

LAKE COUNTY PLANNING DEPARTMENT

106 FOURTH AVENUE EAST
POLSON, MT 59860-2175

PH: 406-883-7235 FAX: 406-883-7205
E-MAIL: planning@lakemt.gov

June 11, 2009

Borchers of Finley Point Homeowners' Association:

It has been determined that the site plan and subdivision approvals for the Borchers of Finley Point Condominium Subdivision that is of record with the Lake County Clerk and Recorder's Office is not representative of what has been sold and constructed on site. The items that are not in compliance must be amended to clear the record in the Clerk and Recorder's Office and bring the condominium subdivision into compliance. The items that must be clarified or amended include the units proposed to be developed, the location of the units to be developed, the roadways that provide access to each unit, the sewer facilities that serve each unit, and the water facilities to serve each unit. In order to clear the record it will be necessary to amend the site plan of the Borchers of Finley Point Condominium subdivision through application to the Lake County Planning Department for Board of Lake County Commissioner review and application to the Lake County Environmental Health Department for Montana Department of Environmental Quality review.

Lake County has been in contact with representatives of the Homeowners Association over the last year in an effort to support and facilitate addressing the inconsistencies with the record and the as-built/sold units in the subdivision. Lake County has been asked to provide information on the status of the Borchers of Finley Point development regarding planning/zoning and sanitation issues. Enclosed is a summary of the status of each unit, based on available information, to assist your association in making decisions for the future of the development. Also included are letters and other documents provided for your reference.

In order to move this process forward, Lake County recommends the following steps to resolve the issues presented:

1. A maximum of 50 units is approved for this development. The filed legal documents stating which of the originally proposed units will not be developed is not consistent with the current ownerships and development. A resolution to correct the record regarding which units will and will not be developed is necessary.
2. The location of all the undeveloped units that are intended to be developed must be determined. This is needed in order to develop a set plan for infrastructure including roadways, driveways, parking, water systems, and wastewater systems. When considering the unit locations, the owners must keep in mind that all amendments must be in compliance with requirements of county and/or state regulations and must be approved by the homeowners' association. *(Please see attached addendum for additional information regarding county and/or state requirements.)*
3. The total number of single-family residential units, duplex and triplex units cannot be changed from the filed site plan. Therefore, a new site plan showing the same number of structures to be developed on the property in the as-built and proposed relocated unit locations must be created and submitted for governing body review. All units depicted as a part of a duplex or triplex will be required to address the service needs (access, water and sewer) for the number of potential units. For example, a building site shown as a duplex unit will be required to have access, water and sewer services for two single-family residential units.

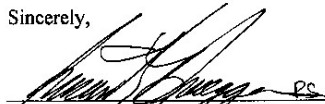
4. The proposed unit locations, and infrastructure to support the units including roadways, driveways, parking, water systems, and wastewater systems, that are different from what is of record at the Lake County Clerk and Recorder's Office, must be submitted by the unit owners to the Lake County Planning Department for review. Any proposed changes to the declaration of unit ownership that will address the proposed changes or maintenance of the common elements should also be submitted to the County at this time.
5. The Lake County Planning Department will then review the proposed unit location, roadways, driveways and declaration changes for adequate compliance with state and local subdivision regulations regarding public health and safety, legal and physical access, etc., and for compliance with the Finley Point Zoning District Regulations. The Planning Department will make a recommendation to the Board of Lake County Commissioners for a final determination on the request to amend the site plan.
6. The wastewater plan must be finalized and submitted to the Montana Department of Environmental Quality for revision of the 1977 Certificate of Subdivision Approval. The water system plan also requires revision; this revision may be completed as a future step toward compliance. At this time, at least a clear understanding of how each unit will be provided with water should be determined with an eye toward the future water plan.
7. The infrastructure (roadways, driveways, fire safety, water, and wastewater) must be upgraded or installed per the above approvals.
8. The condominium subdivision unit owners must file with the Lake County Clerk and Recorder the new site plan and all associated documents consistent with all of the above decisions.

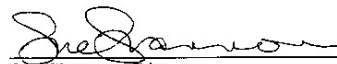
It has been, and remains, Lake County's intention to work cooperatively with the Borchers of Finley Point homeowners to resolve the above issues. However, Lake County has been requested by homeowners to address the consequences should they decide not to move forward with the necessary subdivision corrections. Following is a listing of those potential actions:

1. Notices of Violations and Orders for Correction Action may be issued for identified violations of state and local regulations.
2. Lake County may file a notice with each subdivision unit that states the conditions of non-compliance of the subdivision.
3. Zoning conformance permits will not be issued.
4. Wastewater treatment system permits will not be issued.

