

# YELLOWSTONE COUNTY SUBDIVISION REVIEW PROCEDURES

Presented by:

Dan Schwarz & Monica Plecker

# Section 3.1 Compliance with Local Regulations and State Law

No subdivision of any lot, tract, or parcel of land shall be undertaken; no street, sanitary sewer, storm sewer, water main, or other facilities in connection therewith shall be constructed, opened or extended for public use and travel, or for common use of occupants of buildings except in strict accordance with the provisions of these Regulations and related State statutes.

# Recommendation of Plat

- Three Options

- 1) Conditional Approval (vast majority will be this)

- 2) Approve

- 3) Deny

# Variances

- Only way to deviate is through a variance
- Variance Requirements Under Section 11.1 (76-3-506, MCA).
  1. *The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;*
  2. *Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;*
  3. *The variance will not result in an increase in taxpayer burden;*
  4. *The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations; and*
  5. *The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.*

# Conditional Approval

- Finding
- Supported by Fact
- Condition (based on Yellowstone County Subdivision Regulations)

*Example Condition: To protect public health and safety and provide efficient traffic movement prior to final plat approval the applicant will submit a TIS to County Public Works for review and approval.*

# Quality of Testimony

- Synthesize quality of testimony
  - *Rely more on DEQ, Fish Wildlife and Parks, etc.*
  - *Needs scientific fact based opinion from an Agency*
  - *Burden Shifts*

# Findings of Fact

- Deferring to a Regulatory Agency takes you off the hook
- Compelling testimony needs to be verified that it's true to determine adverse impacts that can or cannot be mitigated.
  - *Proper Evidence*
  - *Proper Testimony*
  - *Proper Regulatory Agency*

# MCA 76-3-608. Criteria for Local Government Review

- Must weigh the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;
- Public Health and Safety concern must be a true danger to the public
- Also must comply with:
  - *the survey requirements*
  - *the local subdivision regulations*
  - *the local subdivision review procedure*

# How to Handle Concerns From Testimony

- Can submit concerns to the respective Regulatory Agency to review
- Can ask the developer to provide more information to mitigate the concern of an adverse impact
- Can approve on the condition that the possible adverse impact is mitigated
- Planning Board should not look at speculative opinions but look to scientific studies or other proof that testimonial concerns will be an adverse impact

# Articulate Findings of Fact to Properly Support Recommendation

- Remember your Job
  - *Remember sufficient reasoning*
- Rely on State Agencies
  - *Example: refer water or sewer concerns to DEQ*
- Have to follow the law

# Proper Recommendation to Deny

- A recommendation to deny must be supported by the following:
  - *Scientific fact based opinion a subdivision will have an adverse impact*
  - *Additional scientific fact based opinion that the adverse impact cannot be mitigated*

# Violations

## MCA 76-3-625 provides:

- A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter. The governing body's decision, based on the record as a whole, **must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.**

# Conflict of Interest

MCA §2-2-105(2) provides:

- ...a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency...

# Conflict of Interest

MCA §2-2-105(4) provides:

- ...[when] a board [or] commission has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

# Conflict of Interest

MCA §2-2-121(2)(e) provides:

- A public officer or a public employee may not: perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

# Conflict of Interest

MCA §2-2-131 provides:

- A public officer, concerned about an interest being created by his/her decision on a public matter, should make full disclosure of the nature of the conflict and the amount of conflict.