

HJR 37

Progress Report

Prepared for the Local Government Subcommittee of the
Education and Local Government Interim Committee

by

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The Working Group

In October, 2003, an invitation to comment on changes to the Subdivision and Platting Act (Title 76, chapter 3, MCA) was prepared and mailed to a list of organizations and individuals who had testified on House Bill No. 370 during the 2003 session or who were otherwise identified as potential interested parties in the HJR 37 study. The invitation to comment was also posted on the Subcommittee's website and expressed to those who attended the Subcommittee's first meeting on October 30, 2003.

A number of comments were received and compiled and those who submitted comments were asked to present their information to the Subcommittee at its meeting on January 9, 2004. Recognizing that there was common ground among the proposals, the Subcommittee asked that those who were interested and inclined come up with language for a bill draft that incorporated those common interests.

An informal working group formed to put together such a proposal. Participants have been:

Peggy Trenk and Michael Kakuk, Montana Association of Realtors

Tim Davis, Montana Smart Growth Coalition

Jeff Bollman, president, Montana Association of Planners and planner for the City of Billings

Tammy McGill, vice-president, MAP and planner for Stillwater County

Byron Roberts and Curt Chisholm, Montana Building Industry Association

Myra Shults, attorney, Joint Powers Insurance Authority (MACo-affiliated)

Anne Hedges, Montana Environmental Information Center

Ray Lazuk and Jim Madden, Department of Environmental Quality (DEQ staff have participated in one working group discussion to date--their primary interest is Title 76, chapter 4, which has not been discussed at length).

The group met three times in February and March. The attached discussion draft is the result of those meetings.

What the Discussion Draft Represents

This discussion draft represents an ongoing good-faith attempt (and considerable time and work) by a diverse group of individuals who have expressed interest in the HJR 37 study to arrive at proposals for changes to the subdivision review process that are agreeable to all involved. It is not intended by any of the participants to be what they consider a final solution or the last word on subdivision review.

Neither is this document officially a bill or a bill draft. The proposed changes were put in bill form because bills are what legislators are accustomed to reviewing and because any changes proposed by the Subcommittee and approved by the Education and Local Government Committee will obviously need to be eventually drafted as Committee bills. A bona fide bill resulting from the HJR 37 study may not be drafted unless one is requested by the Education and Local Government Committee, by an unopposed member of the House or Senate, or by a holdover Senator.

The Subcommittee may choose to accept or reject any of the proposed changes and any organization or person who wishes to may propose alternative language or procedures for the Subcommittee to consider. Additionally, resolution of any of the outstanding issues that remain once the working group has done all it can may be proposed by individual Subcommittee members, either as legislation that an individual requests or for the full Committee's consideration.

What Has Been Negotiated and What Remains

Areas of Agreement

- >Definitions (76-3-103)
- >Clarification that it is a "subdivision application" undergoing review, not simply a "preliminary plat" (throughout Chapter 3)
- >Codifying a response to Brandborg (76-3-504)
- >The pre-application procedure (76-3-504)
- >The treatment of first and subsequent minor subdivisions (76-3-609)

Outstanding Issues

- >Completeness review for both Chapter 3 and Chapter 4
- >Regulations regarding evasion criteria
- >Changes to 76-3-620 regarding denial criteria
- >Specific response to Brandborg
- >Allowing 10 working days (changed from 10 days) for the planning board staff to submit a recommendation to the governing body
- >Change acreage in Chapter 4 definition of subdivision from 20 to 160 acres
- >How much and what kind of sanitation information is appropriate at the first hearing (response to Attorney General Opinion)?

Summary of the Discussion Draft

Section	Proposed Changes	Reason
<p>1. 76-3-103. Definitions</p>	Strikes definition of "Irregularly shaped tract of land".	Term is not used anywhere in Chapter 3.
	Inserts definition of "Minor subdivision".	Term is used throughout but not defined.
	Inserts definition of "Original tract of record".	To eliminate confusion in review of minor subdivisions (76-3-609).
	Strikes definitions of "Registered land surveyor" and "Registered professional engineer".	The term "registered professional engineer" is not used in Chapter 3 and it was thought that there is a broad understanding of what a registered professional surveyor is, so the definition is not necessary.
<p>2. 76-3-504. Subdivision regulations -- contents.</p> <p>Subdividers want predictability but it is difficult to require that all local governments do the same thing when the state is so diverse and staff resources are so varied from county to county. One of the working group's responses to that problem is to require more detail in the local regulations. Local control is maintained and everyone can know what to expect.</p>	(1)(a) Requires that the regulations describe the information that must accompany an application in order for it to be considered complete.	Letting the subdivider know what the governing body will be requiring up front. <i>(Completeness procedure still undecided)</i>
	(1)(i) Clarifies that what is being reviewed is a "subdivision application", not just a "preliminary plat".	Throughout Chapter 3, the term "plat" or "preliminary plat" is used when what is really being reviewed is the subdivision application, part of which is the preliminary plat.
	(1)(i) Refers to the pre-application consultation provided for later in this section.	To provide a link between subsection (1)(i) and the subsection outlining the pre-application procedure.
	(1)(k) Outlines the section.	To make the section easier to read and understand. No substantive change made.

