HOUSE BILL NO. 233

INTRODUCED BY A. GRIFFITH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TRANSFER OF TITLE OF OPEN SPACES IN A RECORDED FINAL PLAT TO A HOMEOWNERS' ASSOCIATION; REQUIRING A PUBLIC HEARING; PROVIDING A DEFINITION; ~~AND~~ AMENDING SECTIONS 76-3-103, 76-8-101, 76-25-103, AND 76-25-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Transfer of title of open spaces in recorded final plat.** (1) After a final subdivision plat has been filed for record with the county clerk and recorder, a homeowners' association may file a petition with the governing body to transfer title to the homeowners' association of any open spaces, parks, or similar common-use areas set aside in the final plat if the following conditions are met:

(a) the homeowners' association is organized in accordance with the covenants;

(b) the covenants require the homeowners' association to maintain, repair, or insure the open spaces, parks, or similar common-use areas; ~~and~~

(c) the governing body finds that it was the intent of the subdivider that the open spaces, parks, or similar common-use areas be owned by the homeowners' association; AND

(D) THE PROPERTY TO BE TRANSFERRED IS NOT OWNED BY A PERSON.

(2) The petition under subsection (1) must be signed by an authorized representative of the homeowners' association.

(3) After a public hearing on the petition, the governing body shall issue written findings of fact and a decision based on the record. If the requirements of subsection (1) have been met, the governing body shall approve the transfer. If the governing body approves the transfer, the approval must be recorded with the clerk and recorder.

Section 2. 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 to review surveys and plats submitted for filing.

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

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

(8) "Homeowners' association" means an association of all the owners of real property within a geographic area defined by physical boundaries that:

(a) is formally governed by a declaration of covenants, bylaws, or both;

(b) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(c) may enact or enforce rules concerning the operation of the community or subdivision.

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

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

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

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

~~(12)~~(13)"Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(13)~~(14)"Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

~~(14)~~(15)"Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

~~(15)~~(16)"Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(16)~~(17)"Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

~~(17)~~(18)(a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be

identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

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

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

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

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

Section 3. Section 76-8-101, MCA, is amended to read:

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

(1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except as provided in ~~76-3-103(16)~~ 76-3-103(17), the term includes a recreational camping vehicle, mobile home, or cell tower. The term does not include a condominium or townhome.

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

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

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

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

(6) "Supermajority" means:

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

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

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

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

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

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

Section 4. Section 76-25-103, MCA, is amended to read:

"**76-25-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

(2) "Applicant" means a person who seeks a land use permit or other approval of a development proposal.

(3) "Built environment" means man-made or modified structures that provide people with living, working, and recreational spaces.

(4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided, unimproved land.

(5) "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.

(6) "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.

(7) "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.

(8) "Dwelling " means a building designed for residential living purposes, including single-unit, two-unit, and multi-unit dwellings.

(9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one household.

(10) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

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

(12) "Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(13) "Homeowners' association" means an association of all the owners of real property within a geographic area defined by physical boundaries that:

(a) is formally governed by a declaration of covenants, bylaws, or both;

(b) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(c) may enact or enforce rules concerning the operation of the community or subdivision.

~~(13)~~(14)"Immediate family" means a spouse, children by blood or adoption, and parents.

~~(14)~~(15)"Irrigation district" means a district established pursuant to Title 85, chapter 7.

~~(15)~~(16)"Jurisdictional area" or "jurisdiction" means the area within the boundaries of the local government. For municipalities, the term includes those areas the local government anticipates may be annexed into the municipality over the next 20 years.

~~(16)~~(17)"Land use permit" means an authorization to complete development in conformance with an application approved by the local government.

~~(17)~~(18)"Land use plan" means the land use plan and future land use map adopted in accordance with this chapter.

~~(18)~~(19)"Land use regulations" means zoning, zoning map, subdivision, or other land use regulations authorized by state law.

~~(19)~~(20)"Local governing body" or "governing body" means the elected body responsible for the administration of a local government.

~~(20)~~(21)"Local government" means a county, consolidated city-county, or an incorporated municipality to which the provisions of this chapter apply as provided in 76-25-105.