The issues related to this development are substantial, but they are resolvable. Lake County commends the homeowners' association for the work they have completed thus far in working on solutions for the subdivision. Please contact us if you have questions on the information included with this mailing or if we can further assist you in this process.

Sincerely,


Susan K. Brueggeman, R.S., Director
Lake County Environmental Health Department


Sue Shannon, Director
Lake County Planning Department

Addendum - Borchers of Finley Point Homeowners' Association

Planning/Zoning related considerations:

A letter to the Timbrshor Association in care of Caryl Cox dated January 28, 2009 provided detailed information about the existing subdivision regulation and zoning standards which are used to review an amendment request. In order to facilitate the ability of the homeowners in the subdivision to make the amendments necessary to clear the record in the Clerk and Recorder's Office and bring the subdivision into compliance, Lake County Planning Department is offering the following minimum guidelines for the homeowners to address in an amendment proposal that would have planning department support through the amendment process.

Roadways and Driveways

All units in the condominium subdivision will be required to have legal and physical access that meets the approval of the governing body. For the purposes of this correspondence, a driveway is a roadway that only accesses one residential unit; a subdivision access road provides ingress/egress to more than one residential unit.

To address the existing roadway network, the county recognizes that the as-built access roads were not constructed as approved and recorded with the condominium subdivision. In an effort to work with the landowners to bring the subdivision into compliance with the record, the county planning department will support use of the as built roadways for physical access to the existing and recorded units so long as it is demonstrated that the physical access meets the needs of all emergency service providers. The design specifications (including but not limited to grade, width, base and surface materials) of existing roadways must be certified acceptable by the fire department and ambulance service. If the existing roadways cannot be certified by these emergency service providers, the landowners must solicit the recommendation of the emergency service providers to bring the roadways up to a standard they are willing to certify as acceptable and the landowners must propose a plan to build the roadway to these standards prior to the county's approval of the amended condominium subdivision plan.

The subdivision access road to the western units (318-430 excluding 320) in the division traverses across an adjacent property without a legal easement and therefore, the County will not allow increased use of the roadway as part of an amendment request. This means that the number of units dependent on use of the off-site subdivision access road for access purposes shall not be increased. Currently it appears Unit 317 as depicted on the recorded plan was to access from internal on site access roads, but as built this unit is accessed via use of the off-site subdivision access road.

All non-existing access roads and driveways that are proposed to either access relocated units that are undeveloped, and/or would provide access to a unit where the access will not be constructed as depicted on the recorded plan, must have a proposal for design and construction of the access roads and driveways to be reviewed by the governing body as part of the amendment request. The design specifications (including but not limited to grade, width, curve radius, and base and surface materials) of proposed subdivision access roads/driveways should also be reviewed and approved by the fire department and ambulance service to demonstrate that all proposed accesses will meet the needs of the emergency service providers. The amendment request must also include a plan to construct the subdivision access roads/driveways and have

them certified acceptable by the emergency service providers prior to the county's final approval and recordation of the amended condominium subdivision plan.

In an effort to work with the landowners to amend the subdivision in order to clear the record and obtain compliance, the county planning department will support the following minimum standards for any proposed subdivision access roads:

1. 20 ft minimum driving surface width;
2. 75 ft minimum driving surface curve radius;
3. 10% maximum driving surface grade;
4. At the terminus of all dead end access roads, a turnaround will be required. Turnarounds can be either a cul-de-sac with an improved driving surface radius of 50 ft or "T" turn around with a minimum inside turning radius of 25ft and a minimum back-up length of 35 ft (*please ask the Fire Department which type of turnarounds they prefer);
5. Minimum construction standards consisting of a base of a minimum 12 inches of compacted pit run that is a maximum of 4 inch diameter and a surface of a minimum of 4 compacted inches of three quarter minus crushed gravel designed to drain water away from the driving surface;
6. Certified as approved for use by emergency service providers.

The county planning department will support the following minimum standards for any proposed driveways:

1. 12-foot minimum driving surface width;
2. 12 maximum driving surface grade with a maximum 5 percent slope for the initial 20 feet from the primary access road;
3. Certified as approved for use by emergency service providers.

Fire Protection

The original subdivision approval required a fire plan that was never implemented. This plan was approved by Lake County with the stipulation of fire department acceptance. The plan included the construction of a water intake and supply lines to three hydrants located in the parking areas for units 301-430. The plan also included 1200 ft of 5-inch diameter hose and a hose truck with manifold that would either be stored on site or donated to the fire department. There is no evidence of fire department acceptance of the plan, installation of the water supply infrastructure, or hose and truck as proposed.

