval of Albin Subdivision 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 Carbon County Sanitarian for water and wastewater provisions. (Section IV-B-8.b.ii; Effect on the Natural Environment; Effect on Public Health and Safety)
2. An easement shall be provided for the Haara Ditch, and any other ditches that convey water across the property, of sufficient size to allow for the use, maintenance, and inspection of the ditch. (Section V-A-18; Effect on Agricultural Water Users Facilities)
3. The following statement shall appear on the final plat: Nothing herein nor any covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent or to beyond the subdivision in quantities and in a manner that are consistent with historic and legal rights.” (Section V-A-18; Effect on Agricultural Water User Facilities)
4. The Fire Prevention and Control Plan shall be filed with the subdivision. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
5. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
6. The final plat 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.” (Section V-A-15.h; Effect on Local Services)
7. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section IV-B-10.f.v; Compliance with the Montana Subdivision and Platting Act)
8. A document revoking the agricultural covenant signed by the landowner and the County Commissioners shall be filed with the final plat. (Section IX-K; Compliance with the Montana Subdivision and Platting Act)
9. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section IV-C-3.b.vi; Compliance with Survey Requirements)
10. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section IV-C-5.b; Compliance with the Subdivision Regulations)
11. The final plat shall be submitted within two years of the date of preliminary plat approval, or an extension(s) to the approval period obtained. (Section IV-B-11; Compliance with the Subdivision Regulations)
12. The final plat shall be prepared and reviewed in accordance with Section IV-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

13. The Declaration of Covenants, Conditions, and Restrictions shall be filed with the final plat and meet the standards of Section V-A-23. (Other regulations in effect in the area of the proposed subdivision)

CARBON COUNTY
Planning Office
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VARIANCE REQUEST – STAFF REPORT

Date: December 2, 2022

To: Carbon County Planning Board/Board of Adjustment Members

From: Forrest J. Mandeville, AICP – Contract Planner

RE: Martin - Elevated Variance Request from Signage Requirements

Recommendation: Approval

Recommended Motion: *Having reviewed and considered the variance request, staff report, public comment, and all of the information presented, I hereby move to recommend approval of the variance request for a relaxation of signage requirements for Elevated.*

Project/Application Summary:

Matt Martin of Granite Peak Holdings, Inc., d/b/a Elevated, has submitted a variance request for relaxation of signage requirements of Resolution 2022-07, a Resolution to Enact Interim Zoning Regulations of the Sale and Production of Marijuana and Marijuana Business by Revising Section VII-A Group 2 Uses of the carbon County Development Regulations. The site of the proposed development is in Roberts, on the southwest corner of 1st Street and Cedar Street. The legal description is Lot 10 Block 1 of John Carrigan’s Addition to Roberts, and Tract 8 Block 2 of COS 1427 Amended, Section 32, T 5S, R 21E, Carbon County, MT.

The requested variance will allow an existing sign to continue in place. The sign is 18-feet in height and is located within 1500 feet of other signs. Section VII-A.4.c.iii. of Resolution 2022-07 contains several regulations specific to signage for marijuana businesses, including requirements that the maximum height of any sign not exceed 15 feet above the mean centerline elevation of the roadway and that any sign be separated by at least 1,500 feet from any other sign. Section VII-A.4.c.vi.4. states that “Nonconforming signs will have 30 days after the effective date to come into compliance.” The Resolution was adopted on March 3, 2022. All other requirements relating to signage appear to be in compliance.

The Cannabis Control Division of the Montana Department of Revenue requires licensees provide a statement from the County indicating any signage is compliant with existing zoning. Without an approved variance or reconstruction of the signage in question, the signage at Elevated is not currently in compliance.

The Carbon County Development Regulations allow an applicant to request a variance to allow for deviation from the literal interpretation of the requirements of the regulations. Variances may be granted if the request is determined to be not contrary to the public interest, and where, owing to special conditions, literal enforcement based on these regulations results in an unnecessary hardship, excluding financial hardships.



Subject Property (Blue) and Vicinity

Required Board Action:

Under the Development Regulations, the Planning Board, in its role as the Board of Adjustment, is tasked with holding a public hearing, evaluating the staff report, considering the requirements necessary to grant a variance, and recommending approval, approval with conditions, or denial of the variance request to the County Commissioners. The Board may recommend conditions related to the variance request. Any recommendation must be based on findings.

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

Pursuant to Section V-C.3.c, the Board of Adjustment shall not recommend that a variance be granted unless:

1. Special conditions: There are special circumstances or conditions that are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in County.

The existing sign was constructed prior to the adoption of Resolution 2022-07 and is located in the community of Roberts. The existing building on site fronts 1st Street, while the rear of property borders Highway 212. The sign location may help direct traffic from 212 to the building entrance. These circumstances are fairly unique in the County and are not generally applicable.

2. Not a result of the applicant: The special circumstances or conditions have not resulted from an act of the applicant or been established to circumvent these Regulations.

