

SUBDIVISION ORDINANCE BILLINGS COUNTY, NORTH DAKOTA

SECTION 1: GENERAL PROVISIONS

1.1 Title. This Ordinance shall be known as the "Subdivision Ordinance of Billings County", and will be referred to herein as "this Ordinance."

1.2 Authority. These regulations are adopted under the authority granted by Chapter 11-33.2 of the North Dakota Century Code and shall in no way affect subdivision within the corporate limits, or within the area of application of extraterritorial zoning jurisdiction, of any municipality within Billings County. These regulations shall in no way prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

1.3 Purpose. The purpose of these regulations is to promote the public health, safety, and general welfare of Billings County landowners and residents by:

1.3.1 Coordinating land subdivision with the Comprehensive Plan;

1.3.2 Assisting the subdivider in harmonizing his interest with those of the County as well as municipalities within the County;

1.3.3 Avoiding scattered, piecemeal, or premature subdivision of land as would involve danger or injury to health, safety and general welfare by reason of lack of water supply, sewer service, drainage, transportation, fire protection, schools, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

1.3.4 Requiring suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate access for firefighting equipment to buildings, and be coordinated so as to compose a convenient system;

1.3.5 Providing for safe access for emergency vehicles to structures on sloping property;

1.3.6 Protecting and preserving property and property values and discouraging inferior development which might adversely affect property values;

1.3.7 Providing for open spaces of adequate proportions;

1.3.8 Securing the rights of the public with respect to public lands and waters;

1.3.9 Prescribing minimum areas of lots so as to assure conformance with zoning ordinances;

1.3.10 Encouraging wise use and management of natural resources throughout the County in order to preserve the integrity, stability, and beauty of the County and the value of its land;

1.3.11 Preserving the natural and scenic character and aesthetic value of natural landmarks, prominent natural features, hillsides, ridges, ridgelines, ridge tops, knolls, saddles, summits, and the natural skyline in the County by regulating development thereon;

1.3.12 Establishing reasonable standards, designs, and procedures for land subdivision, surveys, and plats in order to improve land records, ensure proper legal descriptions, and further beneficial planning in the County; and,

1.3.13 Ensuring orderly growth and responsible development to meet the changing needs of the citizenry of Billings County and creating conditions favorable to health, safety, prosperity, and general welfare.

1.4 **Scope.** No subdivision of land shall be made, no land in any proposed subdivision shall be sold, and no street, sanitary sewer, water main, or other public improvement in connection with any subdivision shall be laid out, constructed, or dedicated, until the regulations and procedures described in this Ordinance have been complied with and the final plat has been approved and recorded in the office of the County Recorder.

1.4.1 **County Auditor's Plat.** A county auditor's plat made pursuant to N.D. Cent. Code § 57-02-39 is for taxation purposes only and does not confer rights in or transfer title to land. An Auditor's Lot is not approved by the County for sale or development.

1.4.2 **Changes to Previously Approved Plat.** No alteration of any previously approved or recorded subdivision plat, including boundary shifts and removal of lot lines between existing lots and/or unplatted tracts shall be made, except in accordance both with the procedures and regulations relating to original subdivision plats described in this Ordinance and with the applicable provisions of N.D. Cent. Code chapter 24-07.

1.4.3 Application of Other Laws. If any part of this Ordinance is at any time at variance with any other applicable law, ordinance, or regulation, the most restrictive provision shall govern.

1.5 Exemptions. The following subdivisions are exempt from the application of this Ordinance:

1.5.1 Agricultural Subdivisions. A division of land into lots, tracts, or parcels all of which are forty (40) acres or more in size for the purpose of agricultural use that does not involve or require any new streets or easements or access to any lot, tract or parcel is not required to comply with the provisions of this Ordinance. If a lot is less than forty (40) acres and has not followed the requirements of this Ordinance, then that land shall have a deed restriction forbidding development of the parcel.

1.5.2 Court-Ordered Subdivision. A division of land which may be ordered or approved by a court of competent jurisdiction, such subdivision need not comply with the provisions of this Ordinance.

1.5.3 Correctional Subdivision. A division of land made to correct errors in prior divisions pursuant to N.D. Cent. Code chapter 40-50.1.

1.6 Character of Land for Subdivision. Land considered for subdivision shall be of such character that it can be used for building purposes with minimal alternation and without danger to public health, safety, welfare, or the environment. Factors to be considered in whether land is suitable for the proposed use include, but are not limited to, susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or Billings County.

