

PUBLIC HEARING SUBDIVISION REGULATIONS AMENDMENTS – Monday, December 9, 2019, 7:00 pm.

Plevna Town Office

Mayor Benner called the meeting to order at 7:00 p.m.

Councilmen present were Jordan Hoffman, Alba Higgins, Kyle Vennes, and Gary Thielen.

Also present: Corrine Sander, Wastewater Operator Krista Nemitz, Clerk/Treasurer
Mark Thielen, Container Site Operator Rick Schell, Water Operator
Shanny Spang Gion, SMART Mary Grube, Planning Board
Rich Menger, Fallon County Environmental Health


Members of the public present: Shawn Sander, Cliff & Jennifer Tudor

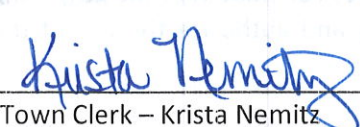
Mary Grube presented an overview of the Planning Board's recommendations in regards to the changes brought forth by House Bill 124. A copy of the Fallon County Planning Board Recommendations is available in the Plevna Town Office.

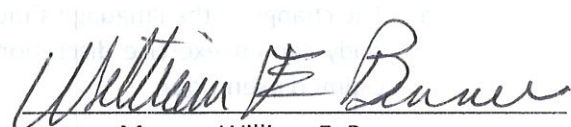
Mayor Benner called for any public comment. There was no comment.

The council will review the changes and consider adopting the changes by resolution at the next regular council meeting.

Having no further business Mayor Benner adjourned the meeting at 7:13 p.m.




Town Clerk – Krista Nemitz


Mayor – William E. Benner



COMMISSIONERS Deb Ranum, District 1 Roy Rost, District 2 Steve Baldwin, District 3 PO Box 846, Baker MT Phone 778-7107	CLERK & RECORDER/ SUPT OF SCHOOLS Brenda J. Wood PO Box 846 Baker, MT Phone 778-7106	JUSTICE OF THE PEACE Anna K. Straub PO Box 846 Baker, MT Phone 778-7128	COUNTY ATTORNEY Darcy Wassmann PO Box 1136 Baker, MT Phone 778-2422	CLERK OF COURT Jeraldine Newell PO Box 1521 Baker, MT Phone 778-7114	TREASURER/ASSESSOR Barbara E. Ketterling PO Box 787 Baker, MT Phone 778-7109	SHERIFF/CORO Trent Harbaug PO Box 899 Baker, MT Phone 778-287
--	---	--	--	---	---	--

PLANNING BOARD RECOMMENDATION - REGS-19-01 2019 SUBDIVISION REGULATIONS AMENDMENTS OCTOBER 8, 2019

The Fallon County, City of Baker and Town of Plevna Planning Board failed to achieve a quorum at their regular meeting on Monday, October 7, 2019 to review and conduct a public hearing on the proposed 2019 Fallon County City of Baker and Town of Plevna Subdivision Regulations. As such, the Staff Report to the Planning Board becomes, by default, the Planning Board Recommendation to the Governing Bodies.

The proposed amendments are designed to implement the changes made to Montana Subdivision Law and advice from the Montana Association of Counties pertaining to local subdivision review.

HB 124 **Effective October 1, 2019**

This legislation provides that a parcel of land created using the Agricultural Exemption (76-3-207(1)(c)) can be changed to limited other “public uses” and establishes a procedure to revoke the required Agricultural Covenant necessary to claim the exemption.

The proposed changes to implement the changes to State Subdivision Law are incorporated into the Agricultural Exemption section.

General Changes Effective upon adoption by the County Commissioners, City and Town Council.

1. Legal Counsel has advised that Montana District Courts have taken exception to the use of the term “Rebuttable Presumption(s)” as the standard of examination for claimed exemptions to the Montana Subdivision and Platting act. The suggested change is to replace ‘Rebuttable Presumption’ with “Review Criteria” as the standard of examination.
 - a. The change in the language should not be interpreted as to conclude that the governing body cannot exercise discretion in each individual case and authorize the use of the claimed exemption.
2. At the July Planning Board Meeting, we reviewed the Huft Major Subdivision. As part of that Subdivision, a Variance to the adopted maximum road length standards found in Table 1 was requested. Most of the comment and discussion about this development centered on the length of the dead-end roads and the limit of 600 feet and why the standard existed. Further, there was concern that approval of a variance would create a new standard without following formal adoption processes.

In short, the 600-foot standard was adopted as a compromise between the needs of urban development in our municipalities and the needs of counties for large lot rural development where road lengths may need to be up to ½ mile in length. After speaking with several Public Works Directors and City Engineers, the 600-foot standard cannot be reasonably lifted for municipalities and provide for the logical extension and looping of urban infrastructure to support urban scale development and densities.

