

Non-Phased Subdivision Preliminary Plat Extension Guidance and Recommended Subdivision Regulation Amendments

*Tara DePuy, Attorney at Law
Montana Association of Counties*

*Kelly A. Lynch, JD, AICP
Deputy Director/General Counsel
Montana League of Cities and Towns*

Guidance: Public participation and the public's right to know are increasingly the subject of litigation in land use processes and decisions. In Montana, the public's right to know and to participate are fundamental rights provided by the Montana Constitution (Art. II Sec. 8 and 9). The *Legacy Ranch* decision out of Ravalli County in July of 2015 focused on the public's constitutional right to know and participate in regards to phased developments. The public's right to know and participate in phased developments were addressed in the 2017 legislative session with a phased development bill, HB 445. However, during discussions on HB 445, concerns were raised that the same issues regarding public participation and the public's right to know exist in regards to extensions of preliminary plat approvals for non-phased subdivisions.

The following subdivision regulations amendments have been developed to assist local governing bodies in amending their subdivision regulations to address extensions of preliminary plat approvals within the context and limitations of Section 76-3-610, MCA. It is important to keep in mind that when considering an extension for a non-phased subdivision preliminary plat approval, the extension **cannot** impose new conditions that the subdivider must meet before final plat. Failure to meet preliminary plat extension criteria may, however, be factored in the decision to grant or deny a requested extension.

It is also important to note that while there is not a limitation on how long an extension can be granted for a non-phased subdivision, extensions should be granted to allow periodic review and evaluation of the preliminary plat extension criteria. Individual extensions of preliminary plat approval for non-phased subdivisions should be limited to no more than 3 years; with the total extensions for preliminary plat approval for non-phased subdivisions no more than ten years. The information regarding impacts of the subdivision - and mitigation of those impacts - becomes increasingly stale and meaningless after approval of the preliminary plat, denying the public its constitutional right to know and participate in local government decision-making.

Recommended Amendments to Subdivision Regulations for Extension of Preliminary Plat Approval under Section 76-3-610.

1. All requests for extensions must be in writing and must provide responses to the following criteria and supporting documentation, if any:
 - A. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
 - B. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
 - C. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision non-compliant with current design standards, such as road design, wildfire, or flood standards.
 - D. Consistency with adopted comprehensive planning documents, including but not limited to, the jurisdiction's growth policy, annexation policy, capital improvements plan, transportation plan, etc.
 - E. Impacts to public health, safety and general welfare.
 - F. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
2. Prior to granting any extensions greater than 3 years past original signed statement of original preliminary plat approval for a major subdivision, the governing body must hold a public hearing. Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
3. Prior to granting any extension of a preliminary plat approval for a minor subdivision, the governing body should hold a public meeting noticed in accordance with the standard practices of the governing body.
4. After the hearing or meeting, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request. Additional conditions may not be imposed as a condition of subdivision extension.