SECTION 2: PROCEDURES

2.1 Approval Required. Any person desiring to create a subdivision shall submit to the Planning and Zoning Board all necessary applications and supporting data as hereinafter provided. No final subdivision plat shall be recorded until the plat has been acted upon by the Planning and Zoning Board and approved by the County Commission.

2.1.1 Minor Subdivisions. Any person desiring to create a minor subdivision is not required to comply with the requirements of subsections (2.3) through 2.5 of this section. The final plat submitted for a minor subdivision is not required to strictly comply with the requirements for final

plats, but must set forth information sufficient to permit the Planning and Zoning Commission and the County Board to make an informed decision as to whether the minor subdivision substantially conforms to the requirements of this Ordinance. Nothing in this section shall be construed to exempt a minor subdivision from the notice and public hearing required pursuant to subsection 2.7 of this section.

2.1.2 Major Subdivisions. Any person desiring to create a major subdivision must strictly comply with all provisions of this Ordinance, except as when otherwise required by the County Board.

2.2 Application Meeting and Area Sketch. Before submitting an application for any proposed subdivision, the Applicant shall determine the applicable zoning requirements and shall meet with the County Planner to discuss the appropriate procedure for approval of the proposed subdivision, including all applicable ordinances, regulations, and plans in the area to be subdivided. The Applicant shall also present to the County Planner an area sketch of the proposed subdivision which presents the basic concept for the subdivision. If the proposal is located within a city's extraterritorial jurisdiction, the request shall be referred to that City.

2.3 Submission of Application and Preliminary Plat. If the proposed subdivision appears to the County Planner to comply with applicable laws and regulations, and the Applicant believes that there is a strong likelihood that the preliminary plat will be approved, the Applicant may submit to the County Planner an application to subdivide and a preliminary plat. The Applicant shall pay the required fee when submitting the application. The County Planner may require the Applicant to submit whatever additional information is necessary for review.

2.3.1 Required Notice to Organized Townships. If the proposed subdivision is located within any organized township, the County Planner shall, by registered mail, notify the appropriate chairperson of the board(s) of township supervisors that an application for subdivision approval has been submitted to the County and that the board of township supervisors is requested to make a recommendation on the application. Prior to submission of a final plat for subdivision approval by the County Board, any Township Board having jurisdiction shall transmit a registered letter to the County Planner certifying that the proposed subdivision is consistent with all Township zoning regulations.

2.3.2 Review by County Engineer. When a subdivision has a direct impact on a public road, the County Engineer shall make a recommendation about the plat.

2.4 Review by County Planner. The County Planner shall review the application and preliminary plat within sixty (60) days of receipt and forward the application, copies of the preliminary plat, and his recommendations to the Planning and Zoning Board.

2.5 Review by Planning and Zoning Board. Within a reasonable time after receiving recommendations from the County Planner, the Planning and Zoning Board shall review the preliminary plat. The Planning and Zoning Board shall approve or disapprove the preliminary plat. If approved, the Planning and Zoning Board shall state in writing the conditions of approval, if any. If disapproved, the Planning and Zoning Board shall state in writing its disapproval and reasons.

2.5.1 Approval of Preliminary Plat. Approval of a preliminary plat, with or without conditions, shall not constitute approval of the final plat.

2.5.2 Compliance with Conditions. All stated conditions must be completed or included in the final plat prior to final plat review by the Planning and Zoning Board. Conditional approval of a preliminary plat is limited to a period of six (6) months, after which time the Applicant must resubmit a preliminary plat, unless waived by the County Board.

2.6 Submission of Final Plat. Within six (6) months of preliminary plat approval, the Applicant shall submit the final plat. The final plat shall incorporate all changes required by the Planning and Zoning Board as conditions to the approval of the preliminary plat, but the final plat shall otherwise conform to the preliminary plat as approved.

2.6.1 Additional Review by County Planner. When appropriate, the County Planner shall meet with the Applicant prior to consideration of the final plat by the Planning and Zoning Board to ensure that the final plat conforms to the preliminary plat as approved or that changes recommended or conditions imposed by the Planning and Zoning Board as to the Preliminary Plat were made.

2.7 Notice and Public Hearing. Within a reasonable time after the final plat has been submitted and all required changes made, the Planning and Zoning Board shall hold a public hearing on the proposed subdivision. Notice of the time and place of such hearing shall be published once in the official newspaper of the County at least ten (10) days prior to the date of the hearing.