In order for the governing body to review an amendment to the roadway and unit locations in the condominium subdivision, fire protection must be addressed. The landowners should contact the fire department and solicit comment regarding a water supply and distribution system of sufficient volume for effective fire control for all units in the subdivision. A plan to bring the property to the standards necessary for adequate fire protection must be submitted to the county for review. Upon approval of the fire protection plan, the landowners will be required to implement the plan and demonstrate fire department acceptance prior to the governing bodies final approval and recordation of the amended condominium subdivision. *

why not?

Zoning Requirements

The Finley Point Zoning Regulations went into effect in September 1991. A request to amend the subdivision will require that new roads and unit locations meet the requirements of the zoning regulations. Therefore, all proposed relocated units shall meet the following setbacks:

- 50 ft from the highwater mark of Flathead lake
- 20 ft from side property boundaries

A Conditional Use approval is required for the disturbance of slopes greater than 25% on lakefront lots. Therefore any proposed relocated unit location, access road or driveway which will require the disturbance of slopes greater than 25% will require conditional use approval prior to construction.

Multi-family residential units are prohibited by the zoning regulations. Therefore, the amendment request shall not increase the total number of multi-family residential units within the subdivision.

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Sanitation considerations:

The end goals of these sanitation comments are:

1. That the 1977 Certificate of Subdivision Approval issued by the Montana Department of Environmental Quality, MDEQ, for the subdivision will be revised and brought into compliance. Per previous correspondence with the homeowners' association, it has been determined that the focus will be on revision of the wastewater approval. However, the water system approval is important and should be addressed in a timely manner. The MDEQ has confirmed that this stepped revision for the wastewater plan first and then the water system plan is acceptable.
and
2. That the existing wastewater treatment systems are in brought into compliance with the MDEQ revised approval and state and local regulations.

Because the original MDEQ approval was for a single community drainfield, the revision must provide a new plan. A draft plan has been provided by Rowland Environmental Consulting and provides for five multi-user drainfields. Two of these drainfields are existing and three are replacement systems; all systems incorporate capacity for future home sites. This plan must be finalized and submitted to MDEQ for review and approval.

As stated in the letter dated to the homeowners' association in June of 2007:

Now that it is understood that the subdivision is not in compliance with its MDEQ approval, the Lake County Environmental Health Department will not issue wastewater permits for this subdivision nor allow new construction or changes to existing systems until the MDEQ approval is revised. Revision of the MDEQ approval, while a substantial undertaking, will both bring the subdivision into compliance with state law and provide an orderly plan for the future water and wastewater infrastructure of this condominium subdivision.

The above statement is based primarily on state and county regulations:

1. *MCA 76-4-130. Deviation from certificate of subdivision approval.* A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.
2. *Lake County Wastewater Treatment System Regulations, Section 3.2 Denial of Installation Permit or Disapproval of Plans.* A. The Lake County Board of Health or its authorized agents may deny an Installation Permit for any of the following reasons: 5. A stipulation of the Certificate of Subdivision Approval has been violated or there is departure from any criterion set forth in the approved plans and specifications of the subdivision.
3. *Lake County Wastewater Treatment System Regulations, Section 5.2 Repair, Alteration, Enlargement or Extension of Pre-Existing Systems.* A. It shall be unlawful to repair, alter, enlarge or extend a pre-existing wastewater treatment system. All pre-existing systems for which major repairs are required shall be replaced under an Installation Permit. *and B.* When application is made for an additional wastewater treatment system on a parcel with a pre-existing or unapproved system, the pre-existing or unapproved system must be replaced under these regulations before or at the same time the additional system is installed.
4. *Lake County Wastewater Treatment System Regulations, Section 3.1 Application for Installation Permit, F. 10.* *The Department may require evidence that the wastewater treatment system will comply with all adopted zoning and/or land use planning requirements for the area.*

* This means that no county wastewater treatment system permit will be issued for any new homesite, any new, replacement or altered wastewater system, septic tank installation, or change of use on a wastewater treatment system until the MDEQ approval has been revised. Installation of any new wastewater system component or any system that incorporates new design flow capacity will require an upgrade of any and all pre-existing and/or out of compliance drainfields.

The homeowners may benefit from having a water/wastewater district in that low interest loans are available to a district for wastewater system improvements. This would also provide for unified waste water system management including operation, maintenance, and financing.

Water Supply Systems

At the time of the subdivision in 1977, there were at least four pre-existing lake water intakes: see 1, 2, 3, and 4 located on the map.

