

SENATE BILL NO. 174

INTRODUCED BY F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE REVIEW OF BUILDINGS FOR LEASE OR RENT; REQUIRING RECREATIONAL VEHICLES AND MOBILE HOMES TO BE CONSIDERED BUILDINGS FOR LEASE OR RENT FOR THE PURPOSES OF SUBDIVISION REVIEW; AND AMENDING SECTIONS 76-3-103, 76-3-504, 76-3-621, 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) "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) "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) "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) "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 of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body

1 to review surveys and plats submitted for filing.

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

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

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

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

9 (10) "Phased development" means a subdivision application and preliminary plat that at the time of
10 submission consists of independently platted development phases that are scheduled for review on a schedule
11 proposed by the subdivider.

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

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

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

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

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

27 (16) "Subdivision" means a division of land or land so divided that it creates one or more parcels
28 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States

1 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise
2 transferred and includes any resubdivision and a condominium. ~~The term also means an area, regardless of its~~
3 ~~size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or~~
4 ~~mobile homes will be placed.~~

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

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

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

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

15 (c) An instrument of conveyance does not merge parcels of land under subsection (17)(b)(i) unless
16 the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate
17 parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the
18 aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."
19

20 **Section 2.** Section 76-3-504, MCA, is amended to read:

21 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
22 chapter must comply with the requirements provided for in 76-3-501 and, at a minimum:

23 (a) list the materials that must be included in a subdivision application in order for the application to
24 be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

25 (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the
26 governing body an environmental assessment as prescribed in 76-3-603;

27 (c) establish procedures consistent with this chapter for the submission and review of subdivision
28 applications and amended applications;

1 (d) prescribe the form and contents of preliminary plats and the documents to accompany final
2 plats;

3 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
4 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
5 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
6 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not
7 include building regulations as defined in 50-60-101 other than those identified by the department of labor and
8 industry as provided in 50-60-901.

9 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of
10 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing
11 body;

12 (g) prescribe standards for:

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

14 (ii) grading and drainage;

15 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that
16 meet the:

17 (A) regulations adopted by the department of environmental quality under 76-4-104 for
18 subdivisions that will create one or more parcels containing less than 20 acres; and

19 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more
20 parcels containing 20 acres or more and less than 160 acres; and

21 (iv) the location and installation of public utilities;

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

24 (i) provide for the review of subdivision applications by affected public utilities and those agencies
25 of local, state, and federal government identified during the preapplication consultation conducted pursuant to
26 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency
27 review may not delay the governing body's action on the application beyond the time limits specified in this
28 chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of

1 the application by the governing body.

2 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the
3 subdivider to:

4 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
5 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
6 a legal right to the water and reserve and sever any remaining surface water rights from the land;

7 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed
8 to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
9 administered through a single entity that specifies administration and the rights and responsibilities of
10 landowners within the subdivision who have a legal right and access to the water; or

11 (iii) reserve and sever all surface water rights from the land;

12 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch
13 easements in the subdivision that:

14 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the
15 physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of
16 water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit
17 of an irrigation district or other private or public entity formed to provide for the use of the water right on the
18 subdivision lots;

19 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
20 maintenance, and inspection of the ditch; and

21 (C) prohibit the placement of structures or the planting of vegetation other than grass within the
22 ditch easement without the written permission of the ditch owner.

23 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

24 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
25 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
26 land and may continue to be assessed for irrigation water delivery even though the water may not be
27 deliverable; or

28 (B) the water rights are removed or the process has been initiated to remove the water rights from

1 the subdivided land through an appropriate legal or administrative process and if the removal or intended
2 removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat,
3 the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and
4 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

5 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
6 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
7 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
8 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
9 historic and legal rights;

10 (m) require the subdivider to describe, dimension, and show public utility easements in the
11 subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient
12 width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of
13 public utility services within the subdivision.

14 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
15 hearings;

16 (o) establish procedures describing how the governing body or its agent or agency will address
17 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

18 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
19 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
20 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
21 the reviewing authority is not the governing body.

22 (q) establish a preapplication process that:

23 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing
24 body, that is designated by the governing body to review subdivision applications prior to the subdivider
25 submitting the application;

26 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and
27 growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

28 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of

1 local, state, and federal government, and any other entities that may be contacted for comment on the
 2 subdivision application and the timeframes that the public utilities, agencies, and other entities are given to
 3 respond. If, during the review of the application, the agent or agency designated by the governing body
 4 contacts a public utility, agency, or other entity that was not included on the list originally made available to the
 5 subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

6 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
 7 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

8 (v) establishes a time limit after a preapplication meeting by which an application must be
 9 submitted;

10 (r) require that the written decision required by 76-3-620 must be provided to the applicant within
 11 30 working days following a decision by the governing body to approve, conditionally approve, or deny a
 12 subdivision;

13 (s) — establish criteria for reviewing an area, regardless of its size, that provides or will provide
 14 multiple spaces for recreational camping vehicles or mobile homes.

