

PLANNING ADVISORY BOARD ZONING COMMISSION

MAY 14, 2013

Case Number

ZCA2013-2

Applicant

Planning & Community Development Department

Owners

City of Great Falls

Property Location

N/A

Parcel ID Number

N/A

Requested Action

Amendments to Title 17
Land Development Code

Recommendation

Approval of the proposed
amendments

Project Planner

Galen Amy

Land Development Code Amendments



Summary

Project Description

Title 17 of the Official Code of the City of Great Falls is the Land Development Code (LDC), designed to guide and regulate land development activities. The LDC is revised and refined over time to address changing conditions and issues that arise in the course of day-to-day planning activities, and to respond to changes to the Montana Code Annotated (MCA). Planning staff is proposing a fiscally responsible update, as well incorporating legislatively mandated amendments, to the LDC.

Overview

The proposed changes relate to 17.16.4.030 - Cost of Notice for action requiring public notice, and updating subdivision review requirements to be consistent with 2013 Legislative changes to the Montana Subdivision & Platting Act.

17.16.4.030 – Cost of Notice:

Background

The City of Great Falls, like other cities throughout Montana and the U.S., has seen the need for improvements in how certain fees associated with development are treated. While this amendment will have an impact to applicants, it will bring immediate fiscal benefits to the City and will create a more equitable application of fees.

Each project application the Planning & Community Development Department receives may require public notice newspaper advertisements, run anywhere from two to five times. If the applicant postpones the project, this may create an additional legal ad that needs to run in order to meet the public notice requirement of the Montana Code Annotated 2011 (MCA) including, but not limited to, Section 76-1-4127 Publication of notice - content - proof, Section 76-15-103 Due notice, and Section 7-3-4448(2) relating to notice for vacation of right-of-way or changing the name of a street.

Montana cities address fees related to public notice in different ways. Currently, the City of Bozeman has adopted a resolution to recover the costs associated with public notice for projects. Cost of notice is due at the time of application, in addition to the set project review fees. The City of Missoula adopted a resolution requiring the applicant to cover the postage costs for public notice mailings, at time of application, in response to Missoula City Council action requiring all notification mailings be registered First Class Mail.

Code Amendments

The LDC, section 17.16.4.030 - Cost of Notice states:

“The City shall pay for all notices required under this article which is recouped through the associated application fees.”

Staff is recommending the language be amended to read:

“The City shall pay for public notices required under this article for City-initiated actions. Applicants shall pay for public notices required under this article for all other actions.”

Section 76-3-201(4) MCA authorizes local government to collect fees, not to exceed \$200, to examine subdivision exemptions, while Section 76-3-602 MCA authorizes local governments to establish reasonable fees, to be paid by the subdivider, to defray the expense of reviewing subdivision applications. The City of Great Falls is authorized to collect fees for the review of annexation, zoning and growth policy proposals based on the provisions of MCA Sections 7-1-101 and 7-1-4123(7), because state statute does not prohibit the collection of fees for annexation, zoning and growth policy proposal review. Additionally, the LDC, section 17.16.2.100 - Application fees, states:

At its discretion the City Commission may set and revise application fees by resolution. The City Clerk shall maintain the official fee schedule.

Rather than establish a set fee for the cost of public notice, the Planning & Community Development Department is proposing the applicant be responsible for contacting the *Great Falls Tribune* and be billed directly for their ad, which staff will draft for them. This model is not uncommon in other areas and creates more ownership of the process because the applicant will be required to be committed to moving forward and be responsible for staying on schedule by investing more into the process.

Fiscal Impact

The Planning & Community Development Department has conducted a review of its public notice legal ad fees and concludes that revision is necessary. Public notice costs range from \$106 to \$303 per ad each time the ad is run, more commonly close to \$130 to \$158. Ads generally run two times, if not three, but if there is a delay the ad could run up to six times depending on where the applicant was in the review process when the delay occurred.

The Department's expenditures for advertising has been as follows:

- FY 2011-2012: \$4,502
- FY 2012-2013: \$7,369

The Planning & Community Development Department is the one of the City departments that is partially supported by the General Fund. Elimination of the cost of public notice from this Department's budget will directly improve the General Fund bottom line. In addition, because advertisements cost different amounts based on content and resulting length, the amendments would create an equitable method of assigning actual costs to each individual application.



