

PRELIMINARY PLAT – STAFF REPORT
FOR
MUSSELSHELL COUNTY COMMISSIONERS
FISCHER 2-LOT SUBDIVISION

Date: 06-30-15

Type of Subdivision: Expedited First Minor Subdivision

Name of Subdivision: Fischer Subdivision

Number of Lease Spaces: 2 lots

Legal Description: Tract 1 C/S 2013-5RB in NW1/4 of Section 20 T6N R24E, Musselshell County

Land Owner(s): Dorothy Fischer, 591 Dean Creek Road, Lavina, MT 59046

Name of Subdivider: Same as Owner

Preparer: Sanderson Stewart, 1300 N. Transtech Way, Billings 59102, Peter Knapp

Surveyor: Sanderson Stewart

Public Hearing: Not Applicable to Minor Subdivisions

Staff Recommendation on Subdivision: Approve with Conditions

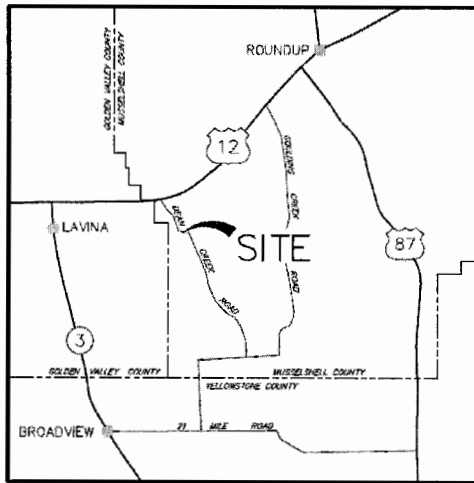
Submitted by:



Anne Cossitt
Musselshell County Subdivision Administrator

06/30/15

Date



VICINITY MAP
NOT TO SCALE

1) Project Characteristics

Location:	Approximately 13 air-miles southwest of Roundup Dean Creek Road
Size and Proposed Use:	43.6 acres proposed as two residential lots of 20.01 acres and 23.6 acres
Subdivision Population:	One residence existing on Lot 1; the creation of another lot would increase population by one household
Present land use:	Residential, agricultural (hay production)
Terrain/Topography	Gradual slope on north portion of property (where there appears to have been hay production in the past) and a forested coulee in the southern portion
Access:	Dean Creek
Utilities:	Gas – individual propane tanks Electric – Fergus Electric Cooperative Telephone – individual cell carriers (Mid-Rivers also available)
Services	Fire – Dean Creek Volunteer Fire Department

Schools – Roundup School District. Also within the Lavina Busing district –students can attend school in Lavina, if approved by both Roundup and Lavina school districts

Law Enforcement –Musselshell County Sheriff
Ambulance – Musselshell County Ambulance
Solid Waste - Musselshell County Refuse District,
(no collection in county outside city of Roundup)

Water/Sewer:

Lot 1 has an existing house, well, and septic/drainfield. Lot 2 has a one-room cabin with sleeping loft, a water cistern with hand-pump, and a privy. In January 2015, Central Montana Health District approved a sealed (vault) pit privy to replace the then-existing unsealed pit privy. The waiver specifies that if any changes are made to the existing water supply or facilities within the existing cabin, a septic and drainfield shall be required.

Adjacent land uses:

North: Large lot residential and agriculture (dry land crop)
West: Agriculture (grazing)
South: Large lot residential and agriculture (crop)
East: Large lot residential

Zoning:

None

Annexation:

NA

Covenants/Restrictions:

Existing: Restrictions were placed on the land in 1975 with Document #219884. (Attached as supplement to this report) The document restricts commercial and business activities, sets requirements for minimum square footage and water supply and sewage systems. Musselshell County is not a party to the restrictions and is not responsible for their enforcement.

Proposed: None

Special Improvement District: None Proposed

2) Proposal

Dorothy Fischer, the owner, proposes to create two lots from her existing tract of record, Tract 1 C/S 2013-5RB in NW1/4 of Section 20 T6N R24E. The land borders Dean Creek road and is on mostly level terrain, with a wooded coulee on the south side.

