

HOUSE BILL 879

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
	Committee recommend bill, do pass.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.
	Third reading, passed.

IN THE SENATE

Feburary 23, 1979	Referred to Committee on Judiciary.
March 12, 1979	Rereferred to Committee on Local Government.
March 24, 1979	Committee recommend bill, as amended.
March 26, 1979	Second reading, concurred.
March 27, 1979	Third reading, as amended.

IN THE HOUSE

March 28, 1979	Returned from Senate, as amended.
March 31, 1979	Second reading, amendments rejected.

CONFERENCE COMMITTEE ACTION

March 31, 1979	On motion, free Conference Committee requested.
April 2, 1979	On motion, free Conference Committee appointed.
April 18, 1979	Free Conference Committee dissolved.
	On motion, Conference Committee requested
	Conference Committe dissolved.

1 House BILL NO. 879
2 INTRODUCED BY Sen. Col. John Dull,
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE SUBDIVISION AND PLATING ACT; AMENDING SECTIONS
6 76-3-102 THROUGH 76-3-104, 76-3-201, 76-3-207, 76-3-606,
7 76-3-608, 76-3-609, AND 76-3-611, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10
11 Section 1. Section 76-3-102, MCA, is amended to read:
12
13 "76-3-102. Statement of purpose. It is the purpose of
14 this chapter to promote the public health, safety, and
15 general welfare by regulating the subdivision of land; to
16 prevent overcrowding of land; to lessen congestion in the
17 streets and highways; to provide for adequate light, air,
18 water supply, sewage disposal, parks and recreation areas,
19 ingress and egress, and other public requirements; to
20 require development in harmony with the natural environment;
21 to require that whenever necessary, the appropriate approval
22 of certain subdivisions be contingent upon a written finding
23 of public interest by the governing body; and to require
24 uniform monumentation of land subdivisions and transferring
25 interests in real property by reference to plat or
certificate of survey."
26
27 Section 2. Section 76-3-103, MCA, is amended to read:
28

1 "76-3-103. Definitions. As used in this chapter,
2 unless the context or subject matter clearly requires
3 otherwise, the following words or phrases shall have the
4 following meanings:

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

8 (2) "Dedication" means the deliberate appropriation of
9 land by an owner for any general and public use, reserving
10 to himself no rights which are incompatible with the full
11 exercise and enjoyment of the public use to which the
12 property has been devoted.

13 (3) "Division of land" means the segregation of one or
14 more parcels of land from a larger tract held in single or
15 undivided ownership by transferring or contracting to
16 transfer title to or possession of a portion of the tract or
17 properly filing a certificate of survey or subdivision plat
18 establishing the identity of the segregated parcels pursuant
19 to this chapter.

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

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

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1 (6) "Irregularly shaped tract of land" means a parcel
 2 of land other than an aliquot part of the United States
 3 government survey section or a United States government lot,
 4 the boundaries or areas of which cannot be determined
 5 without a survey or trigonometric calculation.

6 (7) "Occasional sale" means one sale of a division of
 7 land within any 12-month period.

8 (8) "Planned unit development" means a land
 9 development project consisting of residential clusters,
 10 industrial parks, shopping centers, office building parks,
 11 or any combination thereof which comprises a planned mixture
 12 of land uses built in a prearranged relationship to each
 13 other and having open space and community facilities in
 14 common ownership or use.

15 (9) "Plat" means a graphical representation of a
 16 subdivision showing the division of land into lots, parcels,
 17 blocks, streets, alleys, and other divisions and
 18 dedications.

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

23 (11) "Final plat" means the final drawing of the
 24 subdivision and dedication required by this chapter to be
 25 prepared for filing for record with the county clerk and

1 recorder and containing all elements and requirements set
 2 forth in this chapter and in regulations adopted pursuant
 3 thereto.

4 (12) "Registered land surveyor" means a person licensed
 5 in conformance with the Montana Professional Engineers'
 6 Registration Act (Title 37, chapter 67) to practice
 7 surveying in the state of Montana.

8 (13) "Registered professional engineer" means a person
 9 licensed in conformance with the Montana Professional
 10 Engineers' Registration Act (Title 37, chapter 67) to
 11 practice engineering in the state of Montana.

12 (14) "Subdivider" means any person who causes land to
 13 be subdivided or who proposes a subdivision of land.

14 (15) "Subdivision" means a division of land or land so
 15 divided which creates one or more parcels containing--less
 16 than--20--acres, exclusive of public roadways, in order that
 17 the title to or possession of the parcels may be sold,
 18 rented, leased, or otherwise conveyed and shall include any
 19 resubdivision and shall further include any condominium or
 20 area, regardless of its size, which provides or will provide
 21 multiple space for recreational camping vehicles, or mobile
 22 homes."