2.8 Recommendation of the Planning and Zoning Board. Following the public hearing, the Planning and Zoning Board shall forward its recommendation, together with any recommendations received by an organized township, to the County Board for final approval.

2.9 Approval of Final Plat. Within a reasonable time after receiving recommendations from the Planning and Zoning Board, and any after receiving recommendations from any organized township in which the proposed subdivision is located, the County Board shall review the recommendations and the final plat and approve or disapprove of the proposed subdivision.

2.10 Recording the Final Plat. Within thirty (30) days after final plat approval is granted, the final plat of record, in addition to the required certifications, shall be filed with the County Recorder:

2.10.1 A notarized statement by owner, and by any mortgage holder of record, of the adoption of the plat and the dedication of any streets, roads, and other public areas and private easements;

2.10.2 A notarized statement by a registered land surveyor to the effect that the plat represents a survey made by him and that monuments and markers shown therein exist as located and that all dimensional and geologic features are correct.

2.10.3 A statement from County Auditor showing that all taxes and special assessments due on the property have been paid in full.

2.10.4 A certificate of review by County Engineer, County Planning and Zoning Board, and any organized township.

2.10.5 A certificate of approval from the County Board.

2.10.6 A certificate of recording from the County Recorder.

2.11 Waiver or Addition of Requirements. Where warranting circumstances exist, the Planning and Zoning Board may add to or relieve the Applicant of certain submission requirements of this Ordinance.

SECTION 3: APPLICATION REQUIREMENTS

3.1 Fees. An Applicant shall pay to the County fees to be determined by the County Board required to be submitted along with an application to subdivide. The fees so collected shall be credited to the general fund of the County.

3.2 Area Sketch. Each Applicant for subdivision must prepare an area sketch of all property within one mile of the boundaries of the proposed subdivision that is under the County's jurisdiction, to include the following:

3.2.1 General layout of existing and proposed lots, buildings, and streets/roads including approximate number of lots, lot width and depth, a

proposed general Lot layout and what zoning changes would be required, if any;

3.2.2 Existing and proposed land uses;

3.2.3 North directional indicator;

3.2.4 General topography including significant topographical features and physical features; and,

3.2.5 Preliminary sewage and potable water plans.

3.3 The Preliminary Plat. Each Applicant for subdivision must prepare a preliminary plat. Four (4) prints of the preliminary plat shall be submitted clearly and legibly on tracing paper, tracing cloth or mylar and 24" x 36" in size. One (1) Electronic CAD & PDF file and Twelve (12) clear and legible 11" x 17" reductions shall also be submitted no later than twenty-one (21) days prior to the Planning and Zoning Board meeting. The preliminary plat shall contain the following information:

3.3.1 Proposed name of subdivision;

3.3.2 Date of submittal;

3.3.3 Location by section, township and range;

3.3.4 North directional indicator;

3.3.5 Name and address of developer, owners, lien holders, surveyor or engineer, and designer;

3.3.6 Scale of plat, 1" = 100' or less;

3.3.7 Total acreage within subdivision;

3.3.8 Boundary line of proposed subdivision, approximately to scale;

3.3.9 Boundary lines and owners names of adjacent properties between the proposed subdivision and the nearest existing streets, but not less than 300 feet beyond the proposed subdivision.

3.3.10 Zoning and subdivision names or designations of adjacent properties;

3.3.11 Approximate acreage of each individual Lot;

3.3.12 Lot lines, lot numbers, and block numbers. Any Outlots shall be given consecutive letters, starting with the letter "A".

3.3.13 Lot and block dimensions to the nearest hundredth of a foot with curves dimensioned as central angles, radii and arc distances.