This subdivision meets the Musselshell County criteria in Section 3.3.1 for review as an expedited minor subdivision:

- i. *No more than one additional lot is created and the remaining land is greater than 160 acres in size or two lots are created from a tract of record.* Only one additional lot is being created and there is no “remaining parcel.”
- ii. *Each lot is 20 acres or greater in size.* Yes, both lots are greater than 20 acres each
- iii. *No variances are requested or required.* No variances are needed.
- iv. *No land is dedicated to the public for parkland, playgrounds, or other public uses and no additional streets will be created.* Complies, no parkland dedication is required for minor subdivisions. No new streets or roads are needed for this subdivision.
- v. *It is a first minor subdivision from a tract of record.* The original tract of record created with survey was established as Tract 463 of C/S 1975-2, filed on March 18, 1975. Tract 463 was 80 acres, the W2 NW4 of Section 20 T6N R24E. Survey 1975-2 did not use any exemptions to create tracts. The tracts would have been exempt by definition, since in 1975 a subdivision was defined as creating parcels of less than 20 acres. In 2013, Tract 463 was altered to become Tract 1 C/S 2013-5RB per the exemption requirements under 76-3-207, MCA. Therefore the original tract of record as it existed on July 1, 1973, has never been subdivided, nor has it had more than five parcels created using exemptions under 76-3-201 or 76-3-207, MCA.

3) Site Visit Findings No site visit was conducted for this 2-lot minor subdivision. The review considered documents submitted by Sanderson Stewart, information from the Musselshell County Clerk and Recorder, Montana cadastral, Google Earth, and phone conversations with Pete Knapp (Sanderson Stewart), Susan Baldwin (County Sanitarian).

B) Findings based on Review Criteria in the Musselshell County Subdivision Regulations (MCSR) and the Montana Subdivision and Platting Act (MSPA)

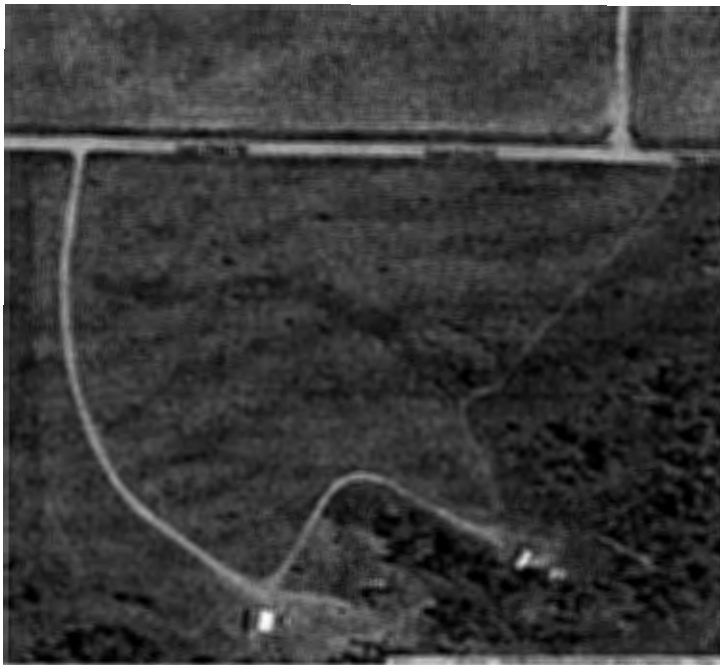
Findings stated below are based on the subdivision application materials and preliminary plat at the time the subdivision application was determined to be sufficient. The findings are presented for each review criteria in the Musselshell County Subdivision Regulations and the Montana Subdivision and Platting Act.

**1) Compliance with Musselshell County Subdivision Regulations (MCSR)
Chapter 5: Design Standards**

The subdivision complies with design standards except as noted below. The following items include those that simply cannot be verified to comply with Design Standards except at the time of final plat or completion of improvements.

5.3.3 *Each lot must abut and have access to a public or private street or road.*

The lots have physical access to Dean Creek Road, which is a county road. However, in order to have clear legal access, the approaches for each driveway must be approved for the proposed use of each lot. The driveway to Lot 1 appears quite established and may already have an existing approach permit. The main access to the cabin on Lot 2 appears currently to be from Lot 1, although there is also a separate two-track access. The two-track may be an approved approach, but likely for agricultural purposes only. Both lots will need approved approach permits for the proposed use as residential.