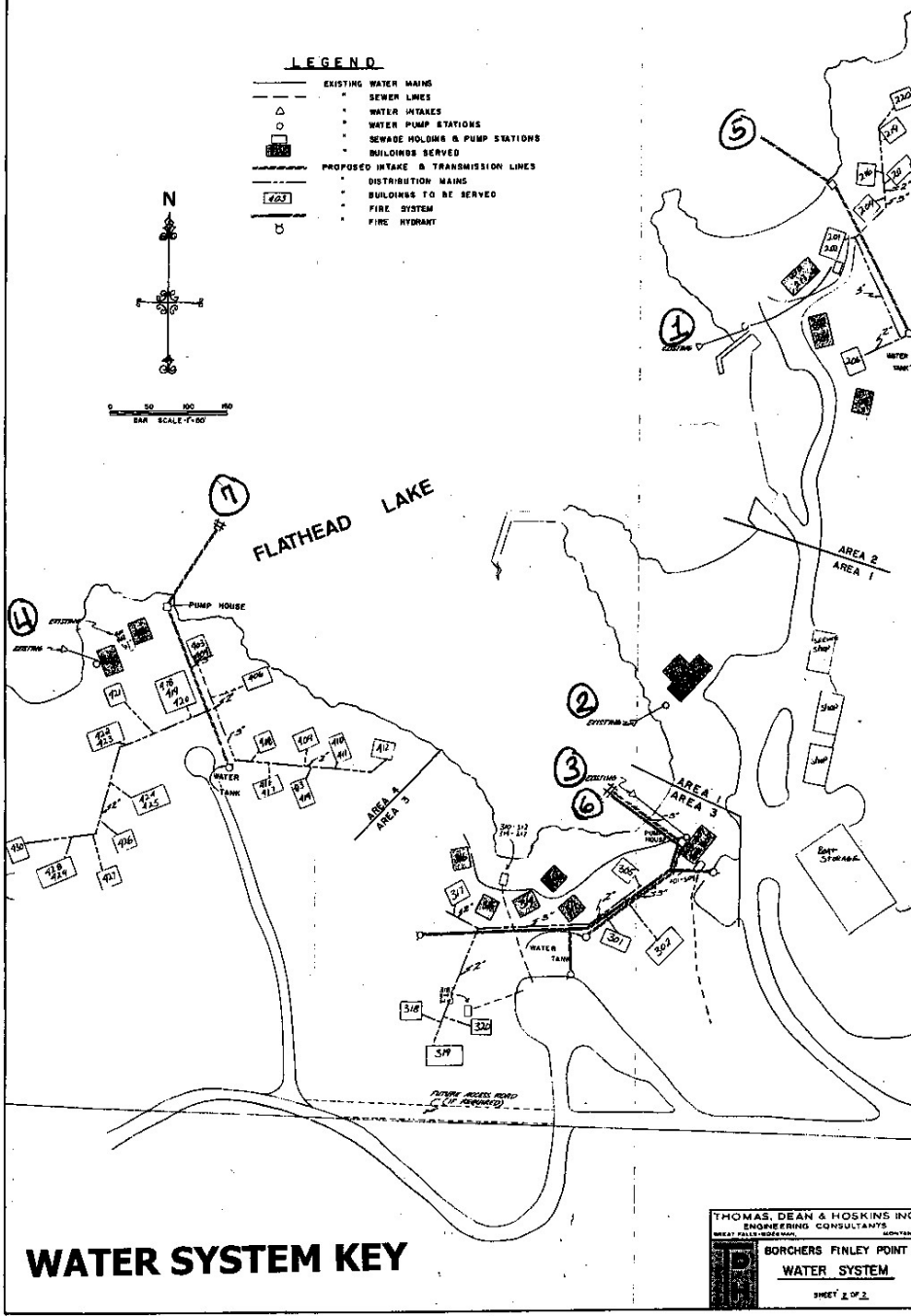
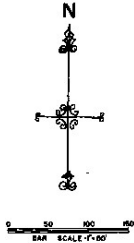
Approved subdivision plans identified three new lake water intakes to serve the homesites that would be constructed: see 5, 6, and 7 located on the map. The pre-existing water systems would continue to serve the pre-existing homes until the systems failed at which time connection to a new system would require review and approval by MDEQ.

The approved subdivision plans were for one community lake water system and two multi-user lake water systems. It appears at least the community system required the water be filtered and chlorinated. It appears all systems were to provide storage tanks.

