

## Planning Board Recommended Subdivision Regulations Updates from the 2011 Montana Legislative Session

### Changes to Section II-B-4

#### Subdivision Improvements Agreement: Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [MCA76-3-507]. The County Commissioners may require up to 100% completion of improvements related to public health and safety, such as road base travelable by a passenger vehicle and fire fighting facilities and installation of utilities, before agreeing to the use of a subdivision improvements agreement. This requirement applies to preliminary plats approved prior to the adoption of these regulations. If 100% completion is required, engineering plans must be filed before approval of the final plat. The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under MCA76-3-507(2)(a) for purposes of filing a final plat [76-3-507(4), MCA]. ~~No construction or placement of structures on the lots may occur until the necessary requirements as listed below under section A are completed. A professional engineer sign-off on all roads must be submitted prior to final plat approval or, if an SIA is in place, prior to satisfaction of the SIA entering the warranty period of fifteen (15) months. A professional engineer will be required to sign-off on all improvements guaranteed through the SIA process.~~

If during the final plat stage a subdivision improvements agreement is proposed by the subdivider and agreed on by the County:

- A. ~~For all subdivisions, at a minimum the following must be installed and signed off by an engineer prior to the developer requesting a SIA:
  - a. road base traveable by a passenger vehicle;
  - b. fire infrastructure;
  - c. stormwater drainage facilities;
  - d. community wastewater system (if required);
  - e. community water systems (if required); and
  - f. other items unique to the subdivision as identified in the conditions mitigated through the preliminary plat process.~~
- B. The governing body shall have sole discretion to determine what form of financial security will be accepted from the subdivider;

- C. The subdivider shall provide a minimum of ~~three~~ two bids and an engineer's estimate for the cost of remaining infrastructure requirements, with the exception of the utility improvements requiring only one bid; shall be obtained by the subdivider. *(NOTE: Due to the rural nature of Granite County, the Planning Board believes two bids provides the Commission with an accurate estimate of work to be completed under an SIA.)*
- D. The amount of the financial security shall be calculated by multiplying 125% by the ~~highest~~ accepted bid.
- E. The subdivider shall bear the entire cost for providing engineer review and certifying that all public improvements have been installed in conformance with the requirements of the preliminary plat, the Granite County subdivision regulations and any requirements of the subdivision improvement agreement.
- F. Prior to the release of the guarantee, engineer stamped and certified as-builts and certificate of completion must be provided to the governing body.

**Changes to Section III-A-6(f)(i)(A & B)**

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

A. ~~At least 30 calendar days prior to the expiration of the preliminary plat approval, the governing body may, at the request of the subdivider, extend the approval for a mutually agreed upon period of time. at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension. When evaluating an extension request, the governing body shall consider:~~

- a. Changes to the development regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;

- b. Progress to date in completing the subdivision as a whole and any phases, including maintenance of the remainder of the site in good condition;
- e. Phasing of the subdivision and the ability for existing development to operate without the delayed development;
- d. Dependence by other development on any public infrastructure or private improvements to be installed by the subdivision;
- e. Demonstrated ability of the subdivider to complete the subdivision;
- f. Whether mitigation for impacts of the subdivision identified during the preliminary plat review and findings of the fact and order remain relevant, adequate and applicable to the present circumstances of the subdivision and community.

B. The governing body may extend the approval of more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in Section II-B-4.

**Changes to Section IV-A-1. Subdivision Application and Preliminary Plat Submittal**

- a. The subdivider shall submit to the governing body or to the agent or agency ~~designated~~ authorized by the governing body a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.

**Changes to Section IV-A-8(f)(i)(A & B) –**

- f. Subdivision Application and Preliminary Plat Approval Period
  - i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
    - A. At least 30 calendar days prior to the expiration of the preliminary plat approval, the governing body may, at the request of the subdivider, extend the approval for a mutually agreed upon period of time. ~~at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year. Any mutually agreed-upon extension must~~

be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension. When evaluating an extension request, the governing body shall consider:

- a. Changes to the development regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;
- b. Progress to date in completing the subdivision as a whole and any phases, including maintenance of the remainder of the site in good condition;
- ~~e. Phasing of the subdivision and the ability for existing development to operate without the delayed development;~~
- ~~d. Dependence by other development on any public infrastructure or private improvements to be installed by the subdivision;~~
- e. Demonstrated ability of the subdivider to complete the subdivision;
- ~~f. Whether mitigation for impacts of the subdivision identified during the preliminary plat review and findings of the fact and order remain relevant, adequate and applicable to the present circumstances of the subdivision and community.~~

~~B. The governing body may extend the approval of more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in Section II B-4.~~

## **Changes to Section V-D**

### **Division of Land Which May be Exempt from Review and Surveying**

- a. Generally condominiums, townhomes or townhouses are subject to review as subdivision, but under certain circumstances they may be exempt from review, provided they are constructed on land subdivided in compliance with these regulations [or on lots within incorporated cities and towns,] and:
  - i. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes or townhouses and 76-3-621, MCA, is complied with; or

- ii. The condominium, townhome or townhouse proposal is in conformance with applicable zoning regulations when local zoning regulations are in effect.

**Changes to Section V-E-4 (a)(iii) – Delete in its entirety. Replace with V-E-5**

- iii. ~~The MSPA allows for the aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established a restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.~~

**Addition of Section V-E-5**

a. Statement of Intent

Aggregation of parcels on a certificate of survey or of lots on a subdivision plat is allowed provided the boundaries of the original parcel or lot are eliminated and the boundaries of the larger aggregated parcel or lot are established.

b. Use of exemption

This exemption may be used without a boundary line relocation but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply. A notarized statement on the amended plat or certificate of survey must reflect these restrictions/requirements, including any applicable zoning, covenants and/or deed restrictions.

c. Rebuttable presumption

- i. If a resulting lot is inconsistent with the approved conditions of subdivision approval, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lot or parcel does not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

- iii. If the amended plat or certificate or survey does not show fewer lots of parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

## **Addition of Section VIII-D**

### **D. Cluster Development, Option I**

- a. As authorized by 76-3-509, MCA, the following apply to subdivisions proposed under this section:
  - i. An area of open space must be preserved that is at least as large as the area that will be developed.
  - ii. Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, or development of the open space lots or parcels, as provided in Title 70, chapter 17.