



Missoula Organization of REALTORS®
Re-imagining Home and Community
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9/6/16

Dear County Commissioners,

I am writing on behalf of the Missoula Organization of REALTORS® regarding proposed amendments to Chapter 5 of the Missoula County Subdivision Regulations. We are grateful for the opportunity to provide comment, and to staff for presenting information and fielding questions.

We understand that county staff consider the Legacy Ranch ruling from Ravalli County a “persuasive authority” and have created amendments based on that ruling. MOR would like to provide some insights with respect to how these proposed changes to the approval period and phasing rules may impact housing.

Phasing extensions allows subdivisions to be put on hold until an economic downturn subsides. This is good for the community because even if very few subdivisions are proposed during an economic downturn, there will be a supply of approved lots available for building houses after the downturn. The proposed three-year approval period, extensions only in three-year increments, and additional public process for extensions will make it less likely that Missoula County maintains an adequate supply of approved lots over the long term. If we go into another economic downturn without an adequate supply of approved lots, any subsequent housing shortfall will be worsened.

The additional public process for extensions may add significant cost and uncertainty to residential development by giving opponents another opportunity to block a subdivision. The “hard look” subdivision review standard may make it all too easy for opponents to force the county to deny an extension. It is worth noting that those living in the earlier phases of a subdivision are likely to become opponents of future phases.

We encourage the commissioners to work with staff to ensure as best as possible that the extension process is appropriately insulated from political pressures. Extensions should be considered on the basis of changes in physical conditions, rather than by changes in public opinion.

These changes to the approval period and phasing rules will also limit master planning of larger subdivisions. This will ultimately lead to lesser quality neighborhoods by limiting a developer’s ability to plan for grid system connectivity, large interior parks, sidewalks, and other infrastructure.

In sum, we believe these amendments are likely to worsen future housing supply shortfalls, lead to lesser quality neighborhoods, and put home ownership even further out of reach for median income families. We encourage the county commissioners to work with partner organizations towards changing



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state law to allow greater flexibility with phasing and to limit the “hard look” standard for subdivision review.

As always, thank you for your service to Missoula County and for considering our comments.

Sincerely,

DJ Smith

Chair, MOR Government Affairs Committee

Thanks Cola. We appreciate the commissioners' interest. Attached is some draft language from the Montana Association of REALTORS® intended to address issues related to both Hard Look and Phased Development.

I should note that we are still early in this process, and that MAR and MOR both welcome input on how we can ensure these processes continue to serve the public and the governing bodies.

Sam

Sam Sill

Public Affairs Director
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From: Nicole Rowley [nrowley@missoulacounty.us]
Sent: Tuesday, September 06, 2016 2:28 PM
To: Jean Curtiss <jcurtiss@missoulacounty.us>; Stacy Rye <srye@missoulacounty.us>; Sam Sill <ssill@missoularealestate.com>
Cc: Christine Dascenzo <cdascenzo@missoulacounty.us>
Subject: Re: MOR Comment: Chapter 5 Subdivision Regulation Rewrite

Thanks Sam!

I called Sam and the MT Association of Realtors is bringing a bill this session to address phasing and 'hard look' standards, he'll pass along an updated draft soon, and it sounds like MACo will also be involved with it. Let's keep our eyes on this topic going into the session!

Nicole "Cola" Rowley, PhD
Missoula County Commissioner
[406-258-3203](tel:406-258-3203)

>>> Sam Sill <ssill@missoularealestate.com> 9/6/2016 1:26 PM >>>
Dear County Commissioners,

Please find attached written comments from the Missoula Organization of REALTORS® pertaining to proposed amendments to Chapter 5 of the Missoula County Subdivision Regulations.

Thank you for your consideration and your dedicated service. If you have any questions, please contact us.

Sam Sill

Public Affairs Director
Missoula Organization of REALTORS®
Montana Regional MLS, LLC

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(i) the criteria to be reviewed under subsection (3)(a) are to be afforded equal weight in a review by the governing body. To the extent the law requires any criteria under subsection (3)(a) to be reviewed under a hard-look standard, the requirement is met if the record taken as a whole shows the governing body exercised informed discretion after evaluating the predominant relevant factors. The governing body's discretion shall be sustained unless clearly erroneous.

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in 76-4-102.

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

76-3-610, M.C.A., currently provides: **Effect of approval of application and preliminary plat.** (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 5 *calendar years* or less than 1 calendar year. At any time during the approval period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed upon period of time. Any mutually agreed upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension. (a) Subsection (1) shall not be construed to prohibit the governing body from approving phased developments which extend beyond 5 calendar years provided that the approval is conditioned upon a decision to extend the initial approval pursuant to subsection (1). (b) Upon approval of a phased development as referenced in subsection (1)(a), the governing body shall obtain from the subdivider and review on an annual basis supplemental information concerning the mitigation of significant adverse impacts identified at conditional approval or subsequently. Annually the ~~The~~ governing body shall re-evaluate the 76-3-608 criteria and issue supplemental written findings of fact to justify the reasonable mitigation required under 76-3-608(4) to reasonably minimize potentially significant adverse impacts identified at conditional approval or subsequently.

(2) Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1). This subsection does not prohibit the governing body from imposing additional conditions following review of supplemental information and re-evaluation of the 76-3-608 criteria under subsection (1)(b).

76-3-103(X) [new definition] "Phased Development" means a subdivision consisting of independently platted development phases, which are sequentially scheduled for completion on a schedule proposed by the applicant.