

HOUSE BILL 399

Introduced by Connelly, et al.

1/25	Introduced
1/25	Referred to Natural Resources
1/26	First Reading
2/18	Hearing
2/20	Tabled in Committee

1 House BILL NO. 399
 2 INTRODUCED BY Connelly Kennedy

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE
 5 OF THE CHAPTER; CLARIFYING THE DEFINITION OF "OCCASIONAL
 6 SALE"; ESTABLISHING, DEFINING, AND PROTECTING PRIVATE REAL
 7 PROPERTY RIGHTS; REQUIRING A COURT ORDER BEFORE A GOVERNMENT
 8 OFFICIAL MAY REFUSE TO FILE A PLAT; PLACING THE BURDEN OF
 9 PROOF ON THE LOCAL GOVERNMENT AS TO WHETHER A LANDOWNER
 10 QUALIFIES FOR AN EXEMPTION; PROHIBITING PARKLAND DEDICATION
 11 FOR SUBDIVISIONS CREATING FIVE OR FEWER PARCELS; AMENDING
 12 SECTIONS 76-3-102, 76-3-103, 76-3-207, 76-3-301, 76-3-501,
 13 AND 76-3-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 14 DATE."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 76-3-102, MCA, is amended to read:
 18 "76-3-102. Statement of purpose. ~~It is the purpose of~~
 19 ~~this chapter to promote the public health, safety, and~~
 20 ~~general welfare by regulating the subdivision of land, to~~
 21 ~~prevent overcrowding of land, to lessen congestion in the~~
 22 ~~streets and highways, to provide for adequate light, air,~~
 23 ~~water supply, sewage disposal, parks and recreation areas,~~
 24 ~~ingress and egress, and other public requirements, to~~
 25 ~~require development in harmony with the natural environment;~~

1 ~~to require that whenever necessary, the appropriate approval~~
 2 ~~of subdivisions be contingent upon a written finding of~~
 3 ~~public interest by the governing body; and to require~~
 4 ~~uniform monumentation of land subdivisions and transferring~~
 5 ~~interests in real property by reference to plat or~~
 6 ~~certificate of survey. It is the purpose of this chapter to~~
 7 ~~provide simple and clear guidelines for review of~~
 8 ~~subdivisions and to protect public health, safety, and~~
 9 ~~welfare in a manner that protects the rights of real~~
 10 ~~property ownership."~~

11 **Section 2.** Section 76-3-103, MCA, is amended to read:

12 "76-3-103. Definitions. As used in this chapter, unless
 13 the context or subject matter clearly requires otherwise,
 14 the following words or phrases shall have the following
 15 meanings:

16 (1) "Certificate of survey" means a drawing of a field
 17 survey prepared by a registered surveyor for the purpose of
 18 disclosing facts pertaining to boundary locations.

19 (2) "Dedication" means the deliberate appropriation of
 20 land by an owner for any general and public use, reserving
 21 to himself no rights which are incompatible with the full
 22 exercise and enjoyment of the public use to which the
 23 property has been devoted.

24 (3) "Division of land" means the segregation of one or
 25 more parcels of land from a larger tract held in single or



1 undivided ownership by transferring or contracting to
 2 transfer title to or possession of a portion of the tract or
 3 properly filing a certificate of survey or subdivision plat
 4 establishing the identity of the segregated parcels pursuant
 5 to this chapter.

6 (4) "Examining land surveyor" means a registered land
 7 surveyor duly appointed by the governing body to review
 8 surveys and plats submitted for filing.

9 (5) "Governing body" means a board of county
 10 commissioners or the governing authority of any city or town
 11 organized pursuant to law.

12 (6) "Irregularly shaped tract of land" means a parcel
 13 of land other than an aliquot part of the United States
 14 government survey section or a United States government lot,
 15 the boundaries or areas of which cannot be determined
 16 without a survey or trigonometric calculation.

17 (7) "Occasional sale" means one sale of a division of a
 18 specific parcel of land within any 12-month period.

19 (8) "Planned unit development" means a land development
 20 project consisting of residential clusters, industrial
 21 parks, shopping centers, office building parks, or any
 22 combination thereof which comprises a planned mixture of
 23 land uses built in a prearranged relationship to each other
 24 and having open space and community facilities in common
 25 ownership or use.

1 (9) "Plat" means a graphical representation of a
 2 subdivision showing the division of land into lots, parcels,
 3 blocks, streets, alleys, and other divisions and
 4 dedications.

5 (10) "Preliminary plat" means a neat and scaled drawing
 6 of a proposed subdivision showing the layout of streets,
 7 alleys, lots, blocks, and other elements of a subdivision
 8 which furnish a basis for review by a governing body.