15 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
 16 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
 17 development."

18

19 **Section 3.** Section 76-3-621, MCA, is amended to read:

20 **"76-3-621. Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3),
 21 and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation
 22 equal to:

23 (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

24 (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre
 25 and not larger than 1 acre;

26 (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not
 27 larger than 3 acres; and

28 (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not

1 larger than 5 acres.

2 (2) When a subdivision is located totally within an area for which density requirements have been
3 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the
4 governing body may establish park dedication requirements based on the community need for parks and the
5 development densities identified in the growth policy or regulations. Park dedication requirements established
6 under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per
7 dwelling unit.

8 (3) A park dedication may not be required for:

9 (a) land proposed for subdivision into parcels larger than 5 acres;

10 (b) subdivision into parcels that are all nonresidential;

11 (c) a subdivision in which parcels are not created, except when that subdivision provides
12 permanent multiple spaces for recreational camping vehicles, mobile homes, or for condominiums;

13 (d) a subdivision in which only one additional parcel is created; or

14 (e) except as provided in subsection (8), a first minor subdivision from a tract of record as
15 described in 76-3-609(2).

16 (4) The governing body, in consultation with the subdivider and the planning board or park board
17 that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and
18 consideration to the expressed preference of the subdivider, may determine whether the park dedication must
19 be a land donation, cash donation, or a combination of both. When a combination of land donation and cash
20 donation is required, the cash donation may not exceed the proportional amount not covered by the land
21 donation.

22 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall
23 use the dedicated money or land for development, acquisition, or maintenance of parks to serve the
24 subdivision.

25 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its
26 jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements
27 only if:

28 (i) the park, recreational area, open space, or conservation easement is within a reasonably close

1 proximity to the proposed subdivision; and

2 (ii) the governing body has formally adopted a park plan that establishes the needs and
3 procedures for use of the money.

4 (c) The governing body may not use more than 50% of the dedicated money for park
5 maintenance.

6 (6) The local governing body shall waive the park dedication requirement if:

7 (a) (i) the preliminary plat provides for a planned unit development or other development with land
8 permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will
9 ultimately reside in the development; and

10 (ii) the area of the land and any improvements set aside for park and recreational purposes equals
11 or exceeds the area of the dedication required under subsection (1);

12 (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical,
13 or natural resources; agricultural interests; or aesthetic values; and

14 (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection
15 provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication
16 required under subsection (1);

17 (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of
18 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication
19 required under subsection (1); or

20 (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and
21 recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

22 (ii) the area of the land and any improvements set aside for park and recreational uses equals or
23 exceeds the area of dedication required under subsection (1).

24 (7) The local governing body may waive the park dedication requirement if:

25 (a) the subdivider provides land outside the subdivision that affords long-term protection of critical
26 wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

27 (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a),
28 equals or exceeds the area of the dedication required under subsection (1).

- 1 (8) (a) A local governing body may, at its discretion, require a park dedication for:
- 2 (i) a subsequent minor subdivision as described in 76-3-609(3); or
- 3 (ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:
- 4 (A) the subdivision plat indicates development of condominiums or other multifamily housing;
- 5 (B) zoning regulations permit condominiums or other multifamily housing; or
- 6 (C) any of the lots are located within the boundaries of a municipality.
- 7 (b) A local governing body that chooses to require a park dedication shall specify in regulations the
- 8 circumstances under which a park dedication will be required.

9 (9) Subject to the approval of the local governing body and acceptance by the school district

10 trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to

11 be used for school facilities or buildings.

12 (10) For the purposes of this section:

13 (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

14 (b) "dwelling unit" means a residential structure in which a person or persons reside.

15 (11) A land donation under this section may be inside or outside of the subdivision."

16

17 **Section 4.** Section 76-8-101, MCA, is amended to read:

18 **"76-8-101. Definitions.** As used in this part, the following definitions apply:

19 (1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls

20 for the permanent or temporary housing or enclosure of persons or property or for the operation of a business.

21 ~~Except as provided in 76-3-103 (16) the~~ The term includes a recreational camping vehicle, mobile home, or cell

22 tower. The term does not include a condominium or townhome.

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

24 (3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-

25 county government.

26 (4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes

27 an heir, successor, or assignee of the ownership interest.

28 (5) "Local reviewing authority" means a local department or board of health that is approved to

1 conduct reviews under Title 76, chapter 4.

2 (6) "Supermajority" means:

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

5 (b) a unanimous affirmative vote of the present and voting county commissioners in counties with
6 three county commissioners;

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

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

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

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

16 - END -