

Amendment - 1st Reading/2nd House-blue - Requested by: Christopher Pope - (S) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

HB0211.002.002

1 HOUSE BILL NO. 211
2 INTRODUCED BY L. BREWSTER, M. MALONE, S. KERNS, J. SCHILLINGER, C. KNUDSEN, S. VINTON, K.
3 SEEKINS-CROWE, M. YAKAWICH, J. FITZPATRICK, J. ETCHART, J. KASSMIER, B. PHALEN
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LOCAL SUBDIVISION REVIEW
6 PROCEDURE; REVISING THE INFORMATION A GOVERNING BODY MAY CONSIDER WHEN
7 DETERMINING IF SUBSEQUENT HEARINGS ARE REQUIRED FOR A SUBDIVISION APPLICATION;
8 REVISING THE REQUIREMENTS FOR A PHASED SUBDIVISION; PROVIDING TIMELINES AND AMENDED
9 CONDITIONS OF A FINAL PLAT APPROVAL; REVISING THE EXPEDITED SUBDIVISION REVIEW
10 PROCESS; AND AMENDING SECTIONS 76-3-615, 76-3-617, AND 76-3-623, MCA; AND PROVIDING AN
11 APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 76-3-615, MCA, is amended to read:

16 **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**
17 **regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this
18 section.

19 (2) The governing body shall determine whether ~~public comments or documents~~ PUBLIC COMMENTS
20 OR OTHER information presented to the governing body at a hearing held pursuant to 76-3-605 ~~constitute:~~

21 ~~(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605~~
22 ~~that the public has had a reasonable opportunity to examine and on which the public has had a reasonable~~
23 ~~opportunity to comment; or~~

24 ~~(b) constitutes relevant, new information regarding a subdivision application or a material~~
25 SUBSTANTIAL change to the design of the subdivision that has never been submitted as evidence or considered
26 by either the governing body or its agent or agency ~~at a hearing during which the subdivision application was~~
27 considered and has a material-SUBSTANTIAL effect on the governing body's consideration of the application.

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1 (3) If the governing body determines that the ~~public comments or documents constitute information~~
2 presented to the governing body constitutes the information described in subsection (2)(b), the governing body
3 may:

4 (a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on
5 the new information if the governing body determines that the new information is either irrelevant or not credible
6 or the change to the design of the subdivision does not materially SUBSTANTIALLY impact the analysis of
7 potentially significant adverse impacts; or

8 (b) schedule or direct its agent or agency to schedule a subsequent public hearing for
9 consideration of only the new information that ~~may have an impact on the findings and conclusions, including a~~
10 material-SUBSTANTIAL change to the design of the subdivision for purposes of considering its findings of fact and
11 conclusions of law and any proposed conditions of approval in light of the new information that the governing
12 body will rely ~~upon~~ on in making its decision on the proposed subdivision.

13 (4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period
14 required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the
15 governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit
16 resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing
17 on the subdivision application can be provided. The governing body may not consider any information regarding
18 the subdivision application that is presented after the hearing when making its decision to approve, conditionally
19 approve, or deny the proposed subdivision."
20

21 **Section 2.** Section 76-3-617, MCA, is amended to read:

22 **"76-3-617. Phased development -- application requirements -- hearing required.** (1) A subdivider
23 applying for phased development review shall submit with the phased development application an overall
24 phased development preliminary plat on which independent platted development phases must be presented.
25 The phased development application must contain the information required pursuant to parts 5 and 6 of this
26 chapter for all phases of a development and a schedule for when the subdivider plans to submit for review each
27 phase of the development. The subdivider may change the schedule for review of each phase of the

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1 development upon approval of the governing body after a public hearing as provided in subsection (4) if the
2 change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

3 (2) Except as otherwise provided by this section, the phased development application must be
4 reviewed in conformity with parts 5 and 6 of this chapter. In addition, each phase of the phased development
5 must be reviewed as provided in subsection (4).

6 (3) The governing body may approve phased developments that extend beyond the time limits set
7 forth in 76-3-610 but all phases of the phased development must be submitted for review and approved,
8 conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is
9 approved by the governing body.