23 Section 3. Section 76-3-104, MCA, is amended to read:
 24 "76-3-104. What constitutes subdivision. A subdivision
 25 shall comprise only those parcels less-than-20-acres which

1 have been segregated from the original tract, and the plat
 2 thereof shall show all such parcels whether contiguous or
 3 not."

4 Section 4. Section 76-3-201, MCA, is amended to read:

5 "76-3-201. Exemption for certain divisions of land.
 6 Unless the method of disposition is adopted for the purpose
 7 of evading this chapter, the requirements of this chapter
 8 shall not apply to any division of land which:

9 (1) is created by order of any court of record in this
 10 state or by operation of law or which, in the absence of
 11 agreement between the parties to the sale, could be created
 12 by an order of any court in this state pursuant to the law
 13 of eminent domain (Title 70, chapter 30);

14 ~~(2) is created to provide security for construction
 15 mortgages, trusts, or trust indentures~~

16 ~~(3) creates an interest in oil, gas, minerals, or
 17 water which is now or hereafter severed from the surface
 18 ownership of real property;~~

19 ~~(4) creates cemetery lots;~~

20 ~~(5) is created by the reservation of a life estate;~~

21 ~~(6) is created by lease or rental for farming and
 22 agricultural purposes;~~

23 ~~(7) results exclusively in parcels of 160 acres or
 24 larger."~~

25 Section 5. 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, provided that when the
15 certificate of survey for gifts to family members is filed,
16 it must be accompanied by the deed for the parcel and a
17 signed, executed copy of the appropriate gift tax return;

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

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

1 (e) for five or fewer lots within a platted
 2 subdivision, relocation of common boundaries and the
 3 aggregation of lots;

4 *if the divisions created to provide security for
 5 construction mortgages, liens, or trust indentures, subject
 6 to the following conditions:*

7 *iii. the security documents for the division must
 8 accompany the certificate of survey for filing;*

9 *iii. when the exempted parcel is transferred to a third
 10 party, the certificate of survey must be accompanied by
 11 documents affirming that the security instrument has been
 12 foreclosed;*

13 *iii. if the conditions described in (i) and (ii) above
 14 are not met, the division shall be reviewed under the
 15 provisions of this chapter.*

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

17 (a) within a platted subdivision filed with the county
 18 clerk and recorder, any division of lots which results in an
 19 increase in the number of lots or which redesigns or
 20 rearranges six or more lots must be reviewed and approved by
 21 the governing body, and an amended plat must be filed with
 22 the county clerk and recorder;

23 (b) any change in use of the land exempted under
 24 subsection (1)(c) for anything other than agricultural
 25 purposes subjects the division to the provisions of this

1 *chapter."*

2 Section 6. Section 76-3-606, MCA, is amended to read:
 3 "76-3-606. Dedication of land to public -- cash
 4 donations. (1) A plat of a residential subdivision shall
 5 show that one-ninth of the combined area of lots 5 acres or
 6 less in size and one-twelfth of the combined area of lots
 7 greater than 5 acres in size, exclusive of all other
 8 dedications, is forever dedicated to the public for parks or
 9 playgrounds. No dedication may be required for the combined
 10 area of those lots in the subdivision which are larger than
 11 10 acres exclusive of all other dedications. The governing
 12 body, in consultation with the planning board having
 13 jurisdiction, may determine suitable locations for such
 14 parks and playgrounds.

15 (2) Where the dedication of land for parks or
 16 playgrounds is undesirable because of size, topography,
 17 shape, location, or other circumstances, the governing body
 18 may, for good cause shown, make an order to be endorsed and
 19 certified on the plat accepting a cash donation in lieu of
 20 the dedication of land and equal to the fair market value of
 21 the amount of land that would have been dedicated. For the
 22 purpose of this section, the fair market value is the value
 23 of the unsubdivided, unimproved land. Such cash donation
 24 shall be paid into the park fund, to *This money may* be used
 25 for the purchase of additional lands, or for the initial

1 development of parks and playgrounds, and for the
 2 maintenance of existing parks and playgrounds. No more than
 3 two-thirds of this money may be used for maintenance.

4 (3) Notwithstanding the provisions of Title 7, chapter
 5 8, part 25, and Title 7, chapter 16, part 23, and other
 6 provisions relating to the sale of parklands, land dedicated
 7 to the public under this section must be evaluated by the
 8 governing body 3 years following the dedication. Following
 9 notice and a public hearing, the governing body may sell the
 10 dedicated land as parcels for fair market value if the sale
 11 would better contribute to the development of the overall
 12 park program. The money derived from the sale of such
 13 parklands shall be deposited in the park funds."

