

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

February 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 Committee dissolved.

1 *House* BILL NO. *879*
 2 INTRODUCED BY *Sen. Tom O'Connell*
 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 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.

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.

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, liens, or trust indentures;~~

16 (3)(2) 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)(3) creates cemetery lots;

20 (5)(4) is created by the reservation of a life estate;

21 (6)(5) is created by lease or rental for farming and
22 agricultural purposes;

23 (6) 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 ~~(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 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 fund."~~

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 ~~76-3-210."~~

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-

1 House BILL NO. 879
 2 INTRODUCED BY Sen. Lou Fish, Sully
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 5 CLARIFY THE SUBDIVISION AND PLATING ACT; AMENDING SECTIONS
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 18 establishing the identity of the segregated parcels pursuant
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 21 surveyor duly appointed by the governing body to review
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 24 commissioners or the governing authority of any city or town
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11 or any combination thereof which comprises a planned mixture
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16 subdivision showing the division of land into lots, parcels,
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13 be subdivided or who proposes a subdivision of land.

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21 multiple space for recreational camping vehicles, or mobile
22 homes."

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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, liens, or trust indentures;~~

16 ~~(3)~~(2) 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)~~(3) creates cemetery lots;

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22 agricultural purposes;

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

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2 subject to survey requirements -- exceptions. (1) Except as
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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;~~

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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
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25 purposes subjects the division to the provisions of this

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2 Section 6. Section 76-3-606, MCA, is amended to read:

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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 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 fund."

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
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12 (3) The provisions of subsections (1) and (2) do not
13 apply to minor subdivisions or subdivisions described in
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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
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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

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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
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 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.

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 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

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

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

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

Section 2. Section ~~76-3-103~~, MCA, is amended to read:
 "~~76-3-103. Definitions. As used in this chapter unless the context or subject matter clearly requires otherwise the following words or phrases shall have the following meanings:~~

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

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

(3) "~~Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or property fitting a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.~~

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

(5) "~~Governing body" means a board of county commissioners or the governing authority of any city or town.~~

1 organized-pursuant-to-law
 2 {6}-"irregularly-shaped-tract-of-land"-means-a-parcel
 3 of-land-other-than-an-aliquot-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-sale"-means-one-sale-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-graphical-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-filing-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-land-to
 14 be-subdivided-or-who-proposes-a-subdivision-of-land
 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 area-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, MCA, 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 sale could be created
13 by an order of any court in this state pursuant to the law
14 of eminent domain ~~(Title 70, Chapter 30)~~

15 (2) is created to provide security for construction
16 mortgages, liens, or trust indentures;

17 (3) ~~(2)~~ creates an interest in oil, gas, minerals, or
18 water which is now or hereafter severed from the surface
19 ownership of real property;

20 (4) ~~(3)~~ creates cemetery lots;

21 (5) ~~(4)~~ is created by the reservation of a life estate;

22 (6) ~~(5)~~ is created by lease or rental for farming and
23 agricultural purposes;

24 (7) ~~(6)~~ results exclusively in parcels of 160 acres or
25 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~~
16 ~~certificate of survey for gifts to family members is filed~~
17 ~~it must be accompanied by the deed for the parcel and a~~
18 ~~signed, 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 ~~(f) divisions created to provide security for~~

6 ~~construction mortgages, liens, or trust indentures, subject~~

7 ~~to the following conditions:~~

8 ~~(i) the security documents for the division must~~

9 ~~accompany the certificate of survey for filing;~~

10 ~~(ii) when the exempted parcel is transferred to a third~~

11 ~~party, the certificate of survey must be accompanied by~~

12 ~~documents affirming that the security instrument has been~~

13 ~~foreclosed;~~

14 ~~(iii) if the conditions described in (i) and (ii) above~~

15 ~~are not met, the division shall be reviewed under the~~

16 ~~provisions of this chapter.~~

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

18 (a) within a platted subdivision filed with the county

19 clerk and recorder, any division of lots which results in an

20 increase in the number of lots or which redesigns or

21 rearranges six or more lots must be reviewed and approved by

22 the governing body, and an amended plat must be filed with

23 the county clerk and recorder;

24 (b) any change in use of the land exempted under

25 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 funds ~~to this money--may ID~~ be

1 used for the purchase of additional lands or OR 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.~~

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

15 Section 4. Section 76-3-608, MCA, is amended to read:
16 "76-3-608. Criteria for local government review. (1)
17 The Except as provided in subsection (3), the basis for the
18 governing body's decision to approve, conditionally approve,
19 or disapprove a subdivision shall be whether the preliminary
20 plat, environmental assessment, public hearing, planning
21 board recommendations, and additional information
22 demonstrate that development of the subdivision would be in
23 the public interest. The governing body shall disapprove
24 any subdivision which it finds not to be in the public
25 interest.

1 (2) To determine whether the proposed subdivision
2 would be in the public interest, the governing body shall
3 issue written findings of fact which weigh the following
4 criteria for public interest:

- 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; and
- 12 (h) effects on the public health and safety.

13 (3) 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 (c) 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: "l"

Insert: "or"

7. Page 9, line 1.

Following: "playgrounds"

Strike: remainder of lines 1 through 3 in their entirety

Insert: "."

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