3.3.14 Minimum building setback lines;

3.3.15 A draft of all restrictive covenants;

3.3.16 Street, highway and major thoroughfare names, locations, surfacing and right-of-way and surface widths;

3.3.17 Any Railroad names, right-of-way widths and locations;

3.3.18 Location and widths of easements and easement functions such as drainage, sewage, public utilities or other;

3.3.19 Location, type (above or below ground) and size of all electric power lines, telephone lines, gas lines, water and sewer mains and other public or private utilities;

3.3.20 Location and approximate sizes of any sidewalks, curbs, or gutters;

3.3.21 Location, size and type of all principle structures, including, but not limited to, buildings, concrete slabs, power line poles or structures, utility boxes, and fences;

3.3.22 Topographic contours at a two-foot interval or a maximum interval or five feet if the later is acceptable to the reviewing authority;

3.3.23 Location and extent of problem soil types and results of all percolation tests sites, if required by County Planner;

3.3.24 Location, size, depth and quality of all shallow and/or deep wells;

3.3.25 Any lands to be reserved or dedicated for parks or public uses;

3.3.26 All streams, water courses and drainage basins and designation of areas which are subject to inundation or stream water over flow and designation of areas determined to be within a 100-year floodplain for all water courses passing through the proposed subdivision;

3.3.27 Where access to any lot is proposed to be accomplished by private easement as opposed to dedicated street, the Applicant shall also indicate the location and dimensions thereof, and shall submit a draft of the proposed instrument creating the easement. Generally, private access easements are to be discouraged, and access shall generally be created by and through public dedications.

3.4 The Final Plat. Within six (6) months after approval of the preliminary plat, the Applicant for subdivision must prepare a final plat. The final plat shall be submitted on high quality mylar, 24" x 36" in size. There shall be one-half inch (1/2") margins from all edges except the left edge, which shall have a two-inch (2") margin. In addition, one (1) electronic CAD & PDF file, four (4) full size blue line prints and twelve (12) copies of an 11" x 17" reduction, of the plat shall also be submitted. A clear, legible mylar sepia of the signed final plat and one (1) signed 8 1/2" x 14" reduction with a 1" margin on at least one side, shall be submitted to the County Planner, who shall, when finally approved, record the plat with the County Recorder. In addition to all information required to be included in the preliminary plat, the final plat shall include the following information:

3.4.1 Primary control points, approved by the County Engineer, or descriptions and "ties" to such control points, to which all dimensions, angles, bearings, and similar data on the plat are referred.

3.4.2 The subdivision boundary line, based on an actual survey. Where a river, stream, creek, lake or pond constitutes a boundary line, a survey line approximately paralleling the water surface shall be shown with bearings or angles and distances between angle points. The angle points shall be shown in relation to the water surface as well as a point every 200 feet on a parallel line shown in relation to the water surface. The survey line shall be shown as a dashed line.

3.4.3 All centerlines of streets or other public right-of-way shall be dimensioned with distances and bearings between points of intersection or between a point of intersection and a point of curvature.

3.4.4 All existing and proposed street cross-sections, grades and profiles.

3.4.5 Where access to any lot is proposed to be accomplished by private easement as opposed to dedicated street, the Applicant shall also indicate the location and dimensions thereof, and shall submit a draft of the proposed instrument creating the easement, including any recommended modifications to same by the Planning and Zoning Board.

Generally, private access easements are to be discouraged, and access shall generally be created by and through public dedications.

3.4.6 Public and private utility plans and profiles.

3.5 **Documentation to Accompany Final Plat.** The following documents must accompany the final plat:

3.5.1 A notarized surveyor's certificate by a surveyor properly licensed acknowledging the plat as a correct representation of a survey and that all distances are correct and monuments placed as shown.

3.5.2 A notarized owner's certificate acknowledging ownership or power of attorney to ownership and dedication of all public lands and easements and private easements, if applicable and approved.

3.5.3 Approval form for the Planning and Zoning Board

3.5.4 Approval form for the County Board.

3.5.5 Approval form for the county engineer.

3.5.6 A title opinion stating the name of all holders of an interest in the surface interests of the affected land.

3.5.7 Certification that there are no outstanding taxes or encumbrances on any properties within the subdivision.

3.5.8 Any other documentation required by the County Planner or Planning and Zoning Board.

SECTION 4: DESIGN STANDARDS

4.1 **Compliance with Other Laws.** In addition to the requirements stated herein, all subdivision plats shall comply with the applicable provisions of the North Dakota Century Code in addition to all applicable city, county, or township plans, zoning ordinances, ND building codes, housing codes, fire codes, or other local regulations. The Applicant should consult with the 911 coordinator and the County Engineer when planning a subdivision.

4.2 **Block length.** Intersecting streets that determine block lengths shall be provided at such intervals as will meet existing streets and serve cross-traffic adequately. Where no existing plats control, the blocks in subdivisions shall not exceed thirteen hundred twenty (1,320) feet in length, except where topography or other conditions justify a departure from this maximum.