5.5.11 *Rural addressing must be developed in conformance with the addressing requirements of the Musselshell County rural addressing system. Lot purchasers must be informed of the rural addressing assignment procedures and requirements.*

There is one current address for the property –591 Dean Creek Road. A new separate address will be needed for Lot 2 when it is established. In order to comply with this

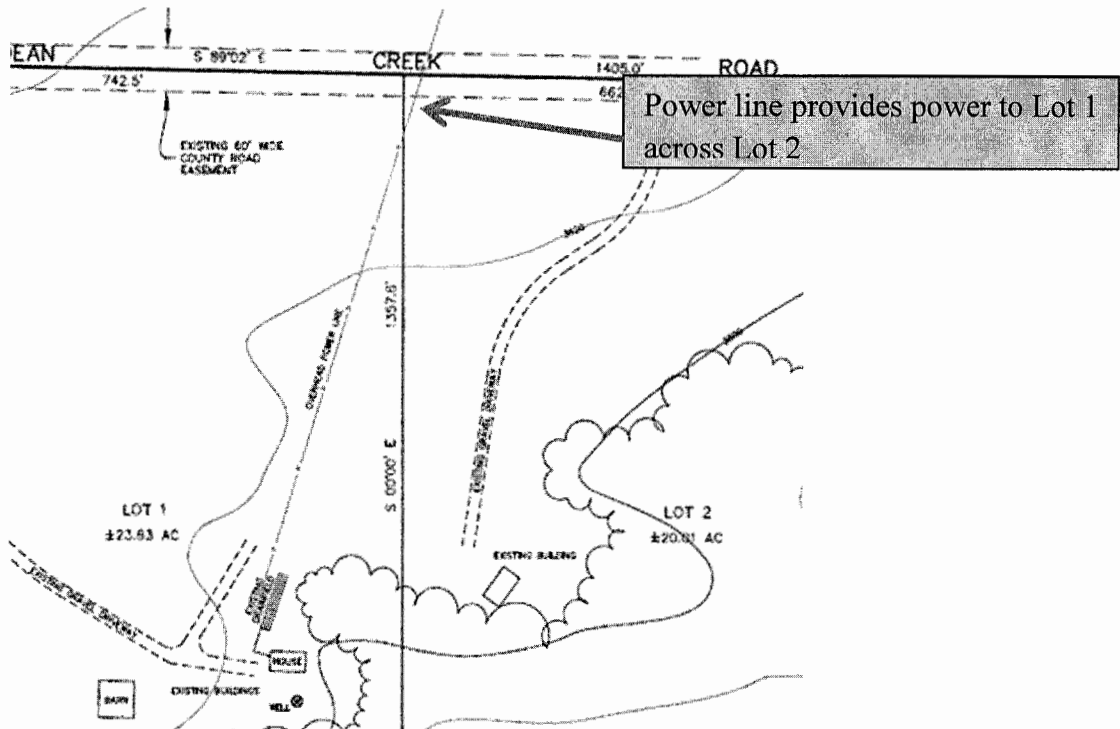
requirement, a notice regarding rural addressing will be required on the face of the plat.

5.10.1 Utilities shall be placed underground.

An overhead power line crosses both properties. Any new power systems will be required to be installed underground in order to comply with this requirement. In order to notify lot owners of the requirement, a notice will be required on the face of the plat.

5.10.5 Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body. Provisions for guy wires on sharp corners must be included. Power poles must be in the ROW, but provisions may be included for wire encroachment out of the ROW.

The final plat will be required to show an easement on Lot 2 for the power line that provides power to Lot 1.



2) Compliance with Review Criteria for Impacts to Agriculture, Agricultural Water User Facilities, Local Services, Natural Resources, Wildlife, Wildlife Habitat and Public Health and Safety (608(3)(a),MCA)

(a) Effect on Agriculture

The subdivision will have an insignificant effect on agriculture. The proposed uses are nearly the same as existing uses.

(b) Effect on Agriculture Water User Facilities

The subdivision will have no effect on agricultural water user facilities because there are no such facilities within or in the vicinity of the proposed subdivision.