	(1)(n) This is where a proposed response to a District Court case (<u>Brandborg v. The Bd of County Commissioners of Ravalli Co.</u>) will go.	To require the governing body to put in their regulations a procedure for how it will handle new information presented at subdivision hearings and how to handle multiple hearings, within parameters provided elsewhere in statute. (<i>Exact language still undecided.</i>)
	(1)(o) Require the governing body to address evasion criteria.	<i>This concept has not been discussed at length yet; exact language remains undecided.</i>
	(1)(p) Require that a pre-application procedure be established.	Most local governments already have some kind of pre-application procedure; this puts some parameters on it so everyone knows what to expect.
3. 76-3-601. Submission of application and preliminary plat.	This section removes reference to 76-3-505, which is repealed, and clarifies that what the subdivider presents to the governing body is an application, containing a number of items, not just a preliminary plat.	The removal of reference to 76-3-505 is technical; the change in terminology is to reflect reality.
4. 76-3-602. Fees	Substitutes the word "applications" for "plats"	See sections 2 and 3, above.
5. 76-3-603. Contents of Environmental Assessment.	Substitutes "subdivision application" for "preliminary plat"	See sections 2, 3, and 4, above.
	In subsection (2), there is a technical change removing reference to 76-3-609(3) because that section is overhauled.	

6. 76-3-604. Review of preliminary plat -- <i>determination of completeness.</i>	<p>Italicized language establishes a procedure for a reviewing authority to make a determination of completeness for a subdivision application, prescribes what needs to happen if an application is determined to be incomplete, and provides that the 60-day application review period does not begin until a determination of completeness is made</p>	<p>Allows the subdivider to learn up front where the application is lacking and provides an opportunity for it to be corrected. <i>This procedure is still under discussion-- questions remain regarding what a completeness review would entail ("Are all the required documents present?" vs. "Are the required documents not only present but correct?").</i></p> <p><i>Reviewing authorities with limited staff resources would have difficulty with an intensive completeness review.</i></p>
	<p>Subsection (2) also allows the subdivider to request that the 60-day review period be suspended.</p>	
	<p>Subsection (3) ties 76-3-604 to 76-3-620.</p>	<p>Section 76-3-620 requires the governing body to issue a written statement of the reasons an application is denied or conditionally approved; 76-3-604 discusses what must be done with the written statement..</p>
7. 76-3-605. Hearing on subdivision application.	<p>Removes reference to 76-3-505, which is repealed.</p>	<p>Technical change.</p>
	<p>Replaces "preliminary plat" with "subdivision application".</p>	<p>See 2 through 5 above.</p>

	Allows 10 working days for a recommendation on a subdivision application to be submitted to the governing body	Gives planning board staff a little more time to develop recommendations after the hearing. <i>Still under consideration by working group.</i>
8.76-3-608. Criteria for local government review.	(3)(a) strikes reference to 76-3-505 (repealed) and inserts reference to 76-3-609, where many of the provisions of 76-3-505 will go.	Technical change.
	Strikes subsection (6), which deals with minor subdivisions.	Provisions regarding minor subdivisions will all be located in one section (76-3-609).
9. 76-3-609. Review procedure for minor subdivisions -- governing body may adopt regulations.	Consolidates review provisions for minor subdivisions (both first minors and subsequent minors) into a single section.	Ease of use, clarity.
	Exempts a subdivision application from certain review criteria if the subdivision is proposed in an area that has adopted zoning regulations.	Incentives for zoning.
	Allows governing body to adopt regulations for expedited review of first minors with the requirement that they must comply with sanitation regulations.	Gives local governments ability to customize review of minors depending on their circumstances and conduct summary review, but ensures that if they do customize the review, it is in the regulations so everyone knows what is expected.

	Allows governing body to adopt regulations for review of subsequent minors that meet or exceed the review requirements provided in subsection (1) of this section.	Retains the ability of local governments to handle remainders but ensures that those review requirements are in the regulations so everyone knows how remainders will be treated.
10. 76-4-102. Definitions	Changes the acreage in the definition of "subdivision" from 20 to 160 acres.	<i>This is a change that was proposed by some participants in the working group--an agenda item for discussion at the meeting.</i>
11. 76-4-103. What constitutes subdivision.	Reflects the changes in acreage above.	<i>Consistency with 76-4-102.</i>
12. 76-4-125. Review of subdivision application -- <i>completeness review</i> -- land divisions excluded from review.	Establishes a completeness review similar to that proposed in Chapter 3.	Allows the developer to learn up front where the application is lacking and provides an opportunity for it to be corrected. <i>The proposed language and the application of this concept in Chapter 4 have not been thoroughly discussed.</i>
13. 76-3-505. Repealed.	This section provided for summary review of minor subdivisions.	Repealed because all of the provisions governing minor subdivisions have been consolidated in 76-3-609.

A Note About Chapter 4 (Sanitation in Subdivisions Act)

It is absolutely within the Subcommittee's purview to examine Title 76, chapter 4, and the problems that are associated with it. However, there is no guidance offered in the text of HJR 37 regarding Chapter 4. Beyond the items specific to Chapter 4 on the April agenda, it continues to be unclear what, if anything, needs to be addressed in the sanitation arena.

Future Meetings

As noted in the study plan and in staff's March memo to the Subcommittee, during the April meeting, the Subcommittee would be presented with a list of areas that remain in contention and asked to decide how to resolve them. Unless Subcommittee members feel strongly enough about any of the outstanding

issues to make a determination at this time, it may be premature as many of those issues may still be resolved by the working group members.

The Subcommittee is scheduled to meet next on June 9, which will be a more appropriate time for that exercise, after which the Subcommittee can make a final determination of the proposal or proposals to present to the full Education and Local Government Committee at its final meeting on September 13 and 14.