4.3 Block Width. The width of the block shall normally be sufficient to allow two (2) tiers of Lots of appropriate depth. Blocks intended for business or industrial use shall be of such width as to be considered most suitable for their respective use.

4.4 Lot Size. The minimum lot area and minimum lot dimensions shall conform to the requirements of the zoning district in which the lot is situated as required by Billings County Zoning Resolution No. 1, except where variance is authorized by the County Board. The following additional requirements apply:

4.4.1 Corner Lots. Corner Lots for residential use shall have sufficient width to permit appropriate building setback from both roads as required by the zoning ordinance having jurisdiction.

4.4.2 Side Lines. Side lines of Lots shall be approximately at right angles to road or street lines or radial to curved road or street lines.

4.4.3 Frontage. Every Lot shall have frontage on a publicly dedicated road, or on a legally established private access easement. In the case that the road is a proposed publicly dedicated road, it shall meet minimum county standards for a local street. For private access easements, a lesser standard may be allowed, when approved by the County Board, in consultation with the County Engineer.

4.5 Minimum Setback. No building or structure shall be constructed, erected, or moved such that it will be located within the minimum setback as provided in Billings County Zoning Resolution No. 1.

4.6 Street within Subdivision. The following design standards apply to streets within a proposed subdivision:

4.6.1 Connection to Existing Streets. Streets, except for cul-de-sacs, normally shall connect with streets already dedicated in adjoining or adjacent subdivisions, or provide for future connections to adjoining unsubdivided tracts. The arrangement of the street network shall be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to runoff storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of the area to be served.

4.6.3 Intersections. Roads shall be designed so as to intersect at right angles, except where topography or other conditions justify variations. Where such conditions may justify the variations, a variance will be required for the proposed subdivision.

4.7 Frontage to Highways. Wherever the proposed subdivision contains or is adjacent to the right-of-way of a State, County, Township, or Federal Highway which is classified as a collector or arterial by the County Engineer, provision shall be made for reverse frontage so that lots do not need direct access on to said roads. Lot depth for reverse frontage lots shall be determined with due consideration for the minimum distances required for approach connections to future grade separations. There shall be only one access per quarter mile on section line roads or roads classified as collectors or arterials by the County Engineer, except where it may result in real practical difficulties, unnecessary hardship or injustice.

4.8 Half Streets. Dedication of half streets or roads will not be approved, except where it is essential to the reasonable development of the subdivision and in conformity with the other requirements of these regulations, where it is found that it will be practical to require the dedication of the other half when the adjoining property is subdivided, or where it becomes necessary to acquire the remaining half by condemnation so that it may be improved in the public interest.

4.9 Streets. All public streets shall be classified based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day; or, the number of dwelling units to be served by the street. Whenever a street continues an existing street that formerly terminated outside the subdivision, or it is expected that a street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.

4.9.1 Street Classifications. The classifications for streets within a subdivision are “arterial,” “collector,” and “alley.”

4.9.2 Minimum Road Surface Widths. The following minimum road surface widths apply to all streets within a subdivision:

Arterial	40 feet
Collector.....	36 feet
Alley	20 feet

4.9.3 Road and Highway Grades. The grades of all streets in any subdivision shall not be greater than the maximum grades for each classification as follows:

Arterial	6 percent
Collector.....	8 percent
Alley.....	8 percent

(minimum surface widths and highway grades may be altered so long as public safety is not impeded upon and so

long as the alterations are done under strict guidance and recommendation of the county engineer, county road district foreman, and by the approval of the county commission.)

4.9.4 Ditch Grade. There shall be a minimum ditch grade of not less than one-tenth of one percent (0.1%) on all streets unless otherwise specified by the County Engineer.

4.9.5 Roadway Cross Sections. Roads shall be crowned to provide drainage. In slopes shall be a minimum of four (4) to 1.

4.9.6 Dedication. All proposed streets or roads shall be offered for dedication as public roads or streets to the appropriate jurisdiction. If said jurisdiction indicates it does not intend to accept such dedication, the road may be allowed as a private road.

4.9.7 Street Names. The preliminary plat may indicate suggested names upon proposed streets, but the Planning and Zoning Board shall name all streets using the County's rural addressing system with the guidance of the 911 coordinator.

4.9.8 Cost of Street Signs. The Applicant may be required to deposit with the County at the time of final subdivision approval the sum for each road sign required.