(c) Effect on Local Services

The subdivision will have an insignificant effect on local services. The proposed uses are nearly the same as existing uses.

(d) Effect on Wildlife

The subdivision will have an insignificant effect on wildlife. The proposed uses are nearly the same as existing uses.

(e) Effect on Wildlife Habitat

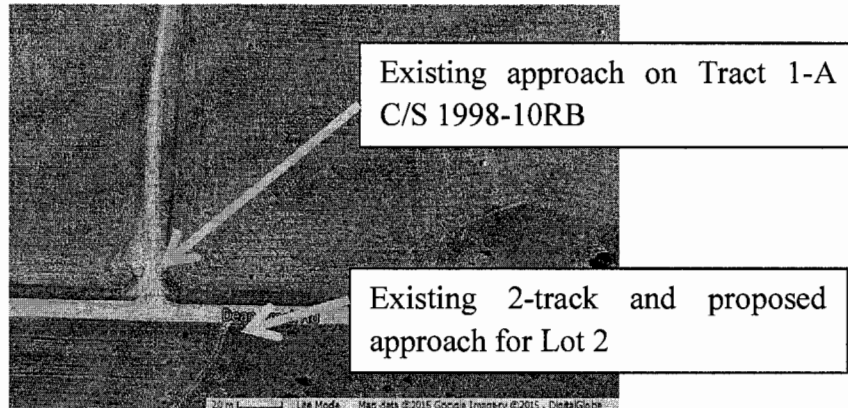
The subdivision will have an insignificant effect on wildlife habitat. The proposed uses are nearly the same as existing uses.

(f) Effect on Public Health and Safety

The waiver granted by the Central Montana Health District for the vault privy on Lot 2 specifies that if any changes are made to the existing water supply or facilities within the existing cabin, a septic and drainfield shall be required. However, it does not further specify that such a system is allowed only for seasonal recreational use, not as a permanent year-round residence. Comparable state rules allow for sealed vault privies only when there is no piped water supply and the parcel is a seasonal-use recreational site. Having a permanent year-round residence with a privy, even if sealed, could create issues later.

The other potentially significant public health and safety issue with this property is the driveway access to proposed Lot 2. This approach will need to be approved by the county for residential purposes if it has not been approved for that purpose. The existing approach for Lot 2 is separated by about 100 feet from the approach to the property on the north side of Dean Creek Road. Aligning the two

approaches could result in greater safety along the road, particularly if traffic volume and speed increase in the future.



3) Requirements of Montana Subdivision and Platting Act 76-3-608(3)(b)

(a) Compliance with survey requirements

The subdivision plat must comply with the Administrative Rules of Montana (ARM) before it can be filed with the clerk and recorder. This is something that gets reviewed when the surveyor submits the final subdivision plat along with any other information needed for final plat approval.

(b) Compliance with subdivision review procedure of the Musselshell County Subdivision Regulations

The following provides the dates of required procedures for this subdivision as an expedited minor subdivision.

2014

06/12 Request for pre-application meeting

07/10 Pre-application meeting held

2015

04/16 Request for 2nd pre-application meeting (Note: no application had been received within the 6 month deadline)

04/17 2nd Pre-application meeting held

05/21 Application Received

05/28 Element Review Complete (4 working days)

05/28 Sent notice that paper version and dropbox versions slightly different and need to be fixed

05/28 Sent link to sanitarian, clerk, assessor, fire, fwp, Ambulance, DES, post office, schools for their review and comment

06/09 Sufficiency Review Notice Sent (8 working days)

06/11 Subdivider's Response

06/15 Sufficiency Review Notice Sent – Application Sufficient (2 working days)

06/29 Preliminary Plat Report Prepared

NA Planning Board Review --- No Planning Board Review is required for an Expedited Minor Subdivision

07/21 Deadline for Commissioners' Decision

4) Requirements of Montana Subdivision and Platting Act 76-3-608(3)(c) and (d)

(a) Easements required for the location and installation of any planned utilities, both on and off site.

The requirement for easement on Lot 2 for the power line to Lot 1 will be addressed with a Condition of Approval.