6-2009 Note: numbers added for clarification

LEGEND

- EXISTING WATER MAINS
- - - SEWER LINES
- △ WATER INTAKES
- WATER PUMP STATIONS
- SEWADE HOLDING & PUMP STATIONS
- BUILDINGS SERVED
- PROPOSED INTAKE & TRANSMISSION LINES
- - - DISTRIBUTION MAINS
- BUILDINGS TO BE SERVED
- FIRE SYSTEM
- FIRE HYDRANT



WATER SYSTEM KEY

THOMAS, DEAN & HOSKINS, INC.
 ENGINEERING CONSULTANTS
 GREAT FALLS, MONTANA

BORCHERS FINLEY POINT
WATER SYSTEM
 SHEET 2 OF 2

**Borchers of Finley Point
WASTEWATER SYSTEM EVALUATION**

**EXISTING SYSTEM #1
PROPOSED SYSTEM A – Orange**

SYSTEM: Large Community System in Parking Area – Permit 1837

Units Connected	201 – McFadden 9947	Per Assessor 2001 – 2BR
	203 – Acher 3126	Per Assessor 56/1994 – 2 BR
	204 – Swindlehurst 3126	Per Assessor 56/1994 – 3 BR
	205 – Rotondi	Per Assessor 56/2009 – 5 BR
	206 - Walters	Per Assessor 1996 – 4 BR
	209 – Peterson	Per Assessor 2002 – 2 BR
	210 – Schwank	Per Assessor 1956 – 2 BR
	211 – Fordahl 1837	Per Assessor 1956 – 2 BR
Units Proposed to Connect	201 - McFadden	System A - Orange
	202 – Borchers?	
	203 – Acher	
	204 – Swindlehurst	
	205 – Rotondi	
	206 - Walters	
	209 – Peterson	
	210 - Schwank	
	211 – Fordahl	
	216 – Borchers?	
	217 – Borchers ?	
	219 – Borchers-Michione	
System Permit	#1837 + tanks	
System Installed	1989	
Tank Size	Multiple	
Design Capacity GPD	400 GPD*	
Comments	Replacement needed.	
Compliance	MDEQ Approval must be revised Drainfield has been parking area – illegal Residences connected without permit – 205, 206, 209, 210 Residence/Bedroom Count would require 1275 GPD design flow 1275 – 400 = 875 gpd short Unit 205 expansion based upon commitment to Board of Health to upgrade system	Note: bolded unit numbers indicate those existing in 1977 when the subdivision was approved.

*100' X 2' X 4 = 800sf X .5 application rate = 400 gpd

Borchers of Finley Point WASTEWATER SYSTEM EVALUATION

EXISTING SYSTEM #2

SYSTEM: 301, 302, 305 – Drainfield by Dumpster Area

Units Connected	301 – Stam	Per Assessor 1978 – 2 BR
	302 – Rountree	Per Assessor 1978 – 2 BR
	305 - Estvoid	Per Assessor 1978 – 3 BR
Units Proposed to Connect	None	System B – Dark Blue
System Permit	None	
System Installed	Unknown – Assume 1978	
Tank Size	Unknown – common tank?	
Design Capacity GPD	Unknown	
Comments	System should have been upgraded per 1979 county regulation requiring upgrade of pre-existing/unapproved systems with any new permit on the lot. Replacement needed.	
Compliance	MDEQ Approval must be revised Installation without Permit Illegal Installation	

Borchers of Finley Point WASTEWATER SYSTEM EVALUATION

EXISTING SYSTEM #3

SYSTEM: 4 Plex

Units Connected	306 - Selvig	Per Assessor 1956 - 2BR
	307 - Payson	Per Assessor 1956 - 1BR
	308 - Novinski	Per Assessor 1956 - 1BR
	309 - Cole	Per Assessor 1956 - 1BR
Units Proposed to Connect	None	System B - Dark Blue
System Permit	Prior to Permitting 1969?	
System Installed	Unknown	
Tank Size	Unknown	
Design Capacity GPD	Unknown	
Comments	Well under building? Water system under building? No wastewater pump - gravity? Septic tank does not likely meet 50' setback to lake. Drainfield does not likely meet 100' setback to lake. Very shallow bedrock apparently in presumed drainfield location - likely near direct discharge to bedrock Replacement plan needed.	Note: bolded unit numbers indicate those existing in 1977 when the subdivision was approved
Compliance	Likely violation of Section 2.1 - LCWRSR ARM 17.36.913(1) "No person may install, alter, repair, extend or utilize any wastewater treatment system that may: 1. Contaminate any actual or potential drinking water supply; 4. Violate any law or regulation governing water pollution or wastewater treatment and disposal; 5. Pollute or contaminate any state water in violation of MCA 75-5-605;" System should have been upgraded per 1979 county regulation requiring upgrade of pre-existing systems with any new permit on the lot.	? what new permit? ? ? Subdivision?