4.10 Sewage Disposal Plan. A sewage disposal plan that is adequate to prevent serious health risks shall be provided within any proposed subdivision. This plan shall be approved in accordance with the rules, regulations, and standards of the State of North Dakota, and all other applicable health regulations.

4.11 Water Supply System. A water supply system that is adequate to provide potable water shall be provided within any subdivision. The system shall be detailed in a water supply system plan that complies with all applicable health regulations. A private or on-site water supply system shall not be less than one hundred (100) feet from any sewage drain field, unless a specific deviation from this standard is approved by the County Board. Further, an adequate water supply for fire-fighting purposes, as determined by the Billings County Fire Chief, shall be available for all buildings, structures and parts thereof located or to be located within the subdivision. The applicant shall submit documentation to the Billings County Fire Chief of adequate water supply for fire-fighting purposes.

4.12 Utility Facilities. All utility facilities intended for distribution within a subdivision shall be placed underground in accordance with the specifications and policies of the respective utility service providers except where it may result in real practical difficulties, unnecessary hardship or injustice. The Applicant

shall submit documentation that an agreement has been reached with the provider for placement of the various utilities.

4.12.1 Service to Other Subdivisions. Whenever it can be reasonably anticipated that utility facilities constructed in one subdivision will be extended to serve other subdivisions, such utility facilities shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

4.12.2 Easement Widths. A minimum of ten (10) feet wide utilities easements shall be provided where necessary. The easements shall be centered on rear and other lot lines or within alley right-of-way. They shall have continuity of alignment from block to block.

4.13 Drainage. A drainage system that is adequate to prevent the undue retention of surface water shall be provided within any subdivision.

4.13.1 Street Drainage. Whenever practicable, the drainage system shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets.

4.13.2 Undue Burdens. All drainage systems shall be constructed and maintained so that nearby properties are not unreasonably burdened with surface water as a result of such system. More specifically: (1) no system may be constructed or maintained so that such system unreasonably impedes the natural flow of water from higher nearby properties across such system, thereby unreasonably causing substantial damage to such higher nearby properties; and (2) no system may be constructed or maintained so that surface waters from such system are unreasonably collected and channeled onto lower nearby properties at such locations or at such volumes as to cause substantial damage to such lower nearby properties.

4.13.3 Conformance to Natural Contours. To the extent practicable, all drainage systems shall conform to the natural contours of the land and natural and pre-existing man-made drainage ways and features shall remain undisturbed.

4.13.4 Lot Boundaries. To the extent practicable, Lot boundaries shall be made to coincide with natural and preexisting man-made drainage ways within subdivisions to avoid the creation of Lots that can be built upon only by altering such drainage ways and minimize soil erosion.

4.13.5 Sewer Systems. No surface water may be channeled or directed into a sanitary sewer system.

SECTION 5: DEDICATION OF PUBLIC LANDS

5.1 Purpose. Because new residential development increases population and therefore demand upon public services, it is required that an original subdivision plat of residential property dedicate land for the purpose of providing public uses and facilities for the future residents of such subdivision.

5.2 Application. The provisions of this requirement shall apply to all original plats of residential zoned subdivisions, and shall include replats if the replat changes the use of the Lots to residential.

5.3 Minimum Dedication. The amount of land required to be dedicated by the Applicant pursuant to these regulations shall be based upon the type of development and the required open space per dwelling unit, determined by the following formula:

One or Two Family	700 sq. ft. per unit
Multi-Family	470 sq. ft. per unit

5.4 Character of Land Dedicated. Any land to be dedicated as a requirement of this section shall be reasonably suitable for public use and shall be at a location convenient to the people to be served. Land to be dedicated shall normally form a unified parcel, be shaped for sufficient public activities, shall have public access either through easements or by frontage on an improved street, shall have sufficient topography and geology to be used for the particular public use, and shall be of such character as to be safely used by the residents of that subdivision. Land that does not meet these criteria shall not be accepted for dedication.

5.5 Deed to Land Dedicated. Prior to Final Plat approval by the County Board, the Applicant shall tender a deed of the dedicated land to the public entity that is to receive the land. If the plat is not approved, the deed shall be returned to the Applicant. The transfer of deed is only final upon final approval of plat. The public entity that receives the dedicated land shall be required to maintain such land.