The applicant had the sign installed in December 2020, approximately 15 months prior to the adoption of Resolution 2022-07. The adoption of the Resolution was not an act of the applicant, and the construction of the sign was far enough prior to the adoption of the resolution that it was not likely done specifically to circumvent the Resolution.

3. Strict application unreasonable: Due to the special circumstances or conditions, the strict application of these Regulations would deprive the applicant of reasonable use of the land or building or create an undue hardship on the landowner.

Applying the 1,500 foot setback from other signs requirement strictly would likely disallow any marijuana business sign along Highway 212 in Roberts due to the amount of other business signage in the community. This could deprive the applicant of the ability to provide any external advertising for a business that has been operating for several years.

Strictly applying the 15-foot height limit for the existing sign would require the sign be reconstructed in order to be used. A variance would also be necessary to rent the sign out to another entity, since off-premise signs are regulated similarly to on-premise marijuana business signs, including the 1,500-foot setback and 15-foot height limit (Section VII-A.2.c.). Applying the Regulations strictly would likely make the existing sign completely unusable.



Looking North; Subject Property on Right



Looking East; Subject Property on Right



Looking South; Subject Property on Left

4. Necessary to provide reasonable use: Granting the variance is necessary to provide a reasonable use of the land or the building.

The property can be utilized without the granting of the variance, but the reasonability for use as a marijuana business, which is existing, is debatable as essentially no outside signage would be allowed.

5. Minimum variance: the variance is the minimum variance necessary to allow a reasonable use of the land or building.

Granting the requested variance is the minimum necessary, as it would allow existing signage to continue in the current state.

6. Not injurious: Granting the variance will not be injurious to the neighborhood or detrimental to the public welfare.

Granting of the variance should not be injurious to the neighborhood as the use and signage on the property have been in place for several years without known complaints.

7. Consistent with regulations: Granting the variance is consistent with the purposes and intent of these Regulations.

The purpose of requirements relating to sign height and density is typically to prevent crowding and/or to maintain views. The granting of this variance will not impede views or result in crowding of other properties.

Planning Staff Recommendation:

Planning Staff recommends approval of the Elevated variance request, pursuant to the following conditions (Section references are to the Carbon County Development Regulations):

1. The variance approval shall be interpreted as the minimum needed – i.e. to allow 18-foot tall sign within 1,500 feet of other signs. Any other deviation will be in violation of the Development Regulations.
2. If approved activity on site is inactive for six months this permit is deemed abandoned and a new permit must be obtained prior to activity resuming. (Section VII-A.4.c.vi.3.)
3. Any intensification of use shall be made known to the Carbon County Planning Department to determine whether an amended permit is required. (Section IV-A.2)
4. All other necessary permits must be obtained. (Section V-A.4.d.vii)

Matt Martin

November 15, 2022

Granite Peak Holdings d.b.a. Elevated
Owner
m.martin@elevatedmt.com
Billings, MT

To whom it may concern,

I am respectfully requesting a variance to numbers 2 & 5 of section c. iii of Resolution 2022-07. I currently have a sign at 1 1st st in Roberts MT that is compliant with 6 of the 8 requirements but it is 18' tall and within 1500 feet of another sign.

I believe the special circumstances that apply are that the sign was erected around mid-December 2020, well before Resolution 2022-07 at significant cost to my company. The sign was erected by licensed contractors and in full compliance at the time thus we were playing by the rules of the time not trying to circumvent. A strict application of the rules in this case would cause financial hardship in numerous ways. I will have paid over \$20,000 for a sign I cant use or rent out. I will incur cost of removing the sign and I will likely loose money at my business because of lack of visibility. I believe that granting a variance is necessary to reasonably use this land for retail. The property borders the highway but the building itself is small and set to the far back of the property such that the entrance is on 1st st making a sign compliantly close to the highway necessary to distinguish my business when on the highway. I am compliant with 6 of 8 requirements and ask for a modest variance in the matter. I don't believe granting this variance would be injurious or contrary to the common welfare. Elevated has operated quietly and compliantly for over two years and we intend to keep it that way. I believe that resolution 2022-07 is beneficial to the community and my business as well. I'm guessing that the intent of the signage portions of the resolution was to stop numerous billboards and other marijuana business signs from littering the highway frontage causing unnecessary angst in the community, I don't think one modest sign mid-town Roberts is contrary to that worthwhile intent.

Property Owners:

White Lexi & Hunter K
PO Box 2226, Red Lodge, MT, 59068-2226

Bauer Lexi
PO Box 2226, Red Lodge, MT, 59068-2226

Wayne Stephen W Trustee
3518 Rigolette Rd, Pineville, LA, 71360-7329

Carbon County Rural Fire Dist #6
General delivery, Roberts, MT, 59070-9999

Ash Justin Charles & Marsha Leeann
PO Box 94, Roberts, MT, 59070-0094

Common Man Concepts llc
PO Box 261, Roberts, MT, 59070-0261

Respectfully,

A handwritten signature in blue ink that reads "Matt Martin". The letters are stylized and connected, with a prominent "M" and "A" at the beginning.

Matt Martin