

January 16, 2024

Mayor and City Council
206 South Main St.
Three Forks, MT, 59752



RE: The Headwaters Townhome Exemption

Dear Mayor and City Council:

Three Rivers Development, LLC, the owner of The Headwaters subdivision has submitted a subdivision exemption application seeking to convert its approved condominium project to townhomes. The original approval for this project was for 32 condominium units and this exemption would simply change the units to townhomes. The City Subdivision Regulations define condominiums in the following manner:

- Condominium: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units.

The City Zoning Code defines townhomes in the following manner:

- Townhouse: A single-family dwelling constructed as part of a series of dwellings, each of which is either attached to the adjacent dwelling or dwellings by party walls or is located immediately adjacent thereto with no visible separation between the dwellings. If individually owned, each townhouse may be located on an individual lot.

The original subdivision plat supports the creation townhome lots and the law allows the City to approve the conversion of the project to townhome lots as long as the development complies with 76-3-203, MCA. This statute is an exemption from subdivision review for condominiums and townhomes. The project complies with the requirements of the statute. This statute is attached as Exhibit A. The density and location of the development was contemplated through the original subdivision process; and the townhomes meet the requirements of the City Zoning Code.

Under the City Subdivision Regulations, the review of exemptions is an administrative review and is therefore undertaken by the subdivision administrator and does not go before the City Council for review and approval. I am serving in the capacity of the contract subdivision administrator for the City. See Exhibit B for that pertinent section of the City Subdivision Regulations for the review of exemptions.

The applicant has amended the new Declaration of Covenants for the townhomes to include all of the restrictions and conditions that were included as part of the original subdivision/PUD conditions.

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Based upon my review and with the guidance of the City Attorney, Susan Swimley, I have made the determination that the proposed exemption meets the statutory requirements and that all documents related to the conversion of the condominiums to townhomes should be simultaneously filed with the Gallatin County Clerk and Recorder's Office to complete the conversion.

This process and this memo have been reviewed and approved by Susan Swimley.

Sincerely,

Great West Engineering, Inc.

A handwritten signature in black ink, appearing to read "Jerry Grebenc", is written over a light gray rectangular background.

Jerry Grebenc
Senior Planner, CFM

See what's *possible.*



EXHIBIT A

76-3-203 MCA: Exemption for certain condominiums and townhouses.

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Montana Code Annotated 2023

TITLE 76. LAND RESOURCES AND USE

CHAPTER 3. LOCAL REGULATION OF SUBDIVISIONS

Part 2. Miscellaneous Exemptions

Exemption For Certain Condominiums And Townhouses

76-3-203. Exemption for certain condominiums and townhouses. (1) Condominiums, townhomes, townhouses, or conversions, as those terms are defined in **70-23-102**, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(a) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in **76-3-621** are complied with; or

(b) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations pertaining to land use, density, bulk and dimensional requirements, landscaping, and parking requirements when local zoning regulations are in effect.

(2) A determination whether the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter must be made by the governing body or the agent or agency designated by the governing body within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the determination.

(3) The governing body may not enact regulations prohibiting the townhome form of ownership or impose conditions on a determination that the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter, and may not require the condominium, townhome, townhouse, or conversion proposal to undergo a conditional use permit or other quasi-judicial governmental review process pursuant to regulations adopted pursuant to Title 76, chapter 2, as a prerequisite to determining eligibility for an exemption from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001; amd. Sec. 1, Ch. 229, L. 2007; amd. Sec. 4, Ch. 373, L. 2011; amd. Sec. 7, Ch. 323, L. 2019; amd. Sec. 1, Ch. 448, L. 2023.



EXHIBIT B

Section V-E-2: City Subdivision Regulations, Excerpt from Divisions or Land Exempt from Subdivision Review

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification must be included on the certificate of survey.

c. Use of Exemption.

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

d. Rebuttable Presumptions.

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if the agent determines that the documentation submitted according to this section does not support the states reason for relocation.

V-E. Procedures and Review of Subdivision Exemptions

V-E-1. Submittal

Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101et.seq., MCA) shall submit to the subdivision administrator, (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption.

V-E-2. Review

When a claimed exemption is submitted to the subdivision administrator, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., county planner, sanitarian and clerk and recorder). The subdivision administrator and governing body agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- a. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.
- b. Within five (5) working days of submittal the subdivision administrator shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.

- c. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and these criteria, the subdivision administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and these criteria, the subdivision administrator shall advise the clerk and recorder to not file or record the documents, and the clerk shall return the materials to the landowner.
- d. The subdivision administrator, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-E-3. Appeals.

- a. Any person whose proposed use of an exemption has been denied by the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the agent's decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the MSPA or these regulations, and, thereby overcome the rebuttable presumption.
- b. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.
- c. If the person proposing to use an exemption does not seek to rebut the rebuttable presumption or if the governing body determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may submit a subdivision application for the proposed land division.

V-E-4. Identification Codes

To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder shall cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these regulations.

CO...Court order [76-3-201(1)(a), MCA]

ME...Mortgage Exemption [76-3-201(1)(b), MCA]

LE...Life Estate [76-3-201(1)(e), MCA]