14 Section 7. Section 76-3-608, MCA, is amended to read:
 15 "76-3-608. Criteria for local government review. (1)
 16 The Except as provided in subsection (3), the basis for the
 17 governing body's decision to approve, conditionally approve,
 18 or disapprove a subdivision shall be whether the preliminary
 19 plat, environmental assessment, public hearing, planning
 20 board recommendations, and additional information
 21 demonstrate that development of the subdivision would be in
 22 the public interest. The governing body shall disapprove
 23 any subdivision which it finds not to be in the public
 24 interest.

25 (2) To determine whether the proposed subdivision

1 would be in the public interest, the governing body shall
 2 issue written findings of fact which weigh the following
 3 criteria for public interest:

- 4 (a) the basis of the need for the subdivision;
- 5 (b) expressed public opinion;
- 6 (c) effects on agriculture;
- 7 (d) effects on local services;
- 8 (e) effects on taxation;
- 9 (f) effects on the natural environment;
- 10 (g) effects on wildlife and wildlife habitat; and
- 11 (h) effects on the public health and safety.

12 (3) The provisions of subsections (1) and (2) do not
 13 apply to minor subdivisions or subdivisions described in
 14 76-3-210a"

15 Section 8. Section 76-3-609, MCA, is amended to read:
 16 "76-3-609. Review procedure for minor subdivisions.
 17 Subdivisions containing five or fewer parcels where proper
 18 access to all lots is provided and in which no land is to be
 19 dedicated to the public for parks or playgrounds are to be
 20 reviewed as follows:
 21 (1) The governing body must approve, conditionally
 22 approve, or disapprove the first such subdivision from a
 23 tract of record within 35 days of the submission of an
 24 application for approval thereof.

25 (2) The governing body shall state in writing the

1 conditions which must be met if the subdivision is
 2 conditionally approved or what local regulations would not
 3 be met by the subdivision if it disapproves the subdivision.

4 (3) The requirements for holding a public hearing, and
 5 preparing an environmental assessment, and finding that the
6 subdivision is in the public interest shall not apply to the
 7 first such subdivision created from a tract of record.

8 (4) Subsequent subdivisions from a tract of record
 9 shall be reviewed under 76-3-505 and regulations adopted
 10 pursuant to that section."

11 Section 9. Section 76-3-611, MCA, is amended to read:
 12 "76-3-611. Review of final plat. (1) The governing
 13 body shall examine every final subdivision plat and shall
 14 approve it when and only when it conforms to the conditions
 15 of approval set forth on the preliminary plat and to the
 16 terms of this chapter and regulations adopted pursuant
 17 thereto.

18 (2) (a) The governing body may require that final
 19 subdivision plats and certificates of survey be reviewed for
 20 errors and omissions in calculation or drafting and for
21 violations of this chapter by an examining land surveyor
 22 before recording with the county clerk and recorder. When
 23 the survey data shown on the plat or certificate of survey
 24 meets the conditions set forth by or pursuant to this
 25 chapter, the examining land surveyor shall so certify in a

1 printed or stamped certificate on the plat or certificate of
 2 survey. Such certificate shall be signed by him.

3 (b) No land surveyor shall act as an examining land
 4 surveyor in regard to a plat or certificate of survey in
 5 which he has a financial or personal interest.

6 (c) The examining land surveyor may charge a fee of
7 \$10 for each plat or certificate of survey filed."

-End-

House BILL NO. 879

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE SUBDIVISION AND PLATING ACT; AMENDING SECTIONS
6 76-3-102 THROUGH 76-3-104, 76-3-201, 76-3-207, 76-3-606,
7 76-3-608, 76-3-609, AND 76-3-611, MCA."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 76-3-102, MCA, is amended to read:
11 "76-3-102. Statement of purpose. It is the purpose of
12 this chapter to promote the public health, safety, and
13 general welfare by regulating the subdivision of land; to
14 prevent overcrowding of land; to lessen congestion in the
15 streets and highways; to provide for adequate light, air,
16 water supply, sewage disposal, parks and recreation areas,
17 ingress and egress, and other public requirements; to
18 require development in harmony with the natural environment;
19 to require that whenever necessary, the appropriate approval
20 of certain subdivisions be contingent upon a written finding
21 of public interest by the governing body; and to require
22 uniform monumentation of land subdivisions and transferring
23 interests in real property by reference to plat or
24 certificate of survey."

