

HOUSE BILL 218

Introduced by Brandewie, et al.

1/18	Introduced
1/18	Referred to Natural Resources
1/18	First Reading
2/03	Hearing
2/13	Tabled in Committee

1 House BILL NO. 218
2 INTRODUCED BY Bonnie Harderig
3 Menahon Ralegal Endy Jorg
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 MONTANA SUBDIVISION AND PLATTING ACT; INCREASING ACREAGE TO
6 PARCELS CONTAINING LESS THAN 40 ACRES; PROVIDING FOR
7 EXPEDITED REVIEW FOR MINOR SUBDIVISIONS; REVISING DEDICATED
8 LAND REQUIREMENTS; REVISING PUBLIC INTEREST CRITERIA;
9 AMENDING SECTIONS 76-3-103, 76-3-104, 76-3-207, 76-3-504,
10 76-3-605, 76-3-606, 76-3-608, AND 76-3-609, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY
12 DATES."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 76-3-103, MCA, is amended to read:

16 "76-3-103. Definitions. As used in this chapter, unless
17 the context or subject matter clearly requires otherwise,
18 the following words or phrases shall have the following
19 meanings:

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

23 (2) "Dedication" means the deliberate appropriation of
24 land by an owner for any general and public use, reserving
25 to himself the landowner no rights which that are not

1 incompatible with the full exercise and enjoyment of the
2 public use to which the property has been devoted.

3 (3) "Division of land" means the segregation of one or
4 more parcels of land from a larger tract held in single or
5 undivided ownership by transferring or contracting to
6 transfer title to or possession of a portion of the tract or
7 properly filing a certificate of survey or subdivision plat
8 establishing the identity of the segregated parcels pursuant
9 to this chapter.

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

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

19 (6) "Governing body" means a board of county
20 commissioners or the governing authority of any city or town
21 organized pursuant to law.

22 (7) "Irregularly shaped tract of land" means a parcel
23 of land other than an aliquot part of the United States
24 government survey section or a United States government lot,
25 the boundaries or areas of which cannot be determined

without a survey or trigonometric calculation.

~~{8}~~--"Occasional sale"--means one sale of a division of land within any 12-month period.

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

~~{10}~~(9) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~{11}~~(10) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

~~{12}~~(11) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~{13}~~(12) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(13) "Rights of property owners" means the right to use, enjoy, improve, sell, and convey, in total or in part, real property as long as the exercise of the rights do not deny these rights to other property owners or adversely affect public health, safety, and welfare.

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

(15) "Subdivision" means a division of land or land so divided which that creates one or more parcels containing less than 20 40 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and ~~shall~~ include includes any resubdivision and ~~shall further include~~ any condominium or area, regardless of its size, which that provides or will provide multiple space for recreational camping vehicles or mobile homes."

Section 2. Section 76-3-104, MCA, is amended to read:

"76-3-104. What constitutes subdivision. A subdivision ~~shall comprise~~ comprises only those parcels less than 20 40 acres which that have been segregated from the original tract, and the subdivision plat thereof ~~shall~~ must show all such the parcels whether contiguous or not."

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

"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions. (1) Except as

provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

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

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to any a member of the landowner's immediate family;

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

~~{d}--a--single--division--of--a--parcel--outside--of--platted subdivisions--when--the--transaction--is--an--occasional--sale;~~

~~{e}{d}~~ for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

~~{f}{e}~~ divisions made for the purpose of relocating a common boundary line between a single lot within a platted

subdivision and adjoining land outside a platted subdivision. ~~Any-restrictions~~ Restrictions or requirements on the original platted lot or original unplatted parcel continue to apply to those areas.

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

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

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

(3) ~~No a~~ division of land may not be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are not delinquent."

Section 4. Section 76-3-504, MCA, is amended to read:

"76-3-504. ~~Minimum~~ requirements for subdivision regulations. The subdivision regulations adopted under this chapter ~~shall~~ must protect the rights of property owners as defined in 76-3-103. The regulations must, at a minimum:

(1) require the subdivider to submit to the governing

body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats, including procedures for expedited review of minor subdivisions and procedures and standards concerning the application of review criteria to subdivision applications as provided for in 76-3-608;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which that, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations adopted by the department of health and environmental sciences under

76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision--such. The utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any an agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(9) prescribe procedures, based on requirements provided in 7-1-4127, for providing public notice of subdivision applications and hearings."

Section 5. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant substantive evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of ~~such~~ the hearing ~~shall~~ must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by ~~registered or~~ certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing."

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

"76-3-606. Dedication of land to public -- cash donations. (1) ~~A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other~~

~~dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications.~~ (a) Except as provided in subsection (2), a subdivider shall dedicate to the governing body for parks or playgrounds a land donation equal to:

(i) 7.5% of the fair market value of the land proposed to be subdivided into parcels of one-half acre or smaller;

(ii) 5% of the fair market value of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(iii) 2.5% of the fair market value of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(iv) 1.25% of the fair market value of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(b) The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) ~~Where~~ When the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and

certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such The cash donation ~~shall~~ must be paid into the park fund to be used for the purchase of additional lands or for the initial development or maintenance of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to:

(a) any a division that creates only one additional lot; or

(b) a minor subdivision."

Section 7. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision ~~shall~~ must be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations, and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest.

(2) ~~To~~ Except as provided in 76-3-609, to determine whether the proposed subdivision would be in the public

interest, the governing body shall issue written findings of fact which that weigh the following criteria for public interest:

{a}--~~the basis of the need for the subdivision;~~

{b}--~~expressed public opinion;~~

{c}{a} effects on agriculture;

{d}{b} effects on local services;

{e}--~~effects on taxation;~~

{f}{c} effects on the natural environment;

{g}{d} effects on wildlife and wildlife habitat; and

{h}{e} effects on the public health and safety."

Section 8. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels where proper access to all lots is provided ~~and in which no land is to be dedicated to the public for parks or playgrounds are to~~ must be reviewed as follows:

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

(2) The governing body shall state in writing the conditions which that must be met if the minor subdivision is conditionally approved or what local regulations would

1 not be met by the subdivision if it disapproves the
2 subdivision.

3 (3) The requirements for holding a public hearing and
4 preparing an environmental assessment ~~shall~~ do not apply to
5 the first such minor subdivision created from a tract of
6 record.

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

10 (5) (a) Except as provided under subsection (5)(b), a
11 minor subdivision may not be reviewed under 76-3-608.

12 (b) A minor subdivision must be reviewed under:

13 (i) 76-3-608(2)(c) as its relates to water quality; and

14 (ii) 76-3-608(2)(e) for effects on the public health and
15 safety."

16 NEW SECTION. Section 9. Applicability. (1) [Sections 1
17 through 3, 5, 6, and 8] apply to all subdivision
18 applications filed after passage and approval of [this act].

19 (2) [Sections 4 and 7] apply to all subdivision
20 applications filed after September 30, 1993.

21 NEW SECTION. Section 10. Effective date. [This act] is
22 effective on passage and approval.

-End-