Changes to the Montana Subdivision & Platting Act :

Background

Montana Senate Bill 40 (SB 40) was signed into law on March 28, 2013. This act became effective on passage and approval, and applies to subdivision applications on or after July 1, 2013. The law enacted straightforward changes to the Montana Subdivision and Platting Act regarding subdivision review, and revises the procedures for submission of subdivision applications. The receipting process for subdivision applications has been handled differently in Planning and/or Community Development offices in counties and municipalities across the state. SB 40 gives direction about receipting, but encourages each office to have receipting methods that work best for them, provided they meet the basic guidelines of the Bill. Proponents of SB 40 include the Montana Building Association, Montana Association of Realtors, Montana Association of Planners, Smart Growth Development, as well as numerous cities and private individuals. See Exhibit A for full text of SB 40.

Specific Code Changes

In the Land Development Code, the application review procedure for both minor and major subdivisions is the same process. To comply with SB 40, staff has determined that only one addition to the City's LDC is necessary, to both section 17.16.26.010 major subdivisions and section 17.16.26.020 minor subdivisions, in bold below:

- C. Submittal of application. The applicant shall submit an application to the Planning and Community Development Department along with the application fee as may be established by the City Commission, within six (6) months of the pre-application meeting referenced in A above. **The date of submittal shall be the date of delivery of the application to the Planning & Community Development Department, accompanied by the correct and full fees.**

Public Notice Requirements

Consistent with Section 76-1-4127 MCA, notice of this public hearing was published in the *Great Falls Tribune* on Sunday, April 28, 2013. At the time this report was written, Staff had not received any public comments regarding the proposed Code amendments.

Recommendation:

The City Zoning Commission has the responsibility to review and make recommendations on Land Development Code amendments.

Recommendation: The Zoning Commission recommends the City Commission adopt the proposed amendments to the Title 17 - Land Development Code of the Official Code of the City of Great Falls.

Next Steps

1. The Zoning Commission recommendation will be presented to the City Commission.
2. City Commission will approve or deny the Ordinances related to amendments to Title 17 - Land Development Code.
3. If approved, the Land Development Code will be amended and the Ordinances will be filed with the Cascade County Clerk and Recorder's Office.

Attachments:

Exhibit A - Senate Bill 40

EXHIBIT A - SENATE BILL 40

63rd Legislature

SB0040



AN ACT GENERALLY REVISING PROVISIONS GOVERNING SUBDIVISION REVIEW; REVISING PROCEDURES FOR THE SUBMISSION OF SUBDIVISION APPLICATIONS; AMENDING SECTIONS 76-3-504, 76-3-601, AND 76-3-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

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

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

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

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

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

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

(g) prescribe standards for:

EXHIBIT A - SENATE BILL 40

SB0040

(i) the design and arrangement of lots, streets, and roads;
 (ii) grading and drainage;
 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

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

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

(iv) the location and installation of public utilities;

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

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

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

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

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

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

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

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical

EXHIBIT A - SENATE BILL 40

SB0040

placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

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

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

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

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

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

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

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

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

EXHIBIT A - SENATE BILL 40

SB0040

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

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

(q) establish a preapplication process that:

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

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

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

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

(v) establishes a time limit after a preapplication meeting by which an application must be submitted ~~as provided in 76-3-604~~;

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

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

~~(3) The governing body may establish deadlines for submittal of subdivision applications."~~

EXHIBIT A - SENATE BILL 40

SB0040

Section 2. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of application and preliminary plat for review -- water and sanitation information required. (1) ~~Subject to the submittal deadlines established as provided in 76-3-504(3), the~~ The subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 3. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of subdivision application -- review for required elements and sufficiency of information. (1) (a) ~~Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall~~ A subdivision application is considered to be received on the date

EXHIBIT A - SENATE BILL 40

SB0040

of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.

(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms

EXHIBIT A - SENATE BILL 40

SB0040

to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

EXHIBIT A - SENATE BILL 40

SB0040

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to subdivision applications submitted on or after July 1, 2013.

- END -