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

1 "76-3-103. Definitions. As used in this chapter,
2 unless the context or subject matter clearly requires
3 otherwise, the following words or phrases shall have the
4 following meanings:

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

8 (2) "Dedication" means the deliberate appropriation of
9 land by an owner for any general and public use, reserving
10 to himself no rights which are incompatible with the full
11 exercise and enjoyment of the public use to which the
12 property has been devoted.

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

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

1 (6) "Irregularly shaped tract of land" means a parcel
 2 of land other than an aliquot part of the United States
 3 government survey section or a United States government lot,
 4 the boundaries or areas of which cannot be determined
 5 without a survey or trigonometric calculation.

6 (7) "Occasional sale" means one sale of a division of
 7 land within any 12-month period.

8 (8) "Planned unit development" means a land
 9 development project consisting of residential clusters,
 10 industrial parks, shopping centers, office building parks,
 11 or any combination thereof which comprises a planned mixture
 12 of land uses built in a prearranged relationship to each
 13 other and having open space and community facilities in
 14 common ownership or use.

15 (9) "Plat" means a graphical representation of a
 16 subdivision showing the division of land into lots, parcels,
 17 blocks, streets, alleys, and other divisions and
 18 dedications.

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

23 (11) "Final plat" means the final drawing of the
 24 subdivision and dedication required by this chapter to be
 25 prepared for filing for record with the county clerk and

1 recorder and containing all elements and requirements set
 2 forth in this chapter and in regulations adopted pursuant
 3 thereto.

4 (12) "Registered land surveyor" means a person licensed
 5 in conformance with the Montana Professional Engineers'
 6 Registration Act (Title 37, chapter 67) to practice
 7 surveying in the state of Montana.

8 (13) "Registered professional engineer" means a person
 9 licensed in conformance with the Montana Professional
 10 Engineers' Registration Act (Title 37, chapter 67) to
 11 practice engineering in the state of Montana.

12 (14) "Subdivider" means any person who causes land to
 13 be subdivided or who proposes a subdivision of land.

14 (15) "Subdivision" means a division of land or land so
 15 divided which creates one or more parcels containing--less
 16 than--20--acres, exclusive of public roadways, in order that
 17 the title to or possession of the parcels may be sold,
 18 rented, leased, or otherwise conveyed and shall include any
 19 resubdivision and shall further include any condominium or
 20 areas, regardless of its size, which provides or will provide
 21 multiple space for recreational camping vehicles, or mobile
 22 homes."

23 Section 3. Section 76-3-104, MCA, is amended to read:
 24 "76-3-104. What constitutes subdivision. A subdivision
 25 shall comprise only those parcels less-than-20-acres which

1 have been segregated from the original tract, and the plat
 2 thereof shall show all such parcels whether contiguous or
 3 not."

4 Section 4. Section 76-3-201, MCA, is amended to read:
 5 "76-3-201. Exemption for certain divisions of land.
 6 Unless the method of disposition is adopted for the purpose
 7 of evading this chapter, the requirements of this chapter
 8 shall not apply to any division of land which:

9 (1) is created by order of any court of record in this
 10 state or by operation of law or which, in the absence of
 11 agreement between the parties to the sale, could be created
 12 by an order of any court in this state pursuant to the law
 13 of eminent domain (Title 70, chapter 30);

14 ~~(2) is created to provide security for construction
 mortgages, tennants or trust indentures;~~

15 ~~(3) creates an interest in oil, gas, minerals, or
 16 water which is now or hereafter severed from the surface
 17 ownership of real property;~~

18 ~~(4) creates cemetery lots;~~

19 ~~(5) is created by the reservation of a life estate;~~

20 ~~(6) is created by lease or rental for farming and
 21 agricultural purposes;~~

22 ~~(6) results exclusively in parcels of 160 acres or
 23 larger."~~

24 Section 5. 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, provided that when the
 15 certificate of survey for gifts to family members is filed,
 16 it must be accompanied by the deed for the parcel and a
 17 signed, executed copy of the appropriate gift tax return;

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

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

1 (e) for five or fewer lots within a platted
 2 subdivision, relocation of common boundaries and the
 3 aggregation of lots;

4 (f) divisions created to provide security for
 5 construction mortgages, liens, or trust indentures, subject
 6 to the following conditions:

7 (i) the security documents for the division must
 8 accompany the certificate of survey for filing;

9 (ii) when the exempted parcel is transferred to a third
 10 party, the certificate of survey must be accompanied by
 11 documents affirming that the security instrument has been
 12 foreclosed;

13 (iii) if the conditions described in (i) and (ii) above
 14 are not met, the division shall be reviewed under the
 15 provisions of this chapter;

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

17 (a) within a platted subdivision filed with the county
 18 clerk and recorder, any division of lots which results in an
 19 increase in the number of lots or which redesigns or
 20 rearranges six or more lots must be reviewed and approved by
 21 the governing body, and an amended plat must be filed with
 22 the county clerk and recorder;

23 (b) any change in use of the land exempted under
 24 subsection (1)(c) for anything other than agricultural
 25 purposes subjects the division to the provisions of this

1 chapter."

