

## Development Permit Application Review Board

2013 Legislative Update, as of February 25, 2013

The Montana Legislature is entering its Transmittal Break at the end of this week and will resume the second half of the Session on March 5. Basically, there cannot be any new bill introduced. However, many bills have already been passed from one chamber to the other and could be up for hearings and action very early in the second half of the session. Below is a brief summary of bills that relate to planning and zoning that local governments and communities should be aware of.

### Transportation

**SB111:** This bill clarifies the definition of "urban population" as it applies to the apportionment of state funds to the urban highway system and includes urban areas with populations of 5,000 or more which adds several small communities to the distribution of urban funds and takes away funds from larger communities in the state. It has been estimated that the Billings urban area could lose about \$100,000 per year under this change. This bill has passed both houses and has been sent to the Governor.

**HB383:** This bill would require a 1,500 foot buffer zone between a proposed highway bypass and an area zoned single-family residential. It would also require certified notification of all property owners within 1,500 feet of the project. It was tabled in committee on 2/19.

### Bills Addressing Subdivision for Lease or Rent (SLRs):

- **HB 499** – This bill would legalize any building or structure for sale-lease-rent that was existing or under construction at the time this bill is passed—regardless of whether they had undergone subdivision review. This bill would stop any legal action against an existing RV park, mobile home court, or other buildings for sale lease rent that did not comply with or had not undergone review as a subdivision or as a legitimate exemption under 76-3-202 or 204, MCA. This bill addresses the single issue of Sterling Miller, who has been in legal action with Missoula County for his use of property for a dude ranch with several buildings. Clearly, the bill will have far-reaching statewide implications, particularly for eastern Montana, which is currently dealing with a proliferation of illegal RV parks as a result of demand for oil and gas-related worker housing. This bill sailed through the House and will go to the Senate in the second half of the Session.
- **HB 531:** This bill addresses SLRs by exempting their review for areas with applicable zoning. This bill also deletes the addition of townhomes made to 76-3-203, MCA in the last session. This bill will be transmitted to the Senate.
- **SB 324:** This bill will eliminate the review of ALL SLRS except Mobile Homes from the Subdivision and Platting Act (MSPA). The bill automatically exempts 3 buildings/units

from any review except sanitation. It sets standards for review of 4 or more buildings/units that are similar, but weaker, than current laws in the MSPA and which do not allow for any public review. It will require all local jurisdictions to create a new set of regulations either under the MSPA some other section of law (not yet identified). The bill has several potential problem areas as follows:

- Due process and public participation are either not provided for or extremely limited under this bill and are not following the very well established and vital due process provisions in current subdivision review process in Title 76 - many forms of notification and legal notices, public hearings, public meetings, etc.
- Mitigation of impacts is the cornerstone of subdivision review. Exempting certain numbers of buildings/units -- 3 buildings or fewer in part of this bill to only sanitation review strips out all of the important criteria for reviewing a subdivision that addresses and protects property, community, natural environment, and the local government. For 4 or more buildings, this bill creates new criteria for review that are similar but weaker than the current criteria for subdivision reviews.
- Local governments are very attuned to the costs of providing services. This bill will add time to processes, as well as require creation of new process for local governments to implement and try and enforce. Communities strive to make process consistent, easy to understand, and efficient. This bill introduces confusion, more processes to a section of law that already has multiple processes in place, and less efficiency for developers and communities alike.

This bill is moving forward with support from many sectors. The bill is heading through Senate and expected to go to the House very soon.

#### **Other Subdivision Regulation Bills**

**SB 040:** This bill: 1) eliminates all of 76-3-615, MCA -- the provisions for subsequent public hearings when new information is relevant and credible; 2) eliminates ability of local governments to set deadlines/schedules for submitting subdivision applications and 3) changes wording about determining when an application is received for completeness and sufficiency review. This bill unanimously passed the House and is being transmitted to Senate.

**SB 041:** This bill prohibits the governing body from considering mitigation for a subdivision in conjunction with the impact of a future subdivision, except when the subdivisions are part of the same phased development. Since the amendment still allows local government to enforce subdivision regulations as per 76-3-501, it is not clear how this might limit reviews. Passed Senate 33-17; transmitted to House; Bill was approved in Committee on Feb 19 on 12-6 vote. This will go to the House floor for a vote anytime and if passed will go to the Governor for signature.

**SB 146:** This bill targets state and federal agency comments regarding wildlife, wildlife habitat and natural environment. The governing body may not include these comments in its final decision document unless the opinion “provides scientific information or a published study” to support the comment. Compared to an earlier version of this bill, this new bill is less restrictive than it was previously. This bill passed in the Senate on unanimous vote and was transmitted to the House.

**SB 147:** This bill changes the 76-3-608(3)(a) criteria from “agriculture” to “adjacent agricultural operations” This bill passed the Senate on a 30-20 vote and was transmitted to the House. What is odd about this bill is that it refers to the word “surrounding” agriculture as being in current law and propose to strike it, but the current MCA 2011 online does not have the word “surrounding”? A potential concern of this bill is that it changes the ability of local government to evaluate a subdivision’s impact on agriculture *in general* to only “adjacent agriculture operations.”

