

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; CLARIFYING WHAT STANDARDS OF REVIEW APPLY TO AN ENVIRONMENTAL ASSESSMENT; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 76-3-103, 76-3-603, 76-3-608, AND AND 76-3-625, AND 76-8-101, MCA."

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

~~SECTION 1. 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 definitions apply:~~

~~(1) "Arbitrary, capricious, or unlawful" means random, unreasonable, seemingly unmotivated, or failing to comply with applicable statutes and regulations.~~

~~(2) "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)(3) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.~~

~~(3)(4) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.~~

~~(4)(5) "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 a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division~~

1 of land is not a division of land.

2 ~~———— (5)(6) "Examining land surveyor" means a registered land surveyor appointed by the governing body to~~  
3 ~~review surveys and plats submitted for filing.~~

4 ~~———— (6)(7) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to~~  
5 ~~be prepared for filing for record with the county clerk and recorder and containing all elements and requirements~~  
6 ~~set forth in this chapter and in regulations adopted pursuant to this chapter.~~

7 ~~———— (7)(8) "Governing body" means a board of county commissioners or the governing authority of a city or~~  
8 ~~town organized pursuant to law.~~

9 ~~———— (8)(9) "Immediate family" means a spouse, children by blood or adoption, and parents.~~

10 ~~———— (9)(10) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.~~

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

15 ~~———— (11)(12) "Plat" means a graphical representation of a subdivision showing the division of land into lots,~~  
16 ~~parcels, blocks, streets, alleys, and other divisions and dedications.~~

17 ~~———— (12)(13) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the~~  
18 ~~layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a~~  
19 ~~governing body.~~

20 ~~———— (13)(14) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,~~  
21 ~~the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter~~  
22 ~~13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by~~  
23 ~~the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.~~

24 ~~———— (14)(15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision~~  
25 ~~of land.~~

26 ~~———— (15)(16) "Subdivision" means a division of land or land so divided that it creates one or more parcels~~  
27 ~~containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States~~  
28 ~~government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise~~  
29 ~~transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its~~  
30 ~~size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or~~

1 mobile homes will be placed:

2 ~~———— (16)(17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be~~  
 3 ~~identified by legal description, independent of any other parcel of land, using documents on file in the records of~~  
 4 ~~the county clerk and recorder's office.~~

5 ~~———— (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the~~  
 6 ~~parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:~~

7 ~~———— (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description~~  
 8 ~~that describes the resulting single parcel and in which the owner expressly declares the owner's intention that~~  
 9 ~~the tracts be merged; or~~

10 ~~———— (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have~~  
 11 ~~been expunged and depicts the boundaries of the larger aggregate parcel.~~

12 ~~———— (c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) (17)(b)(i)~~  
 13 ~~unless the instrument states, "This instrument is intended to merge individual parcels of land to form the~~  
 14 ~~aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the~~  
 15 ~~aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."~~

16

17 **SECTION 1. SECTION 76-3-603, MCA, IS AMENDED TO READ:**

18 **"76-3-603. Contents of environmental assessment. (1)** When required, the environmental assessment  
 19 must accompany the subdivision application and must include:

20 ~~(1)(a)~~ (a) for a major subdivision:

21 ~~(a)(i)~~ (i) a description of every body or stream of surface water that may be affected by the proposed  
 22 subdivision, together with available ground water information, and a description of the topography, vegetation,  
 23 and wildlife use within the area of the proposed subdivision;

24 ~~(b)(ii)~~ (ii) a summary of the probable impacts of the proposed subdivision based on the criteria described  
 25 in 76-3-608; and

26 ~~(c)(iii)~~ (iii) a community impact report containing a statement of anticipated needs of the proposed  
 27 subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid  
 28 waste facilities; and fire and police protection; and

29 ~~(d)(iv)~~ (iv) additional relevant and reasonable information related to the applicable regulatory criteria adopted  
 30 under 76-3-501 as may be required by the governing body;

1           ~~(2)(b)~~ except as provided in 76-3-609, for a minor subdivision, a summary of the probable impacts of the  
2 proposed subdivision based on the criteria described in 76-3-608.