9 (11) "Final plat" means the final drawing of the
 10 subdivision and dedication required by this chapter to be
 11 prepared for filing for record with the county clerk and
 12 recorder and containing all elements and requirements set
 13 forth in this chapter and in regulations adopted pursuant
 14 thereto.

15 (12) "Registered land surveyor" means a person licensed
 16 in conformance with Title 37, chapter 67, to practice
 17 surveying in the state of Montana.

18 (13) "Registered professional engineer" means a person
 19 licensed in conformance with Title 37, chapter 67, to
 20 practice engineering in the state of Montana.

21 (14) "Rights of real property ownership" includes rights
 22 to use, enjoy, improve, sell, and convey in total or in part
 23 real property so long as the exercise of the rights does
 24 not:

25 (a) deny the rights to other private real property

1 owners; or

2 (b) adversely affect public health, safety, and
3 welfare.

4 ~~{14}~~(15) "Subdivider" means any person who causes land
5 to be subdivided or who proposes a subdivision of land.

6 ~~{15}~~(16) "Subdivision" means a division of land or land
7 so divided which creates one or more parcels containing less
8 than 20 acres, exclusive of public roadways, in order that
9 the title to or possession of the parcels may be sold,
10 rented, leased, or otherwise conveyed and shall include any
11 resubdivision and shall further include any condominium or
12 area, regardless of its size, which provides or will provide
13 multiple space for recreational camping vehicles or mobile
14 homes."

15 NEW SECTION. Section 3. Protection of private real
16 property ownership rights. A government agency may not deny
17 or restrict the rights of private real property ownership
18 under this chapter without:

19 (1) proving that denied or restricted activity
20 adversely affects public health, safety, or welfare;

21 (2) providing just compensation for the denial or
22 restriction; or

23 (3) obtaining from the private real property owners
24 affected permission to deny or restrict the rights.

25 **Section 4.** Section 76-3-207, MCA, is amended to read:

1 ***76-3-207. Subdivisions exempted from review but**
2 **subject to survey requirements -- exceptions.** (1) Except as
3 provided in subsection (2), unless the method of disposition
4 is adopted for the purpose of evading this chapter, the
5 following divisions of land are not subdivisions under this
6 chapter but are subject to the surveying requirements of
7 76-3-401 for divisions of land not amounting to
8 subdivisions:

9 (a) divisions made outside of platted subdivisions for
10 the purpose of relocating common boundary lines between
11 adjoining properties;

12 (b) divisions made outside of platted subdivisions for
13 the purpose of a gift or sale to any member of the
14 landowner's immediate family;

15 (c) divisions made outside of platted subdivisions by
16 sale or agreement to buy and sell where the parties to the
17 transaction enter a covenant running with the land and
18 revocable only by mutual consent of the governing body and
19 the property owner that the divided land will be used
20 exclusively for agricultural purposes;

21 (d) a single division of a parcel outside of platted
22 subdivisions when the transaction is an occasional sale;

23 (e) for five or fewer lots within a platted
24 subdivision, relocation of common boundaries and the
25 aggregation of lots; and

1 (f) divisions made for the purpose of relocating a
2 common boundary line between a single lot within a platted
3 subdivision and adjoining land outside a platted
4 subdivision. Any restrictions or requirements on the
5 original platted lot or original unplatted parcel continue
6 to apply to those areas.

7 (2) Notwithstanding the provisions of subsection (1):

8 (a) within a platted subdivision filed with the county
9 clerk and recorder, any division of lots which results in an
10 increase in the number of lots or which redesigns or
11 rearranges six or more lots must be reviewed and approved by
12 the governing body, and an amended plat must be filed with
13 the county clerk and recorder;

14 (b) any change in use of the land exempted under
15 subsection (1)(c) for anything other than agricultural
16 purposes subjects the division to the provisions of this
17 chapter.

18 (3) No division of land may be made under this section
19 unless the county treasurer has certified that no real
20 property taxes assessed and levied on the land to be divided
21 are delinquent.

22 (4) A clerk and recorder or any other government
23 official may not prohibit the filing of a survey and
24 conveyance that complies with this section without a court
25 order. A landowner aggrieved by a refusal to file without a

1 court order is entitled to attorney fees and expenses in
2 bringing an action to compel recording and filing plus the
3 reasonable value of the loss of use of the division,
4 including interest on a proposed sale. If a court order is
5 secured prohibiting the filing and recording and that order
6 is eventually rescinded, the landowner is entitled to only
7 attorney fees and all expenses of the litigation.