The solution is to split the road length urban and rural and establish separate standards.

Specific Amendments to the existing 2017 Subdivision Regulations.

We will follow standard protocol for the amendment to regulations approved by the Planning Board.

Existing text will appear exactly as it does in the regulations, A combination of **BOLD**, Underlined and Normal.

New text will be ***BOLD, Underlined and Italicized.***

Text being eliminated will be ~~Struck Through.~~

VI-C. Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA]

- v. ***Review Criteria.*** Rebuttable Presumptions

VI-E-1. Relocation of Common Boundary [76-3-207(1)(a), MCA]

- d. ***Review Criteria.*** Rebuttable Presumptions

VI-E-2. A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]

- d. ***Review Criteria.*** Rebuttable Presumptions
 - ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan ***will result in a finding*** ~~raises a rebuttable presumption~~ that the use of the exemption is adopted for purposes of evading the MSPA.

VI-E-4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]

- c. ***Review Criteria.*** Rebuttable Presumptions

VI-E-5. Aggregation of Lots or Parcels [76-3-207(1)(f), MCA]

- d. ***Review Criteria.*** Rebuttable Presumptions

VI-E-3. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]

1) Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it **except as provided in 4 and 5 below.**

2) Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(f)(iii) in the Appendix] The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

3) Use of Exemption.

- a) "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- b) Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- c) Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

4) Review Criteria ~~Rebuttable Presumptions.~~

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- a) The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land

will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.

- b) The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
 - c) The parcel must meet the criteria for an agricultural designation under section 15- 7-202, MCA.
 - d) A government or public entity is limited to the United States Federal Government, the State of Montana, its political subdivisions, publicly funded schools, colleges, universities and any District authorized by Montana Law that may levy and collect taxes.
- 5) Revocation of Covenant.

The governing body may revoke the covenant provided for in 76-3-207(1)(c) and the division may proceed without subdivision review as provided by these regulations if:

- a) The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant.
- b) A government or public entity seeks to use the parcel of land created via the use of this exemption for public purposes as defined in the Review Criteria contained in section VI-E-3 (4)(d).
- c) Procedure to Revoke the Agricultural Covenant
 - i) The governing body must find that the intended use of the parcel is consistent with VI-E-3(d).
 - ii) A public hearing on the possible revocation of the Agricultural Covenant must be advertised as provided in these Regulations.
 - iii) Within fifteen (15) days following the public hearing, the governing body shall issue written findings of fact and decision based upon the record and findings.
 - iv) If the revocation of the covenant is approved, the findings of fact and approval shall be recorded with the County Clerk and Recorder.
 - v) If the revocation of the covenant is denied, the owner/petitioner may apply for subdivision review in accordance with these regulations.
 - vi) Revocation of the covenant shall not impact sanitary restrictions imposed under Title 76, Chapter 4.

TABLE 1: Road Design Standards for Subdivision

MINIMUM DESIGN STANDARDS	COLLECTOR	LOCAL ROAD
Minimum Right-of-Way Width	60 ft.	60 ft.
Minimum Roadway Width ¹	34 ft.	28 ft.
Minimum Curb Radius or Edge of Pavement at Intersections	25 ft.	20 ft.
Maximum Grades	8%	8%
Approaches onto Public Roads		
Minimum Sight Distance	275 ft.	150 ft.
Minimum Width	35 ft.	30 ft.
Maximum Grade for 20'	5%	5%
Curvature ²		
Design Speed	40 mph	20 mph
Maximum Curve	12.25	53.5
Minimum Radius	468 ft.	107 ft.
Cul-de-sacs/Turnarounds		
Maximum Road Length		600 ft.
<i><u>Incorporated City</u></i>		
<i><u>Unincorporated Rural</u></i>	-	<i><u>1,320 ft</u></i>
Cul-de-sac: Minimum Outside Right-of-Way Radius	-	58 ft.
Cul-de-sacs: Minimum Outside Roadway Radius	-	47 ft.
"T" Turnaround: Backup Lengths (2 Required)	-	40 ft. each
New Bridges		
Curb-to-Curb Widths ³	28 ft.	24 ft.

Design Load Capacity	HL-93	HL-93
Vertical Clearance	14.5 ft.	14.5 ft.

¹ Where parking will be permitted add eight feet on each side. If guardrail installation is required or a shoulder is desired, add two feet to each side of roadway.

² Curvature is based on a super-elevation of 0.8/ft.

³ Width of the bridge roadway surface should match the width of the roadway system it joins.

Suggested Motion:

I move to recommend the Adoption of Planning Board Recommendation REGS-19-01 as finding of fact. Further, I move that the Governing Bodies of Fallon County, the City of Baker and the Town of Plevna adopt the described amendments into their respective Subdivision Regulations.