Borchers of Finley Point WASTEWATER SYSTEM EVALUATION

EXISTING SYSTEM #4

SYSTEM: Current 1000D


Units Connected	311	Per Assessor 1972 - 2 BR
	312	Per Assessor 1969 - 2 BR
	314	Per Assessor 1969 - 2 BR
	315	Per Assessor 1970 - 3 BR
	316	Per Assessor 1969 - 2 BR
	317 <i>McCarthy</i>	Per Assessor 1981 - 2 BR ← ?
Units Proposed to Connect	None	System B - Dark Blue
System Permit	1000D	
System Installed	1971-72	
Tank Size	3700 G	
Design Capacity GPD	550 GPD*	
Comments	System documented after installation	
Compliance	<p>MDEQ Approval must be revised</p> <p>Unit 317 Connection was not Permitted making full system Out of Compliance as an "alteration without a permit"</p> <p>Common tank does not meet 50' setback from lake</p> <p>Common tank has overflow on to surface. <i>Notice of Violation will be issued promptly for this overflow.</i></p> <p>Drainfield has been parking area - illegal</p> <p>Residence/Bedroom Count would require 1325 GPD design flow 1325 - 550 = 775 gpd short</p> <p>System should have been upgraded per 1979 county regulation requiring upgrade of pre-existing/unapproved systems with any <u>new permit</u> on the lot.</p> <p>Replacement needed.</p>	<p>Violation of Section 2.1 - LCWRSR ARM 17.36.913(1)</p> <p><i>"No person may install, alter, repair, extend or utilize any wastewater treatment system that may:</i></p> <ol style="list-style-type: none"> 1. Contaminate any actual or potential drinking water supply; 2. Cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans; 3. Cause a public health hazard by being accessible to persons or animals; 4. Violate any law or regulation governing water pollution or wastewater treatment and disposal; 5. Pollute or contaminate any state water in violation of MCA 75-5-605; 6. Cause a nuisance due to odor, unsightly appearance or other aesthetic consideration." <p>Note: bolded unit numbers indicate those existing in 1977 when the subdivision was approved</p>

* 110' X 2' X 5 laterals = 1100 sf X .5 application rate = 550 gpd

**Borchers of Finley Point
WASTEWATER SYSTEM EVALUATION**

**EXISTING SYSTEM #5
PROPOSED SYSTEM D – Purple**

SYSTEM: 1001Q and Replacement

Units Connected	401 – Johnson	Per Assessor 1973 – 3 BR
	402 – Manning	Per Assessor 1974 – 3BR
Units Proposed to Connect	401 - Johnson	System D - Purple
	402 - Manning	
	417 - ?	
	421 - Johnson	
	422 – Johnson	
	424 - Johnson	
System Permit	1001Q	
System Installed	1973	
Tank Size	1000/500 pump	
Design Capacity GPD	220 GPD**	
Comments	System documented after installation. Replacement plan needed.	Note: bolded unit numbers indicate those existing in 1977 when the subdivision was approved
Compliance	 <p>Drainfield has been driveway & parking area – illegal</p> <p>Drainfield very likely nearly direct discharge to fractured bedrock.</p> <p>Residence/Bedroom Count would require 650 GPD design flow 650 – 220 = 430gpd short</p>	<p>Likely violation of Section 2.1 – LCWRSR ARM 17.36.913(1)</p> <p><i>"No person may install, alter, repair, extend or utilize any wastewater treatment system that may:</i></p> <ol style="list-style-type: none"> <i>1. Contaminate any actual or potential drinking water supply;</i> <i>4. Violate any law or regulation governing water pollution or wastewater treatment and disposal;</i> <i>5. Pollute or contaminate any state water in violation of MCA 75-5-605;"</i>

* 22' X 2' = 220sf X .5 application rate = 220 gpd

**Borchers of Finley Point
WASTEWATER SYSTEM EVALUATION**

**EXISTING SYSTEM #6
PROPOSED SYSTEM C – Light Blue**

SYSTEM: 5000B

Units Connected	406 - Sand	Per Assessor	1999 - 3 BR
	409 - Roy		?
	411 - Mead	Per Assessor	2000 - 3 BR
	412 - Cox	Per Assessor	2000 - 3 BR
Units Proposed to Connect	403/404 - Sand	System C - Light Blue	
	406 - Sand		
	408 - Caraway		
	409 - Roy		
	410 - Sand		
	411 - Mead		
	412 - Cox		
	414 - Bantry		
System Permit	5000B		
System Installed	1999		
Tank Size	Multiple tanks		
Design Capacity GPD	2400 GPD*		
Comments	Is Unit 403/404 one unit or two? <i>one</i>		
Compliance	<p>MDEQ Approval must be revised</p> <p>→ No permit issued for Roy tank. As-Built needed.</p> <p>→ Drainfield installed within 100' of Unit 317 well - plan is for drainfield to be adjusted if well is to remain.</p> <p>Additional homesites will require permit for septic tank.</p>		<p><i>county designed & approved</i></p>