(b) Legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.

The lots abut Dean Creek Road, which is a public road, and are thus provided physical access. Legal access will be addressed with the requirement for road approach approvals from the county.

(c) Required public or private improvements to be installed before final plat approval, or guaranteed with a Subdivision Improvements Agreement (MCSR 2.3.5 and 76-3-507, MCA)

No improvements are necessary for this property to be divided. If the driveway approach for Lot 2 requires a move to the west, that can be accomplished by the lot purchaser.

(d) Requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights.

This provision is not applicable to this subdivision as the lot size average is greater than five acres.

(e) Requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements.

This requirement is not applicable as there are no watercourse or irrigation easements on the subject parcel.

5) Conformance with the Growth Policy

The subdivision appears to be in compliance with provisions of the *Musselshell County Growth Policy Update – June 2011*.

II) RECOMMENDATION

Approve the Subdivision with conditions as noted below.

1. Compliance with Subdivision Design Standards

<i>FINDINGS</i>	<i>CONDITIONS</i>
A. Legal Access MCSR 5.3.3 <i>Each lot must abut and have access to a public or private street or road.</i> Currently, there is a question as to whether both lots have legal access with approved county road approaches.	1. Prior to final plat, the subdivider shall provide approved approach permits from Musselshell County Road Supervisors for each lot's proposed residential use.
B. Rural Addressing MCSR 5.5.11 <i>Rural addressing must be developed in conformance with the addressing requirements of the Musselshell County rural addressing system. Lot purchasers must be informed of the rural addressing assignment procedures and requirements.</i> Lot 1 appears to have a rural address but not Lot 2.	2. Include a notice on the face of the plat that states, "The owner of Lot 2 shall contact the Musselshell County Rural Addressing Coordinator to obtain a street address."
C. Underground Utilities MCSR .10.1 <i>Utilities shall be placed underground.</i> Existing utilities on the subdivision appear to be primarily above-ground. If new utilities are placed at some time in the future on the property, they should be underground to comply with this requirement.	3. The following notice to be placed on the face of the plat: "Installation of new utilities, including phone, cable, power, etc., shall be underground, and designed and installed in coordination with the utility provider."
D. Utility Easements MCSR 5.10.5 <i>Utility easements must be a minimum of 15 feet wide</i>	4. The final plat shall clearly delineate an easement width and dedication on Lot 2 for

<p><i>unless otherwise specified by a utility company or the governing body. Provisions for guy wires on sharp corners must be included. Power poles must be in the ROW, but provisions may be included for wire encroachment out of the ROW. The line that provides power to Lot 1 crosses over Lot 2, but there is no easement identified on the preliminary plat.</i></p>	<p>power to Lot 1.</p>
--	------------------------

Conclusion for Item #s 1 thru 4 above: The subdivision does not currently comply with all design standards in the Musselshell County Subdivision Regulations, but will comply by final site plan with the above conditions.

2. Effect on Public Health and Safety (76-3-608(3)(a), MCA)

<i>FINDINGS</i>	<i>CONDITIONS</i>
<p>A. Vault Privy Lot 2 is proposed with a sealed vault privy rather than a septic-drainfield. This is the existing system but it is not a system for a permanent residence. Having a vault privy for year-round residential use has potential health and safety implications. State law allows for such systems only when there is no piped water and the site is seasonal-use recreational.</p>	<p>5. Place a notice on the face of the plat that states, "Lot 2 is served with a sealed vault privy intended for seasonal recreational use only. Any change in use from seasonal recreational or installation of piped water requires the lot owner to install a septic/drainfield system approved by the Central Montana Health District."</p>
<p>B. Driveway Alignment The existing 2-track driveway access on Lot 2 is offset by about 100 feet from the approach for Tract 1-A C/S 1998-10RB on the opposite side of Dean Creek Road. This may be a potential safety issue in the future.</p>	<p>6. If the County Road Supervisors require the driveway approach for Lot 2 to align with the approach on the north side of the road, the plat shall include the following notice: "Purchaser of Lot 1 is responsible for developing a driveway approach in accordance with the county approved approach for Lot 1."</p>

Conclusion for Item #s 5-6 above: The subdivision could have a potentially significant impact on public health and safety, which would be mitigated to acceptable levels with the conditions of approval above.