2 Section 6. Section 76-3-606, MCA, is amended to read:
 3 "76-3-606. Dedication of land to public -- cash
 4 donations. (1) A plat of a residential subdivision shall
 5 show that one-ninth of the combined area of lots 5 acres or
 6 less in size and one-twelfth of the combined area of lots
 7 greater than 5 acres in size, exclusive of all other
 8 dedications, is forever dedicated to the public for parks or
 9 playgrounds. No dedication may be required for the combined
 10 area of those lots in the subdivision which are larger than
 11 10 acres exclusive of all other dedications. The governing
 12 body, in consultation with the planning board having
 13 jurisdiction, may determine suitable locations for such
 14 parks and playgrounds.

15 (2) Where the dedication of land for parks or
 16 playgrounds is undesirable because of size, topography,
 17 shape, location, or other circumstances, the governing body
 18 may, for good cause shown, make an order to be endorsed and
 19 certified on the plat accepting a cash donation in lieu of
 20 the dedication of land and equal to the fair market value of
 21 the amount of land that would have been dedicated. For the
 22 purpose of this section, the fair market value is the value
 23 of the unsubdivided, unimproved land. Such cash donation
 24 shall be paid into the park funds to This money may be used
 25 for the purchase of additional lands, or for the initial

1 development of parks and playgrounds, and for the
 2 maintenance of existing parks and playgrounds. No more than
 3 two-thirds of this money may be used for maintenance.

4 (3) Notwithstanding the provisions of Title 7, chapter
 5 8, part 23, and Title 7, chapter 16, part 23, and other
 6 provisions relating to the sale of parklands, land dedicated
 7 to the public under this section must be evaluated by the
 8 governing body 3 years following the dedication. Following
 9 notice and a public hearing, the governing body may sell the
 10 dedicated land as parcels for fair market value if the sale
 11 would better contribute to the development of the overall
 12 park program. The money derived from the sale of such
 13 parklands shall be deposited in the park funds."

14 Section 7. Section 76-3-608, MCA, is amended to read:
 15 "76-3-608. Criteria for local government review. (1) Except as provided in subsection (3), the basis for the
 16 governing body's decision to approve, conditionally approve,
 17 or disapprove a subdivision shall be whether the preliminary
 18 plat, environmental assessment, public hearing, planning
 19 board recommendations, and additional information
 20 demonstrate that development of the subdivision would be in
 21 the public interest. The governing body shall disapprove
 22 any subdivision which it finds not to be in the public
 23 interest.

24 (2) To determine whether the proposed subdivision

1 would be in the public interest, the governing body shall
 2 issue written findings of fact which weigh the following
 3 criteria for public interest:

4 (a) the basis of the need for the subdivision;
 5 (b) expressed public opinion;
 6 (c) effects on agriculture;
 7 (d) effects on local services;
 8 (e) effects on taxation;
 9 (f) effects on the natural environment;
 10 (g) effects on wildlife and wildlife habitat; and
 11 (h) effects on the public health and safety.

12 (3) The provisions of subsections (1) and (2) do not
 13 apply to minor subdivisions or subdivisions described in
 14 76-3-210a"

15 Section 8. Section 76-3-609, MCA, is amended to read:
 16 "76-3-609. Review procedure for minor subdivisions.
 17 Subdivisions containing five or fewer parcels where proper
 18 access to all lots is provided and in which no land is to be
 19 dedicated to the public for parks or playgrounds are to be
 20 reviewed as follows:
 21 (1) The governing body must approve, conditionally
 22 approve, or disapprove the first such subdivision from a
 23 tract of record within 35 days of the submission of an
 24 application for approval thereof.

25 (2) The governing body shall state in writing the

1 conditions which must be met if the subdivision is
 2 conditionally approved or what local regulations would not
 3 be met by the subdivision if it disapproves the subdivision.

4 (3) The requirements for holding a public hearings and
 5 preparing an environmental assessments and finding that the
 6 subdivision is in the public interest shall not apply to the
 7 first such subdivision created from a tract of record.