**SB 293:** This bill would require subdividers to submit information with the preliminary plat that indicates if a shared, multi-user, or public water or waste-water system will be under the jurisdiction of the Public Service Commission. It isn’t clear why this specifically needs to be addressed? The bill was heard on February 22 in House Local Government.

**HB 562:** This bill adds language that states it is legal to have boundary relocations that result in parcels that are less than 160 acres. It isn’t clear why this specifically needs to be addressed?

**SB 316:** This bill would make an addition to the criteria for approving subdivisions in 76-3-608, MCA . It would require the approval of an adjoining property owner for a well isolation zone that extends into their property from a proposed subdivision. This bill passed unanimously out of Senate Natural Resource Committee.

### **Zoning**

**SB023:** This bill amends the Part 2 Interim zoning 76-2-206. It requires a county to initiate a study within 30 days of adoption to verify and identify that an emergency exists and limits the length of time that an initial interim regulation is effective to 182 days (down from the current 1 year). The bill also sets up new procedures that the BOCC must follow to extend an initial interim regulation. It requires a unanimous vote to approve the interim regulations in counties with three commissioners, as well as setting supermajorities for counties with more commissioners. Among other things, reducing the amount of time for which an interim district or regulation may be enacted to 182 days combined with the unanimous and super-majority actions needed to extend the interim zoning could make it impossible in some cases to provide for adequate public review and process to establish permanent zoning if needed. This bill was transmitted to the House.

**SB024:** This bill deals with sand and gravel operations in areas with Part 2 zoning or that are proposed to be zoned with Part 2 zoning. The bill reads that if an applicant for an open cut sand or gravel permit on a tract of land that is not zoned under the provisions of this part has been notified that the application is complete under 82-4-432(4)(d), a resolution or rule for zoning under this part may not prohibit an open cut sand or gravel operation on that tract unless the date of the notice of a public hearing on the proposed zoning regulations under 76-2-205 precedes the date that the applicant was notified of the complete application. Presumably, since the filing of the mining application requires a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed operation complies with applicable local zoning regulations, the jurisdiction would have the opportunity at the time of verifying zoning or no zoning to decide whether to begin the process of drafting zoning regulations for the area where the mining was to take place. This bill was transmitted to the House.

**SB105:** This bill is similar to the SB24 in regard to its intent to prevent zoning out of gravel mining operations but it casts a wide net and allows any use subject to regulation and approval by a state agency under Title 75, Title 76, chapter 4, or Title 82 to go forward if the agency has received an application for the proposed use. A board of county commissioners may not establish an interim zoning district or interim regulation to prevent such a proposed use. It does state that the use must comply with zoning if zoning is in effect, but it is more directed at areas that may not be zoned but may wish to have the county enact interim zoning or permanent zoning to address a proposed gravel mining operation or other state-permitted use (hog farm?) before it is approved by the state. This bill was transmitted to the House.

### **Sort of Zoning**

**SB290:** (Highland issue on Orchard – Senator Arntzen, sponsor) This bill is designed to require notice to a municipality and property owners within 300 feet (it was amended in Committee to reduce the notification from one mile to 300 feet) of a property in the county when a change in an allowed use on the county property occurs. If the municipality or 10% of the property owners notified request a hearing on the change in use, the county must hold the hearing. If the county determines, based on testimony provided at the hearing, that the regulations in the county district are no longer *as compatible as possible with the municipal zoning ordinances* as provided in 76-2-203(3), the county may initiate a revision to the zoning district or amendments to the regulations. This bill provides a special case when a legal use in a zoning district is subject to special notification, hearing, and possibly, limitation when a property changes from one legal use to another legal use in a zoning district. This bill was passed by the Senate Local Government Committee on 2/22 and will go to the floor at any time.

**Tax Increment Financing Districts** – TIFD experts from around the state have identified SB239 as a good bill and HB443 as a bad bill.

**SB239:** This bill amends the Montana Urban Renewal Law combining all non-urban renewal economic development districts into one type of district, called a "Targeted Economic Development District that can take advantage of tax increment financing (TIF). It also clarifies the process by which a Targeted Economic Development District is created. This bill provides consistency to city and county governments in creating tax increment financing districts of both types (urban and non-urban renewal districts). It also eliminates the requirement that businesses within certain types of TIFs conduct at least 50% of their business outside the state of Montana. This bill passed 2<sup>nd</sup> reading on 2/22 in the Senate and is scheduled for final reading on 2/25.

**HB443:** This bill would limit the term of bond financing in a TIF district to the 15th anniversary of the TIFDs creation. It has a number of other provisions including the ability to spend remaining TIF funds on "new projects" when the district terminates rather than returning the funds to the affected taxing jurisdictions. By limiting the term of a bond issue, it effectively eliminates the use of bonds in TIF districts, particularly for smaller communities. Many times districts don't even "take off" for several years after their creation and are only able to bond in their 10th or later year of existence. This bill has not yet left the House Taxation Committee.