8 (5) The local government has the burden of proving that
9 a landowner is not entitled to an exemption and may not
10 impose any obligations on the landowner or a surveyor to
11 prove that the landowner is entitled to the exemption."

12 **Section 5.** Section 76-3-301, MCA, is amended to read:

13 "76-3-301. General restriction on transfer of title to
14 subdivided lands. (1) Except as provided in 76-3-303, every
15 final subdivision plat must be filed for record with the
16 county clerk and recorder before title to the subdivided
17 land can be sold or transferred in any manner. The clerk and
18 recorder of the county shall refuse to accept any plat for
19 record that fails to have the approval of 76-3-611(1) in
20 proper form.

21 (2) The clerk and recorder shall notify the governing
22 body or its designated agent of any land division described
23 in 76-3-207(1).

24 (3) If transfers not in accordance with this chapter
25 are made, the county attorney shall commence action to

1 enjoin further sales or transfers and compel compliance with
 2 all provisions of this chapter. The cost of such action
 3 shall be imposed against the party not prevailing. The
 4 provisions of this subsection and 76-3-105 are the local
 5 government's sole remedy."

6 **Section 6.** Section 76-3-501, MCA, is amended to read:

7 "76-3-501. Local subdivision regulations. (1) Before
 8 July 1, 1974, the governing body of every county, city, and
 9 town shall adopt and provide for the enforcement and
 10 administration of subdivision regulations reasonably
 11 providing for the orderly development of their
 12 jurisdictional areas; for the coordination of roads within
 13 subdivided land with other roads, both existing and planned;
 14 for the dedication of land for roadways and for public
 15 utility easements; for the improvement of roads; for the
 16 provision of adequate open spaces for travel, light, air,
 17 and recreation; for the provision of adequate
 18 transportation, water, drainage, and sanitary facilities;
 19 for the avoidance or minimization of congestion; and for the
 20 avoidance of subdivision which would involve unnecessary
 21 environmental degradation and the avoidance of danger of
 22 injury to health, safety, or welfare by reason of natural
 23 hazard or the lack of water, drainage, access,
 24 transportation, or other public services or would
 25 necessitate an excessive expenditure of public funds for the

1 supply of such services.

2 (2) Review and approval or disapproval of a subdivision
 3 under this chapter may occur only under those regulations in
 4 effect at the time an application for approval of a
 5 preliminary plat or for an extension under 76-3-610 is
 6 submitted to the governing body.

7 (3) A local government may not adopt a rule or
 8 regulation and a rule or regulation previously adopted is
 9 invalid or unenforceable if the rule or regulation creates
 10 any presumption with respect to the right of any person to
 11 be entitled to any exemption provided in this chapter."

12 **Section 7.** Section 76-3-606, MCA, is amended to read:

13 "76-3-606. Dedication of land to public -- cash
 14 donations. (1) A plat of a residential subdivision shall
 15 show that one-ninth 1/9 of the fair market value of the
 16 combined area of lots 5 acres or less in size and
 17 one-twelfth--of--the--combined--area--of--lots--greater--than--5
 18 acres--in--size, exclusive of all other dedications, is
 19 forever dedicated to the public for parks or playgrounds. No
 20 dedication may be required for the combined area of those
 21 lots in the subdivision which are larger than ± 0.5 acres
 22 exclusive of all other dedications. The governing body, in
 23 consultation with the planning board having jurisdiction,
 24 may determine suitable locations for such parks and
 25 playgrounds.

1 (2) Where the dedication of land for parks or
2 playgrounds is undesirable because of size, topography,
3 shape, location, or other circumstances, the governing body
4 may, for good cause shown, make an order to be endorsed and
5 certified on the plat accepting a cash donation in lieu of
6 the dedication of land and equal to the fair market value of
7 the amount of land that would have been dedicated. ~~For the~~
8 ~~purpose of this section, the fair market value is the value~~
9 ~~of the unsubdivided, unimproved land.~~ Such cash donation
10 shall be paid into the park fund to be used for the purchase
11 of additional lands or for the initial development of parks
12 and playgrounds.

13 (3) The park dedication and cash in lieu requirements
14 of subsections (1) and (2) do not apply to any division that
15 creates only one 5 or fewer additional ~~lot~~ lots.

16 (4) For the purposes of this section, the fair market
17 value is the value of the subdivided, improved land."

18 NEW SECTION. Section 8. Effective date. [This act] is
19 effective on passage and approval.

20 NEW SECTION. Section 9. Codification instruction.
21 [Section 3] is intended to be codified as an integral part
22 of Title 76, chapter 3, part 1, and the provisions of Title
23 76, chapter 3, part 1, apply to [section 3].

-End-