8 (4) Subsequent subdivisions from a tract of record
 9 shall be reviewed under 76-3-505 and regulations adopted
 10 pursuant to that section."

11 Section 9. Section 76-3-611, MCA, is amended to read:
 12 "76-3-611. Review of final plat. (1) The governing
 13 body shall examine every final subdivision plat and shall
 14 approve it when and only when it conforms to the conditions
 15 of approval set forth on the preliminary plat and to the
 16 terms of this chapter and regulations adopted pursuant
 17 thereto.

18 (2) (a) The governing body may require that final
 19 subdivision plats and certificates of survey be reviewed for
 20 errors and omissions in calculation or drafting and for
 21 violations of this chapter by an examining land surveyor
 22 before recording with the county clerk and recorder. When
 23 the survey data shown on the plat or certificate of survey
 24 meets the conditions set forth by or pursuant to this
 25 chapter, the examining land surveyor shall so certify in a

1 printed or stamped certificate on the plat or certificate of
 2 survey. Such certificate shall be signed by him.
 3 (b) No land surveyor shall act as an examining land
 4 surveyor in regard to a plat or certificate of survey in
 5 which he has a financial or personal interest.
 6 (c) The examining land surveyor may charge a fee of
 7 \$10 for each plat or certificate of survey filed."

-End-

HOUSE BILL NO. 879

INTRODUCED BY JUDICIARY COMMITTEE

SCULLY, CHAIRMAN

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE SUBDIVISION AND PLATING ACT; AMENDING SECTIONS
7 76-3-102, 76-3-104, 76-3-201, 76-3-207, 76-3-606,
8 76-3-608, 76-3-609, AND 76-3-611, MCA."

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14 general welfare by regulating the subdivision of land; to
15 prevent overcrowding of land; to lessen congestion in the
16 streets and highways; to provide for adequate light, air,
17 water supply, sewage disposal, parks and recreation areas,
18 ingress and egress, and other public requirements; to
19 require development in harmony with the natural environment;
20 to require that whenever necessary, the appropriate approval
21 of certain subdivisions OF SIX PARCELS OR MORE be contingent
22 upon a written finding of public interest by the governing
23 body; and to require uniform monumentation of land
24 subdivisions and transferring interests in real property by
25 reference to plat or certificate of survey."

1 organized-pursuant-to-laws

2 (6) -- "irregularly--shaped--tract-of-land" -- means a--parcel
 3 of-land--other--than--an--acute--part--of--the--United--States
 4 government--survey--section--or--a--United--States--government--tract
 5 the--boundaries--or--areas--of--which--cannot--be--determined
 6 without-a--survey--or--trigonometric--calculations

7 (7) -- "Occasional--site" -- means one--site--of-a--division--of
 8 land--within--any--12--month--period

9 (8) -- "Planned--unit--development" -- means a--land
 10 development--project--consisting--of--residential--clusters--
 11 industrial--parks--shopping--centers--office--building--parks
 12 or--any--combination--thereof--which--comprises--a--planned--mixture
 13 of--land--uses--built--in--a--prearranged--relationship--to--each
 14 other--and--having--open--space--and--community--facilities--in
 15 common--ownership--or--use

16 (9) -- "Plot" -- means a--graphic--representation--of--a
 17 subdivision--showing--the--division--of--land--into--lots--parcels--
 18 blocks--streets--alleys--and--other--divisions--and
 19 dedications

20 (10) -- "Preliminary--plot" -- means a--neat--and--scaled--drawing
 21 of--a--proposed--subdivision--showing--the--layout--of--streets--
 22 alleys--lots--blocks--and--other--elements--of--a--subdivision
 23 which--furnish--a--basis--for--review--by--a--governing--body

24 (11) -- "Final--plot" -- means the--final--drawing--of--the
 25 subdivision--and--dedication--required--by--this--chapter--to--be

1 prepared--for--fitting--for--record--with--the--county--clerk--and
 2 recorder--and--containing--all--elements--and--requirements--set
 3 forth--in--this--chapter--and--in--regulations--adopted--pursuant
 4 thereto

5 (12) -- "Registered--land--surveyor" -- means a--person--licensed
 6 in--conformance--with--the--Montana--Professional--Engineers--
 7 Registration--Act--(Title--37--Chapter--67) --to--practice
 8 surveying--in--the--state--of--Montana

9 (13) -- "Registered--professional--engineer" -- means a--person
 10 licensed--in--conformance--with--the--Montana--Professional
 11 Engineers--Registration--Act--(Title--37--Chapter--67) --to
 12 practice--engineering--in--the--state--of--Montana

