

1 SENATE BILL NO. 161

2 INTRODUCED BY J. ESP, M. BERTOGLIO

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SUBDIVISION LAWS; ALLOWING AN
 5 EXPEDITED REVIEW FOR SUBDIVISIONS THAT MEET CERTAIN REQUIREMENTS; EXEMPTING
 6 CERTAIN SUBDIVISIONS IN CITIES AND TOWNS FROM CERTAIN REVIEWS; ALLOWING A COUNTY TO
 7 ADOPT EXPEDITED REVIEW PROVISIONS; ~~REQUIRING A GOVERNING BODY~~ THE LOCAL
 8 GOVERNMENT TO HOLD A HEARING TO APPROVE OR DENY A SUBDIVISION APPLICATION FOR
 9 EXPEDITED REVIEW; CLARIFYING THE AMOUNT OF TIME WITHIN WHICH A PERSON MAY BRING
 10 ACTION TO CHALLENGE THE APPROVAL, IMPOSITION OF CONDITIONS, OR DENIAL OF A
 11 PRELIMINARY PLAT AND ACTIONS TAKEN ON A FINAL PLAT; AND AMENDING SECTION 76-3-625,
 12 MCA."

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

15
 16 NEW SECTION. Section 1. Expedited review for certain subdivisions. (1) A EXCEPT AS PROVIDED
 17 IN SUBSECTION (9), A subdivision application, regardless of the number of lots, that meets the requirements
 18 provided in subsection (3) is entitled to the expedited review process provided in this section at the applicant's
 19 request.

20 (2) A subdivision application that meets the requirements provided in subsection (3) is exempt from:

21 (a) the preparation of an environmental assessment as required in 76-3-603; and

22 (b) the review criteria listed in 76-3-608(3)(a).

23 (3) A subdivision qualifies for the expedited review process provided in this section if the proposed
 24 subdivision:

25 (a) is within:

26 (i) an incorporated city or town or consolidated city-county government and is subject to an adopted
 27 growth policy pursuant to Title 76, chapter 1, and adopted zoning regulations pursuant to Title 76, chapter 2,
 28 part 3; or

1 (ii) a county water and/or sewer district created under 7-13-2203 that provides both water and sewer
2 services and is subject to an adopted growth policy as provided in Title 76, chapter 1, and zoning regulations
3 pursuant to Title 76, chapter 2, part 2, that, at a minimum, address development intensity through minimum lot
4 sizes or densities, bulk and dimensional requirements, and use standards;

5 (b) complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the
6 design standards and other subdivision regulations adopted pursuant to 76-3-504 without the need for
7 variances or other deviations to adopted standards; and

8 (c) includes in its proposal plans for the onsite development of or extension to public infrastructure in
9 accordance with adopted ordinances and regulations.

10 (4) On submission for expedited review under this section, the subdivision application must be
11 reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3) to
12 determine whether the application complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304
13 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 without
14 the need for variances or other deviations to adopted standards and includes in its proposal plans for the onsite
15 development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

16 (5) The governing body shall:

17 (a) hold a hearing on the subdivision application within 35 working days of a determination by the
18 reviewing agent or agency that the application contains required elements and sufficient information for review
19 as provided in subsection (3);

20 (b) provide notice for the hearing required in subsection (5)(a) by publication in a newspaper of
21 general circulation in the county not less than 15 days prior to the date of the hearing;

22 (c) approve the application unless public comment or other information demonstrates the application
23 does not comply with:

24 (i) adopted zoning regulations, design standards, and other requirements of subdivision regulations
25 adopted pursuant to 76-3-504 without the need for variances or other deviations to adopted standards; or

26 (ii) adopted ordinances or regulations for the onsite development of or extension to public
27 infrastructure; and

28 (d) provide to the applicant and the public a written statement within 30 days of the decision to

1 approve or deny a proposed subdivision for expedited review as allowed in this section that provides:

2 (i) the facts and conclusions that the governing body relied on in making its decision to approve or
3 deny the application; and

4 (ii) the conditions that apply to the preliminary plat approval that must be satisfied before the final plat
5 may be approved.

6 (6) The governing body may:

7 (a) with the agreement of the applicant, ~~extend~~ GRANT ONE EXTENSION OF the review period allowed in
8 subsection (5)(a) not to exceed 180 calendar days; ~~or~~

9 (b) adopt conditions of approval only to ensure an approved subdivision application is completed in
10 accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4; OR

11 (C) DELEGATE TO ITS REVIEWING AGENT OR AGENCY THE REQUIREMENT TO HOLD A PUBLIC HEARING ON THE
12 SUBDIVISION APPLICATION AS REQUIRED IN THIS SECTION.

13 (7) A local governing body may not adopt zoning regulations pursuant to 76-2-203 or 76-2-304,
14 subdivision regulations pursuant to 76-3-504, or other ordinances or regulations that restrict the use of the
15 expedited subdivision review process as provided in this section.

16 (8) (a) Except as modified in this section, subdivision applications meeting the requirements for an
17 expedited review remain subject to the provisions of 76-3-608(3)(b) through (3)(d) and 76-3-608(6) through
18 (10), 76-3-610 through 76-3-614, 76-3-621, and 76-3-625.

19 (b) The provisions of this section supersede any provision of this chapter that is in conflict with any
20 provision of this section.

21 (9) A SUBDIVISION LOCATED OUTSIDE OF THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN MAY NOT
22 UTILIZE THE EXPEDITED REVIEW PROCESS PROVIDED IN THIS SECTION UNLESS THE BOARD OF COUNTY COMMISSIONERS
23 OF THE COUNTY WHERE THE SUBDIVISION IS LOCATED HAS VOTED TO ALLOW THE PROVISIONS OF THIS SECTION TO
24 APPLY TO SUBDIVISIONS LOCATED OUTSIDE THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN.

25

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

27 **"76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the
28 governing body an application for a subdivision under this chapter may bring an action in district court to sue

1 the governing body to recover actual damages caused by a final action, decision, or order of the governing
 2 body or a regulation adopted pursuant to this chapter within 180 days of the final action, decision, order, or
 3 adoption of a regulation. The governing body's decision, based on the record as a whole, must be sustained
 4 unless the decision being challenged is arbitrary, capricious, or unlawful.

5 (2) (a) A party identified in subsection (3) who is aggrieved by a decision of the governing body to
 6 approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final
 7 subdivision plat may, within 30 days from the date of the written decision, appeal to the district court in the
 8 county in which the property involved is located to challenge the approval, imposition of conditions, or denial of
 9 the preliminary plat.

10 (b) A party identified in subsection (3) who is aggrieved by any other final decision of the governing
 11 body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district
 12 court in the county in which the property involved is located to challenge the decision.

13 (c) The A petition allowed in subsections (2)(a) and (2)(b) must specify the grounds upon which the
 14 appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the
 15 decision being challenged is arbitrary, capricious, or unlawful.

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

17 (a) the subdivider;

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

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

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

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

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

28 (4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific

1 personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially
2 and injuriously affected by the decision."

3
4 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
5 integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 1].

6 - END -