3           (2) An environmental assessment conducted pursuant to this chapter is distinct from an environmental  
4 review conducted pursuant to Title 75, chapter 1. The standards of review applicable to an environmental review  
5 conducted pursuant to Title 75, chapter 1, do not apply to an environmental assessment conducted pursuant to  
6 this chapter."

7

8           **Section 2.** Section 76-3-608, MCA, is amended to read:

9           **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to  
10 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary  
11 plat, applicable environmental assessment, public hearing, planning board recommendations, or additional  
12 information demonstrates that development of the proposed subdivision meets the requirements of this chapter.  
13 A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts  
14 on educational services or based solely on parcels within the subdivision having been designated as  
15 wildland-urban interface parcels under 76-13-145.

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

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

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

22           (b) compliance with:

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

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

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

26           (c) the provision of easements within and to the proposed subdivision for the location and installation  
27 of any planned utilities; and

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

30           (4) The governing body may require the subdivider to design the proposed subdivision to reasonably

1 minimize potentially significant adverse impacts identified through the review required under subsection (3). The  
2 governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

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

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

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

13 (7) A governing body may not require as a condition of subdivision approval that a property owner waive  
14 a right to protest the creation of a special improvement district or a rural improvement district for capital  
15 improvement projects that does not identify the specific capital improvements for which protest is being waived.  
16 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  
17 subdivision plat is filed with the county clerk and recorder.

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

23 (9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding  
24 wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting  
25 a governing body's review, the comment or opinion may be included in the governing body's written statement  
26 under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports  
27 the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others  
28 in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity  
29 has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this  
30 subsection.

1 (10) Findings of fact by the governing body under this section CONCERNING WHETHER THE DEVELOPMENT  
 2 OF THE PROPOSED SUBDIVISION MEETS THE REQUIREMENTS OF THIS CHAPTER must be based on the record as a whole.  
 3 The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful."

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

6 **"76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the  
 7 governing body an application for a subdivision under this chapter may bring an action in district court to sue the  
 8 governing body to recover actual damages caused by a final action, decision, or order of the governing body or  
 9 a regulation adopted pursuant to this chapter ~~that is arbitrary, or capricious, or unlawful.~~ The governing body's  
 10 decision, based on the record as a whole, must be sustained unless the decision being challenged is random,  
 11 unreasonable, or seemingly unmotivated or fails to comply with applicable statutes and regulations ARBITRARY,  
 12 CAPRICIOUS, OR UNLAWFUL.

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

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

21 (a) the subdivider;

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

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

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

28 (ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of  
 29 its limits; and

30 (iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1

1 mile of its limits.

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

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6 ~~SECTION 5. SECTION 76-8-101, MCA, IS AMENDED TO READ:~~

7 ~~"76-8-101. Definitions. As used in this part, the following definitions apply:~~

8 ~~(1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the~~  
9 ~~permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except~~  
10 ~~as provided in 76-3-103(15) 76-3-103(16) the term includes a recreational camping vehicle, mobile home, or cell~~  
11 ~~tower. The term does not include a condominium or townhome.~~

12 ~~(2) "Department" means the department of environmental quality provided for in 2-15-3501.~~

13 ~~(3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-county~~  
14 ~~government.~~

15 ~~(4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an~~  
16 ~~heir, successor, or assignee of the ownership interest.~~

17 ~~(5) "Local reviewing authority" means a local department or board of health that is approved to conduct~~  
18 ~~reviews under Title 76, chapter 4.~~

19 ~~(6) "Supermajority" means:~~

20 ~~(a) an affirmative vote of at least two-thirds of the present and voting members of a city or town council;~~

21 ~~(b) a unanimous affirmative vote of the present and voting county commissioners in counties with three~~  
22 ~~county commissioners;~~

23 ~~(c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties~~  
24 ~~with five commissioners;~~

25 ~~(d) an affirmative vote of at least two-thirds of the present and voting county commissioners in counties~~  
26 ~~with more than five commissioners; or~~

27 ~~(e) an affirmative vote of at least two-thirds of the present and voting members of the governing body~~  
28 ~~of a consolidated city-county government.~~

29 ~~(7) "Tract" means an individual parcel of land that can be identified by legal description, independent of~~  
30 ~~any other parcel of land, using documents on file in the records of the county clerk and recorder's office."~~

31 - END -