13 (14) -- "Subdivider" -- means any--person--who--causes--to--land--to
 14 be--subdivided--or--who--proposes--a--subdivision--of--lands

15 (15) -- "Subdivision" -- means a--division--of--land--or--land--so
 16 divided--which--creates--one--or--more--parcels--containing--less
 17 than--20--acres--exclusive--of--public--roadways--in--order--that
 18 the--title--to--or--possession--of--the--parcels--may--be--sold--
 19 rented--leased--or--otherwise--conveyed--and--shall--include--any
 20 resubdivision--and--shall--further--include--any--condominium--or
 21 areas--regardless--of--its--size--which--provides--or--will--provide
 22 multiple--space--for--recreational--camping--vehicles--or--mobile
 23 homes."

24 Section--3--Section--76-3-104--MCA--is--amended--to--read--
 25 "#76-3-104--What----constitutes----subdivisions-----"

1 subdivision shall comprise only those parcels less than 20
 2 acres which have been segregated from the original tract
 3 and the plat thereof shall show all such parcels whether
 4 contiguous or not."

5 Section 4--Section 76-3-201, MEAv, is amended to read:
 6 "76-3-201--Exemption for certain divisions of land
 7 Unless the method of disposition is adopted for the purpose
 8 of evading this chapter, the requirements of this chapter
 9 shall not apply to any division of land which

10 (1) is created by order of any court of record in this
 11 state or by operation of law or which in the absence of
 12 agreement between the parties to the suit could be created
 13 by an order of any court in this state pursuant to the law
 14 of eminent domain; (2) is created to provide security for construction
 15 mortgages, liens, or trust indentures

16 (3) creates an interest in oil, gas, minerals or
 17 water which is now or hereafter severed from the surface
 18 ownership of real property

19 (4) creates a cemetery lot
 20 (5) is created by the reservation of a life estate
 21 (6) is created by lease or rental for farming and
 22 agricultural purposes;

23 (7) results exclusively in parcels of 160 acres or
 24 larger."

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

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

13 (b) divisions made outside of platted subdivisions for
 14 the purpose of a gift or sale to any member of the
 15 landowner's immediate family; ~~provided that when the~~
~~certificate of survey for gifts to family members is filed~~
~~it must be accompanied by the deed for the parcel and a~~
~~signed and executed copy of the appropriate gift tax return;~~

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

25 (d) a single division of a parcel outside of platted

1 subdivisions when the transaction is an occasional sale;
 2 (e) for five or fewer lots within a platted
 3 subdivision, relocation of common boundaries and the
 4 aggregation of lots;
 5 if divisions created to provide security for
construction mortgages, liens, or trust indentures, subject
to the following conditions:

6 (i) the security documents for the division must
accompany the certificate of survey for filing;

7 (ii) when the exempted parcel is transferred to a third
party, the certificate of survey must be accompanied by
documents affirming that the security instrument has been
foreclosed;

8 (iii) if the conditions described in (i) and (ii) above
are not met, the division shall be reviewed under the
provisions of this chapter.

9 (2) Notwithstanding the provisions of subsection (1):
 10 (a) within a platted subdivision filed with the county
 11 clerk and recorder, any division of lots which results in an
 12 increase in the number of lots or which redesigns or
 13 rearranges six or more lots must be reviewed and approved by
 14 the governing body, and an amended plat must be filed with
 15 the county clerk and recorder;

16 (b) any change in use of the land exempted under
 17 subsection (1)(c) for anything other than agricultural

1 purposes subjects the division to the provisions of this
 2 chapter."

3 Section 3. Section 76-3-606, MCA, is amended to read:
 4 "76-3-606. Dedication of land to public -- cash
 5 donations. (1) A plat of a residential subdivision shall
 6 show that one-ninth of the combined area of lots 5 acres or
 7 less in size and one-twelfth of the combined area of lots
 8 greater than 5 acres in size, exclusive of all other
 9 dedications, is forever dedicated to the public for parks or
 10 playgrounds. No dedication may be required for the combined
 11 area of those lots in the subdivision which are larger than
 12 10 acres exclusive of all other dedications. The governing
 13 body, in consultation with the planning board having
 14 jurisdiction, may determine suitable locations for such
 15 parks and playgrounds.

