

HOUSE BILL NO. 416

INTRODUCED BY E. GREEF

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING LOCAL GOVERNMENT SUBDIVISION REVIEW DECISIONS; REQUIRING FINDINGS OF FACT IN LOCAL GOVERNMENT REVIEW TO BE BASED ON THE RECORD AS A WHOLE; CLARIFYING WHEN A DECISION MADE BY A GOVERNING BODY MUST BE SUSTAINED WHEN CHALLENGED; AND AMENDING SECTIONS 76-3-608 AND 76-3-625, MCA."

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

**Section 1.** 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 deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation



1 of any planned utilities; and

2 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the  
3 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

4 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably  
5 minimize potentially significant adverse impacts identified through the review required under subsection (3). The  
6 governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

7 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under  
8 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is  
9 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and  
10 will preclude approval of the subdivision.

11 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider  
12 and shall give due weight and consideration to the expressed preference of the subdivider.

13 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water  
14 and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on  
15 the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing  
16 subdivision, zoning, or other regulations that the governing body has the authority to enforce.

17 (7) A governing body may not require as a condition of subdivision approval that a property owner waive  
18 a right to protest the creation of a special improvement district or a rural improvement district for capital  
19 improvement projects that does not identify the specific capital improvements for which protest is being waived.  
20 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final  
21 subdivision plat is filed with the county clerk and recorder.

22 (8) A governing body may not approve a proposed subdivision if any of the features and improvements  
23 of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under  
24 chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed  
25 subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the  
26 encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in 76-4-102.

27 (9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding  
28 wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting  
29 a governing body's review, the comment or opinion may be included in the governing body's written statement  
30 under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports

1 the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others  
 2 in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity  
 3 has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this  
 4 subsection.

5 (10) Findings of fact by the governing body under this section must be based on the record as a whole.  
 6 The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful."

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8 **Section 2.** Section 76-3-625, MCA, is amended to read:

9 **"76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the  
 10 governing body an application for a subdivision under this chapter may bring an action in district court to sue the  
 11 governing body to recover actual damages caused by a final action, decision, or order of the governing body or  
 12 a regulation adopted pursuant to this chapter that is arbitrary, ~~or capricious, or unlawful.~~ The governing body's  
 13 decision, based on the record as a whole, must be sustained unless the decision being challenged is random,  
 14 unreasonable, or seemingly unmotivated or fails to comply with applicable statutes and regulations.

15 (2) A party identified in subsection (3) who is aggrieved by a an arbitrary, capricious, or unlawful decision  
 16 of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a  
 17 proposed subdivision or a final subdivision plat may, within 30 days from the date of the written decision, appeal  
 18 to the district court in the county in which the property involved is located. The petition must specify the grounds  
 19 upon which the appeal is made. The governing body's decision, based on the record as a whole, must be  
 20 sustained unless the decision being challenged is random, unreasonable, or seemingly unmotivated or fails to  
 21 comply with applicable statutes and regulations.

22 (3) The following parties may appeal under the provisions of subsection (2):

23 (a) the subdivider;

24 (b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner  
 25 with property within the county or municipality where the subdivision is proposed if that landowner can show a  
 26 likelihood of material injury to the landowner's property or its value;

27 (c) the county commissioners of the county where the subdivision is proposed; and

28 (d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of  
 29 its limits;

30 (ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of

1 its limits; and

2 (iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1  
3 mile of its limits.

4 (4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific  
5 personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and  
6 injuriously affected by the decision."

7 - END -