

TARA DEPUY
MONTANA ASSOCIATION OF COUNTIES
PROPERTY AND CASUALTY TRUST LAND USE ATTORNEY
PO BOX 222
LIVINGSTON, MT 59047

December 7, 2021

Richland County Commission
201 West Main Street
Sidney, MT 59270

Joel Nelson, Contract County Planner
Office of Richland County Planner
123 West Main Street, Suite 2
Sidney, MT 59270

Re: Steve Lunderby Minor Subdivision Application – AMENDED SUBDIVISION APPLICATION
REQUIRED

Dear Gentlemen:

After the public meeting yesterday, December 6th, I was able to spend time reviewing the staff report and the subdivision application Mr. Nelson sent me last evening for the Steve Lunderby Minor Subdivision. It is my opinion that there has been a change to the proposed wastewater system for this subdivision which requires the subdivider to submit an amended subdivision application to the Richland County Subdivision Administrator.

Richland County Subdivision Regulations

An amended subdivision application is required if, before the County Commission makes a determination on a minor subdivision, the subdivider changes the subdivision application.

II-A-4. Amended Applications a. If the subdivider changes the subdivision application or preliminary plat before the public hearing for major subdivisions, or before the governing body makes its decision for first minor subdivisions, **the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.**

An amended subdivision application is required to go back through the review process if there is a material change to the subdivision water and/or septic proposals. RCSR II-A-4.c. While the determination of whether there is a material change is left to the subdivision administrator, my legal opinion is that the change proposed by the representatives for the Steve Lunderby Minor Subdivision during yesterday's public meeting is material as set forth below.

Definitions of Wastewater/Sewage

Neither the Richland County Subdivision Regulations define “wastewater”, “septic” or “sewage” nor does the Montana Subdivision and Platting Act. However, Montana Code Annotated Title 75, Chapter 5, Water Quality, as well as the Administrative Rules of Montana (ARM) for the Montana Department of Environmental Quality (MDEQ) do have applicable definitions.

Section 75-5-103, MCA, defines “sewage” to include discharge from animals and a sewage system to include “collection from industrial waste”. Definitions (29) and (30), Section 76-5-103, MCA. The definition of “industrial” in the Richland County Subdivision Regulations is set forth below:

INDUSTRIAL USE: The manufacture, fabrication, **processing or reduction of any article, substance, or commodity or any other treatment thereof** in such a manner to change the form character or appearance thereof. It shall include trucking facilities, rail facilities, mining, warehousing, and product, materials or equipment storage, and businesses serving primarily industry and similar enterprises.

RCSR, Definition 31.

The ARMs for MDEQ define wastewater to mean water-carried wastes and includes, but it not limited to, household, commercial or industrial wastes as well as **animal** and vegetable **matter in suspension or solution**. ARM 17.36.101(68).

The Richland County Health Code, Chapter 2, defines wastewater as follows:

8.35 Wastewater means a combination of liquid wastes that may include chemicals, house wastes, wash water, human excreta, **and animal or vegetable matter in suspension or solution, and solids in suspension or solution.**

It is my opinion that the meat processing plan is an industrial use as defined by the Richland County Subdivision Regulations and that Richland County must review the wastewater/sewage generated by this facility in its subdivision review. The Richland County Subdivision Regulations state that all wastewater treatment systems are subject to the approval of the governing body, being the County Commission. RCSR V-L-b.

Stated Changes to Steve Lunderby Minor Subdivision

During the Richland County Commission public meeting on December 6, the representatives for the Steve Lunderby Minor Subdivision stated that the Montana Department of Environmental Quality had rejected the wastewater proposal proposed for the combined wastewater treatment for the meat processing plant and the domestic wastewater. Further, the representatives for the Steve Lunderby Minor Subdivision stated that they did not know who will be reviewing at least a major portion of the meat processing plant wastewater treatment and the portion of that treatment that the public voiced the most concern about, being the lagoon.

As submitted, the subdivision application for the Steve Lunderby Minor Subdivision proposes a combined treatment system for both the wastewater for the meat processing plant and domestic wastewater. It was stated during the public meeting yesterday in response to public comment that

MDEQ would be reviewing and monitoring the lagoon. The representatives for the Steve Lunderby Minor Subdivision stated that it is not known at this time either who will be reviewing the lagoon or what permits/review are required. The public, pursuant to the public's Constitutional rights to know and participate in the subdivision review process, should be able to comment on any new proposals for the wastewater for the meat processing plant or a change in who reviews, permits and monitors the lagoon. These stated changes are material to the subdivision application and require an amended subdivision application to go back through the review process.

The Montana Subdivision and Platting Act Section 76-3-601, MCA requires that a subdivision application include the preliminary water and sanitation information required under Section 76-3-622, MCA. Section 76-3-622(1)(b) requires a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems and wastewater treatment systems. As stated by the representatives for the Steve Lunderby Minor Subdivision on December 6, the proposed wastewater treatment system in the pending application is no longer valid as MDEQ rejected the proposal and Richland County cannot proceed to review the pending application knowing that the information contained within it is not valid. The only process available at this time pursuant to the Richland County Subdivision Regulations is for the Steve Lunderby Minor Subdivision to amend its application to contain the new wastewater treatment proposals so that Richland County is reviewing accurate and valid information.

Recommended Action

It is therefore my recommendation that when the Richland County Commission reconvenes at 3:00 p.m. today, December 7th, to continue its review of the Steve Lunderby Minor Subdivision this opinion be read into the record and no action be taken on the current pending subdivision application. It is further recommended that the representatives for the Steve Lunderby Minor Subdivision be instructed to submit an amended subdivision application detailing the amended wastewater treatment proposal for all components of this subdivision to the Subdivision Administrator for Richland County, being Mr. Nelson, for his review and a review in accordance with the Richland County Subdivision Regulations.

Sincerely,

Tara DePuy

Tara DePuy
PCT Land Use Attorney

c: Janet Chrisoffersen, County Attorney