~~(21)~~(22)"Manufactured housing" means a dwelling for a single household, built offsite in a factory that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(22)~~(23)"Ministerial permit" means a permit granted upon a determination that a proposed project complies with the zoning map and the established standards set forth in the zoning regulations. The determination must be based on objective standards, involving little or no personal judgment, and must be issued by the planning administrator.

~~(23)~~(24)"Multi-unit dwelling" means a building designed for five or more attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

~~(24)~~(25)"Permitted use" means a use that may be approved by issuance of a ministerial permit.

~~(25)~~(26)"Planning administrator" means the person designated by the local governing body to review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other development applications as required in this chapter.

~~(26)~~(27)"Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(27)~~(28)"Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

~~(28)~~(29)"Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

~~(29)~~(30)"Single-room occupancy development" means a development with dwelling units in which residents rent a private bedroom with a shared kitchen and bathroom facilities.

~~(30)~~(31)"Single-unit dwelling" means a building designed for one dwelling unit that is detached from any other dwelling unit.

~~(31)~~(32)"Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(32)~~(33)"Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

~~(33)~~(34)"Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in 76-25-413.

~~(34)~~(35)"Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

~~(35)~~(36)"Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be

gained between the units through an internal doorway, excluding common hallways.

~~(36)~~(37)"Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway."

Section 5. Section 76-25-411, MCA, is amended to read:

"**76-25-411. Filing and recordation of plats and certificates of survey.** (1) (a) Except as provided in subsection (1)(b), every final plat or certificate of survey must be filed for record with the county clerk and recorder before title to the land may be sold or transferred in any manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record that has not been approved in accordance with this part unless the final plat or certificate of survey is located in an area over which the state does not have jurisdiction.

(b) After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following contract conditions are imposed and met:

(i) the purchasers of lots in the proposed subdivision make payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(ii) the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(iii) if the final plat of the proposed subdivision is not filed with the county clerk and recorder within the approval period of the preliminary plat, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(iv) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(v) the following language is conspicuously set out in each contract: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner".

(2) (a) Subject to subsection (2)(b), no division of land may be made unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (2)(b) as a partial payment of the total tax that is due.

(3) (a) The county clerk and recorder shall maintain an index of all recorded and filed subdivision plats and certificates of survey.

(b) The index must list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and must list the recording or filing numbers of all plats or certificates of survey depicting lands lying within each quarter section. Each quarter section list must be definitive to the exclusion of all other quarter sections. The index must also list the names of all subdivision plats in alphabetical order and the place where filed.

(4) The recording of any plat made in compliance with the provisions of this chapter must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be received in evidence in all courts of this state.

(5) (a) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration:

(i) the previous platting;

(ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;

(iii) the reasons stated in the petition requesting the vacation;

(iv) the parties requesting the vacation; and

(v) any agreements between the adjacent property owners regarding the use of the vacated area.

The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(6) (a) After a final subdivision plat has been filed for record with the county clerk and recorder, a homeowners' association may file a petition with the governing body to transfer title to the homeowners' association of any open spaces, parks, or similar common-use areas set aside in the final plat if the following conditions are met:

(i) the homeowners' association is organized in accordance with the covenants;

(ii) the covenants require the homeowners' association to maintain, repair, or insure the open spaces, parks, or similar common-use areas; ~~and~~

(iii) the governing body finds that it was the intent of the subdivider that the open spaces, parks, or similar common-use areas be owned by the homeowners' association; AND

(IV) THE PROPERTY TO BE TRANSFERRED IS NOT OWNED BY A PERSON.

(b) The petition under subsection (6)(a) must be signed by an authorized representative of the homeowners' association.

(c) After a public hearing on the petition, the governing body shall issue written findings of fact and a decision based on the record. If the requirements of subsection (6)(a) have been met, the governing body shall approve the transfer. If the governing body approves the transfer, the approval must be recorded with the clerk and recorder."

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an

integral part of Title 76, chapter 3, part 3, and the provisions of Title 76, chapter 3, part 3, apply to [section 1].

NEW SECTION. **SECTION 7. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. **SECTION 8. APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO FINAL SUBDIVISION PLATS RECORDED ON OR AFTER OCTOBER 1, 1973.

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