16. Final Site Plans and Preliminary Plat Approval Period (MCSR 2.3 and 4.4)

<i>FINDINGS</i>	<i>CONDITIONS</i>
<p>A. Material changes to the subdivision after preliminary plat approval are contrary to the intent of public review in the subdivision process.</p>	<p>7. Changes to the site plan and application after preliminary approval by the county commissioners will trigger review to determine if the changes are material and if the subdivision application must be re-submitted as a preliminary site plan.</p>

B. Preliminary plat does not meet all requirements for a final site plan.	8. The final site plans shall meet requirements of the Musselshell County Subdivision Regulations. All easements of record on the property shall be identified on the survey and labeled with recorded document number. The final plat application shall include a statement that all easements of record for the subject property are identified on the plat.
D. The Subdivision Regulations establish requirements for final plats.	9. The final plat application and related materials shall meet the requirements of the regulations.
E. Preliminary plat approval must be in force for not more than 3 calendar years or less than 1 calendar year (76-3-610, MCA)	10. The time frame for completing the subdivision shall be two years from the time of conditional approval.

Conclusion for Item #s 7-10 above: The subdivision does not currently comply with all requirements in the Musselshell County Subdivision Regulations or in the Montana Subdivision and Platting Act, but will comply by final site plan with the above conditions.

SUMMARY CONCLUSION:

The subdivision will comply with requirements of Musselshell County Subdivision Regulations and the Montana Subdivision and Platting Act with completion of the conditions of approval.

WARRANTY DEED

THIS INDENTURE, made the 15th day of September, 1975, between RLC INVESTMENTS, INC., a corporation with offices at 612 West 47th Street, Kansas City, Missouri, as Party of the First Part, and grantor herein and GARY VANDERPAN of 116 Burlington, Billings, Montana 59101, as Part y of the Second Part and grantee herein,

WITNESSETH:

For and in consideration of the sum of Ten and no/100 (\$10.00) Dollars and more, current lawful money of the United States of America, and other valuable consideration, receipt of which is hereby acknowledged by First Party, the said grantor herein does hereby grant, bargain, sell, convey, warrant and confirm unto the said grantee, and to his heirs and assigns forever, the following described real estate situated in the County of Musselshell, State of Montana, to-wit:

Township 6 North, Range 24 East, M. P. M.

Section 20: W1/2NW1/4 (Tract 463)
Containing 80 acres, more or less.

Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and an easement from the County Road in Section 18 and 19, Township 6 North, Range 24 East, M. P. M., to the above described premises, and reserving unto the Seller and its successors and assigns, an easement for County roads and summer access road which are now constructed over and across said tract for a full width of 60' and an easement for all utilities.

TO HAVE AND TO HOLD unto the Second Party and to his heirs and assigns forever, subject however, to:

- (a) Reservations and exceptions contained in the patents from the United States of America;
- (b) Existing rights of way and easements for roads, ditches, canals, power lines and telephone lines;
- (c) Mineral and royalty interest in said lands owned by others than the Grantor;
- (d) Excepting and reserving unto Grantor and its successors and assigns an undivided one-half of all oil, gas and other minerals in and under the above described land which were owned by Grantor on the date of this contract, together with a right of ingress and egress for the purpose of exploring for, mining and removing the same (with all existing outstanding royalty burdens being borne and shared equally by Grantor and Grantee from their respective interest as the same are hereby granted and reserved);
- (e) Taxes and assessments for the year 1975 and subsequent years; and
- (f) LAND USE RESTRICTIONS:
 1. Said land shall not be occupied or used for any commercial or business purpose including any commercial cattle feeding, hog raising, poultry or any other animal; nor for any noxious or offensive activity and nothing shall be done or permitted to be done on said land which is a nuisance or might become a nuisance to the owner or owners of any surrounding land including the disposal of trash or junk cars. All domestic animals must be fenced within the boundaries of said property.

STATE OF MONTANA : COUNTY OF MUSSELHELL, MS.
 Frances L. Dawson
 Clerk & Recorder
 10/10/75

Rec'd: Montana Bank of Billings, N. A.