10 (4) ~~Prior to the commencement of each phase~~ For any phase of the approved subdivision
11 submitted for final plat approval more than 5-3 years after the date of preliminary approval of the subdivision,
12 the subdivider shall provide written notice to the governing body not more than 1 year or less than 90 calendar
13 days in advance of submitting the final plat application. The governing body shall hold a public hearing pursuant
14 to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider to determine
15 whether changed circumstances justify amending any conditions of approval or imposing additional conditions
16 of approval. The governing body may amend or impose additional conditions of approval only if it determines,
17 based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the
18 potentially significant adverse impacts identified during the original review based on changed circumstances.
19 ~~After the hearing, the governing body shall determine whether any changed primary criteria impacts or new~~
20 ~~information exists that creates new potentially significant adverse impacts for the phase or phases.~~
21 Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of
22 fact within 20 working days of the hearing ~~and may impose necessary, additional conditions to minimize~~
23 ~~potentially significant adverse impacts identified in the review of each phase of the development for changed~~
24 ~~primary criteria impacts or new information.~~ Any additional conditions must be met before final plat approval for
25 each particular remaining phase and the approval in accordance with 76-3-611 is in force for not more than 3
26 calendar years or less than 1 calendar year within the maximum timeframe provided in subsection (3).

27 (5) The governing body may impose a reasonable periodic fee for the review under subsection (4)

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1 of the phases in the phased development."

2

3 **Section 3.** Section 76-3-623, MCA, is amended to read:

4 **"76-3-623. Expedited review for certain subdivisions.** (1) Except as provided in subsection (9), a
5 subdivision application, regardless of the number of lots, that meets the requirements provided in subsection (3)
6 is entitled to the expedited review process provided in this section at the applicant's request.

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

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

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

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

13 (a) is within:

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

17 (ii) ~~a county water and/or sewer district created under 7-13-2203 that provides both water and~~
18 ~~sewer services~~ A COUNTY WATER AND/OR SEWER DISTRICT CREATED UNDER 7-13-2203 THAT PROVIDES BOTH WATER
19 AND SEWER SERVICES OR an area outside the boundaries of an incorporated city, town, COUNTY, or consolidated
20 city-county that is served by publicly regulated CITY, TOWN, COUNTY, OR CONSOLIDATED CITY-COUNTY water and
21 sewer services and is subject to an adopted growth policy as provided in Title 76, chapter 1, and zoning
22 regulations pursuant to Title 76, chapter 2, part 2, that, at a minimum, address development intensity through
23 minimum lot sizes or densities, bulk and dimensional requirements, and use standards;

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

27 (c) includes in its proposal plans for the onsite development of or extension to public infrastructure

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1 in accordance with adopted ordinances and regulations.

2 (4) On submission for expedited review under this section, the subdivision application must be
3 reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3) to
4 determine whether the application complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304
5 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 ~~without~~
6 ~~the need for variances or other deviations to adopted standards~~ and includes in its proposal plans for the onsite
7 development of or extension to public infrastructure in accordance with adopted ordinances and regulations.
8 The application may include a request for variance or deviation from subdivision regulations adopted pursuant
9 to 76-3-504 and in accordance with the provisions of 76-3-506.

10 (5) The governing body shall:

11 (a) ~~hold a hearing on and approve, conditionally approve, or deny~~ the subdivision application
12 within 35 working days of a determination by the reviewing agent or agency that the application contains
13 required elements and sufficient information for review as provided in subsection (3). If the subdivision
14 application includes a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-
15 504, the time for holding a hearing as required in this subsection (5) must be extended to a total of 45 working
16 days;

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

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

21 (i) adopted zoning regulations, design standards, and other requirements of subdivision
22 regulations adopted pursuant to 76-3-504 ~~without the need for variances or other deviations to adopted~~
23 ~~standards~~, including any criteria for granting variances or deviations from subdivision regulations adopted
24 pursuant to 76-3-504; or

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

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

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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
5 plat may be approved.

6 (6) The governing body may:

7 (a) with the agreement of the applicant, grant one extension of the review period allowed in
8 subsection (5)(a) not to exceed 180 calendar days;

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 utilize
22 the expedited review process provided in this section unless the board of county commissioners of the county
23 where the subdivision is located has voted to allow the provisions of this section to apply to subdivisions located
24 outside the boundaries of an incorporated city or town.

25 (10) An incorporated city, town, or consolidated city-county shall implement the expedited review
26 provided for in this section for a proposed subdivision that meets the criteria in subsection (3)(a)(i) regardless of
27 whether the city, town, or consolidated city-county has incorporated the provisions of this section into the city,

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1 town, or consolidated city-county's local subdivision regulations."

2

3 NEW SECTION. SECTION 4. APPLICABILITY. [SECTION 2] APPLIES TO SUBDIVISION APPLICATIONS THAT ARE

4 APPROVED ON OR AFTER OCTOBER 1, 2023.

5

- END -

AMENDED