* 44' X 110' (two beds) = 4840sf X .5 application rate = 2400 gpd

**Borchers of Finley Point
WASTEWATER SYSTEM EVALUATION**

**EXISTING SYSTEM #7
PROPOSED SYSTEM E - Green**

SYSTEM: Rys-Sikora/Kukendall - #5584 + #5912

Units Connected	428 - Rys-Sikora	Per Assessor 2002 - 3BR
	418/419 - Kuykendall	Per Assessor 2004 - 3BR
Units Proposed to Connect	418/419 - Kuykendall	System C - Green
	426 - Borchers, Wm	
	427 - Maxwell	
	428 - Rys-Sikora	
	430 - Rys-Sikora	
System Permit	#5584 + #5912	
System Installed	2002 & 2003	
Tank Size	Multiple	
Design Capacity GPD	1350 GPD*	
Comments	Can 418/419 Units be split - requiring additional drainfield capacity needs? Does one lateral still need to be installed?	
Compliance	MDEQ Approval must be revised. <i>why?</i> With MDEQ revision, system will be in compliance for five 3-bedroom residences with full system installed Additional homesites will require permit for septic tank.	

*8' X 80' X 2 = 1280sf

10' X 75' X 2 = 1500sf + 1280sf = 2780sf X .5 GPD application rate = 1390 GPD

Borchers of Finley Point WASTEWATER SYSTEM EVALUATION

EXISTING SYSTEM #8

SYSTEM: Lodge

Units Connected	Lodge – Borchers of FP	Per Assessor 1938 – 5 BR
Units Proposed/Connected	None	Connect to System
System Permit	None - Prior to Permitting?	Dark Blue
System Installed	Unknown	
Tank Size	Unknown	
Drainfield Size	Unknown	
Design Capacity GPD	Unknown	
Comments	<p>Tank may not meet 50' setback from lake</p> <p>Drainfield in presumed location does not likely meet 100' setback from lake</p> <p>Very shallow bedrock apparently in presumed drainfield location – likely near direct discharge to bedrock</p> <p>Replacement plan needed.</p>	<p>Note: bolded unit numbers indicate those existing in 1977 when the subdivision was approved</p>
Compliance	<p>Likely violation of Section 2.1 – LCWRSR ARM 17.36.913(1)</p> <p><i>"No person may install, alter, repair, extend or utilize any wastewater treatment system that may:</i></p> <ol style="list-style-type: none"> <i>1. Contaminate any actual or potential drinking water supply;</i> <i>4. Violate any law or regulation governing water pollution or wastewater treatment and disposal;</i> <i>5. Pollute or contaminate any state water in violation of MCA 75-5-605;"</i> <p>System should have been upgraded per 1979 county regulation requiring upgrade of pre-existing/unapproved systems with any new permit on the lot.</p>	

**Borchers of Finley Point
WASTEWATER SYSTEM EVALUATION**

EXISTING SYSTEM #9

SYSTEM: Laundry Building

Units Connected	Laundry Building only?	
Units Proposed Connected	None	
System Permit	None	
System Installed	?	
Tank Size	?	
Drainfield Size	?	
Design Capacity GPD	?	
Comments	Gray water under current regulations must be treated and disposed in the same manner as full wastewater No reference to this facility in the 1977 MDEQ approval If the facility is to remain it needs to be connected to legal system. Replacement needed.	
Compliance	System should have been upgraded per 1979 county regulation requiring upgrade of pre-existing/unapproved systems with any new permit on the lot.	

Sanitation Key to Wastewater System Compliance:

Note: This summary is in response to a request to identify violations associated with each wastewater system and the legal actions possible.

1. Violation of Certificate of Subdivision Approval:

MCA 76-4-130. *Deviation from certificate of subdivision approval. A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.*

Language of the MDEQ approval statement for Borchers of Finley Point: *THAT departure from any criteria set forth in the approved plans and specifications and MAC 16-2.14(10)-S14340 when erecting a structure and appurtenant facilities in said subdivision without Department approval is grounds for injunction by the Department of Health and Environmental Sciences.*

Remedies Available:

MCA 76-4-109. Penalties. *(1) A person who violates a provision of this part, except 76-4- 122(1), or a rule adopted or an order issued under this part is guilty of an offense and subject to a fine in an amount not to exceed \$1,000.*

(2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule adopted or order issued under this part is subject to an administrative penalty in an amount not to exceed \$250 or a civil penalty in an amount not to exceed \$1,000. Each day of violation constitutes a separate violation.

(b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in 76-4-1001. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.