16 (2) Where the dedication of land for parks or
 17 playgrounds is undesirable because of size, topography,
 18 shape, location, or other circumstances, the governing body
 19 may, for good cause shown, make an order to be endorsed and
 20 certified on the plat accepting a cash donation in lieu of
 21 the dedication of land and equal to the fair market value of
 22 the amount of land that would have been dedicated. For the
 23 purpose of this section, the fair market value is the value
 24 of the unsubdivided, unimproved land. Such cash donation
 25 shall be paid into the park fund to ~~this money~~ may be

1 used for the purchase of additional lands or QR for the
2 initial development of parks and playgrounds--and--for--the
3 maintenance--of--existing--parks--and--playgrounds. No--more--than
4 two--thirds--of--this--money--may--be--used--for--maintenance

131 Notwithstanding the provisions of Title 7, chapter
132 8, part 25, and Title 7, chapter 16, part 23, and other
133 provisions relating to the sale of parklands, land dedicated
134 to the public under this section must be evaluated by the
135 governing body 3 years following the dedication. Following
136 notice and a public hearing, the governing body may sell the
137 dedicated land as parcels for fair market value if the sale
138 would better contribute to the development of the overall
139 park program. The money derived from the sale of such
140 parklands shall be deposited in the park fund."

- 5 (a) the basis of the need for the subdivision;
- 6 (b) expressed public opinion;
- 7 (c) effects on agriculture;
- 8 (d) effects on local services;
- 9 (e) effects on taxation;
- 10 (f) effects on the natural environment;
- 11 (g) effects on wildlife and wildlife habitat; an
- 12 (h) effects on the public health and safety.

13 131. The provisions of subsections (1) and (2) do not
14 apply to minor subdivisions or subdivisions described in
15 76-3-210."

16 Section 5. Section 76-3-609, MCA, is amended to read:
17 "76-3-609. Review procedure for minor subdivisions.
18 Subdivisions containing five or fewer parcels where proper
19 access to all lots is provided and in which no land is to be
20 dedicated to the public for parks or playgrounds are to be
21 reviewed as follows:

22 (1) The governing body must approve, conditionally
23 approve, or disapprove the first such subdivision from a
24 tract of record within 35 days of the submission of an
25 application for approval thereof.

1 (2) The governing body shall state in writing the
2 conditions which must be met if the subdivision is
3 conditionally approved or what local regulations would not
4 be met by the subdivision if it disapproves the subdivision.

5 (3) The requirements for holding a public hearing and
6 preparing an environmental assessment and finding that the
7 subdivision is in the public interest shall not apply to the
8 first such subdivision created from a tract of record.

9 (4) Subsequent subdivisions from a tract of record
10 shall be reviewed under 76-3-505 and regulations adopted
11 pursuant to that section.*

12 Section 6. Section 76-3-611, MCA, is amended to read:
13 "76-3-611. Review of final plat. (1) The governing
14 body shall examine every final subdivision plat and shall
15 approve it when and only when it conforms to the conditions
16 of approval set forth on the preliminary plat and to the
17 terms of this chapter and regulations adopted pursuant
18 thereto.

19 (2) (a) The governing body may require that final
20 subdivision plats and certificates of survey be reviewed for
21 errors and omissions in calculation or drafting and for
22 violations of this chapter by an examining land surveyor
23 before recording with the county clerk and recorder. When
24 the survey data shown on the plat or certificate of survey
25 meets the conditions set forth by or pursuant to this

1 chapter, the examining land surveyor shall so certify in a
2 printed or stamped certificate on the plat or certificate of
3 survey. Such certificate shall be signed by him.

4 (b) No land surveyor shall act as an examining land
5 surveyor in regard to a plat or certificate of survey in
6 which he has a financial or personal interest.

7 1c1. The examining land surveyor may charge a fee of
8 \$10 for each plat or certificate of survey filed."

-End-

March 24, 1979

SENATE STANDING COMMITTEE REPORT
(Local Government)

That House Bill No. 879, third reading bill, be amended as follows:

1. Title, line 6.

Following: "76-3-102"

Strike: "THROUGH 76-3-104, 76-3-201"

2. Page 1, line 20.

Following: "of"

Strike: "certain"

Following: "subdivisions"

Insert: "of 6 parcels or more"

3. Page 1, line 25.

Strike: lines 25 through line 24 on page 5 in their entirety

Renumber: subsequent sections.

4. Page 6, line 14.

Following: "family"

Strike: remainder of lines 14 through 17 in their entirety

Insert: ";"

5. Page 8, line 24.

Following: "fund"

Strike: ". This money may"

Insert: "to"

6. Page 8, line 25.

Following: "lands"

Strike: ", "

Insert: "or"

7. Page 9, line 1.

Following: "playgrounds"

Strike: remainder of lines 1 through 3 in their entirety

Insert: "."

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