76-4-110. Additional remedies available. *This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it stop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights equity or under the common law or statutory law*

2. Violation of Lake County Wastewater Treatment System Regulations:

DEFINITION:

Alteration - *changing a wastewater treatment system by lengthening, shortening, adding or removing components, building structures over components, making non-cosmetic structural modifications to a building served by the system, or exchanging dwelling units; this shall not be construed to mean exchanging units in a campground or a trailer court currently licensed by the Montana Department of Public Health and Human Services. Alteration shall also include increasing the potential wastewater flow or strength beyond the design capacity of the system.*

2a SECTION 2.1 Prohibited Acts

A. No person may install, alter, repair, extend, or utilize any wastewater treatment system in a manner that may:

As per A.R.M. 17.36.913 (1):

1. Contaminate any actual or potential drinking water supply;

2. Cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
3. Cause a public health hazard by being accessible to persons or animals;
4. Violate any law or regulations governing water pollution or wastewater treatment and disposal;
5. Pollute or contaminate any state water in violation of 75-5-605, MCA; or
6. Cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

2b. SECTION 3.1 Application for Installation Permit

A. No person may install, alter, repair or extend a wastewater treatment system unless the Department has issued an Installation Permit. This permit shall be for the specific installation, alteration, repair, or extension. Alternations may be authorized by a Change of Use Permit.

2c. SECTION 3.4. Use Permit

G. Any alteration of the wastewater treatment system not approved by the Department after the Use Permit has been issued invalidates the permit.

2d. SECTION 3.5 Change of Use Permit

A. No person may increase wastewater flow or strength beyond the design of a wastewater treatment system without a Change of Use Permit issued by the Department. Examples of uses requiring a Change of Use Permit include but are not limited to:

1. Addition of a bedroom(s) to a residence.

2e. SECTION 4.2 General Standards

F. No component of any wastewater treatment system shall be located under driveways, roads, parking areas or areas subject to heavy loading and no vehicles shall be driven over the system after installation, except those portions properly installed to accept traffic loads.

2f. SECTION 4.2 General Standards

B. Minimum horizontal setbacks: Septic tank to lake or well = 50'
Drainfield to lake or well = 100'

Remedies Available

SECTION 7.1 Notice of Violation or Order of the Lake County Board of Health

If any inspection discloses there has been a violation of these regulations or order of the Board of Health or authorized agents, the responsible party shall be given notice of such violation. Such notice shall be in writing and shall state the violation, the required corrective action, and provide a reasonable time for correction. Service of such notice shall be by means of certified mail or personal delivery.

A re-inspection shall be made by the Department upon receipt of notification that the violation has been corrected or at the end of the time period allowed for corrective action. The correction of a violation does not preclude the assessment of penalties as provided for in Section 7.3. If the violation has not been corrected or an order has been violated, the Board of Health or its authorized agents may seek criminal prosecution as per Section 7.3.

SECTION 7.2 Cease and Desist Order

The Lake County Board of Health or its authorized agents may issue an order to cease and desist from the use of any wastewater treatment system that is found not to be functioning in compliance with these regulations. In addition, the Health Officer, as per M.C.A. 50-2-123, may issue an order to cease and desist from any further installation, alteration, repair or extension of any wastewater treatment system for which a valid Installation Permit has not been issued under the provisions of these regulations. The order shall require the responsible party bring the wastewater treatment system into compliance within a reasonable period of time, not to exceed thirty (30) days.

A re-inspection shall be made by the Department upon receipt of notification that the wastewater treatment system has been brought into compliance or at the end of the time period allowed for corrective action. The correction of a violation does not preclude the assessment of penalties as provided for in Section 7.3. If the violation has not been corrected or an order has been violated, the Board of Health or authorized agents may seek criminal prosecution as per Section 7.3.

SECTION 7.3 Penalty for Violation

A. The Lake County Board of Health or its authorized agents may assess a penalty for violation of these regulations. The penalty shall not exceed \$500 per violation and shall be assigned according to the severity of the violation. Each day of violation may be considered a separate violation.

B. Any violation of these regulations or order of the Lake County Board of Health is subject to criminal prosecution in accordance with M.C.A. 50-2-123-124.

As per M.C.A. 50-2-123: Compliance order authorized.

If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the county.

As per M.C.A. 50-2-124 Penalties for Violations

(1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than \$10 or more than \$200.

(2) Except as provided in subsection (1) of section and M.C.A. 50-2-123, a person who violates the provisions of this chapter or rules adopted by the Montana Department of Environmental Quality under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than \$10 or more than \$500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the violation occurs.

These are the major violations that are associated with Borchers of Finley Point. It is not meant to be all inclusive.