5.6 Dedication of Private Land. Where private open space for park and recreational purposes is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, such areas may be credited against the requirement of dedication for land for public use provided the County Board finds it is in the public interest to do so and that the following standards are met:

5.6.1 That the use of the private open space is restricted for park and recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the tract. In addition, there

must be a separate agreement between the Applicant and the County which restricts the use of such open space to park and recreational purposes and provides the County with the right to enforce the provisions of the agreement; and,

5.6.2 That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, and location of the private open space land.

5.7 Cash Payment in Lieu of Land Dedication. Where the proposed subdivision does not contain land consistent with the requirements of this section, or where the Applicant can demonstrate a compelling reason why he should not comply with the requirements of this section, cash may be offered in lieu of the land required for public dedication. The cash shall be used for land for public parks or other public land uses such as schools and must be used for land in the vicinity of the proposed subdivision. The amount required shall be determined by the County Board and shall be consistent with the value of the land which would otherwise be offered for public dedication.

SECTION 6: IMPROVEMENT GUARANTEES

6.1 Improvement Guarantees. Prior to final plat approval, the Applicant, at his own expense, shall be required to make and install such public improvements as provided in these regulations. The Applicant shall make an offer of irrevocable dedication for the public improvements to the public free and clear of all liens and encumbrances on the property and public improvements thus offered.

6.2 Waiver of Improvement Guarantees. The County Board may, at its discretion, waive the requirement that the Applicant complete and dedicate all public improvements prior to final plat approval. Instead, the County Board may allow the Applicant to post a surety bond or other security at the time of submitting the final plat. The surety bond or other security shall secure the satisfactory construction, installation, and dedication of the required public improvements. The Applicant shall post a surety bond or other security in an amount determined by the County Board as sufficient to ensure those public improvements are installed with such time as the County Board shall set.

6.3 Reduction of Surety Bond. The surety bond or other security may be reduced upon actual acceptance of dedication of part of the total public improvements only to the ratio those public improvements bear to the total public improvements. In no event shall a surety bond or other security be reduced below twenty-five percent (25%) of the principal amount required to ensure public improvements are installed.

6.4 Release of Surety Bond. The County Board shall release the surety bond or other security upon the submission by the Applicant of both an “as-built” plan and proof that a title insurance policy has been furnished insuring that the public improvements are free and clear of any and all liens and encumbrances. The “as-built” plan must be drawn to scale and indicate all underground utilities, road profiles and centerlines, easements, and dedicated roadways. Upon such approval and recommendation, the County should thereafter accept the improvements for dedication.

6.5 Failure to Make Public Improvements. In the event that any public improvements which may be required to be installed by the Applicant have not been installed as provided in these regulations or in accordance with the plat as finally approved, the County Board has the power to enforce any surety bond, or other security, required of said Applicant by appropriate legal and equitable remedies.

6.6 Acceptance of Dedication of Public Improvements. Acceptance of dedication of public improvements shall be by resolution of the County Board. The approval of the plat by the County Board shall not be deemed to constitute or imply the acceptance by the County of any public improvement shown on the plat. When a local government other than the County will be the recipient of the dedication of public improvements, a duly certified resolution of acceptance from said local government shall be included in the final plat.

SECTION 7: VARIANCES AND APPEALS

7.1 Hearing Required. The Planning and Zoning Board must grant a hearing for variance approval from the provisions of these regulations upon proper application, and provide a recommendation to the County Board regarding action on such variance request.

7.2 Variations Authorized. The County Board may approve a variance from strict compliance with the provisions of these regulations when it is found that undue hardship may result from strict compliance.

7.3 Conditional Approval. The County Board shall prescribe any conditions that it deems necessary to or desirable for the protection of the public interest prior to granting any variance.

7.4 Findings Required. Prior to granting a variance, the Planning and Zoning Board must make findings and recommendations as to whether a variance should be granted. In determining whether to grant a variance, and in addition to the findings and recommendations of the Planning and Zoning Board, the County Board must take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons who reside or work in the proposed subdivision, and the probable effect of the proposed

subdivision upon traffic conditions in the vicinity. No variance shall be granted unless the County Board finds any of the following:

7.4.1 That there are special circumstances or conditions affecting said property such that the strict application of the provisions of these regulations would deprive the Applicant of the reasonable use of his land.

7.4.2 That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

7.4.3 That the granting of the variance will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

7.5 **Appeal.** If an Applicant wishes to obtain a reversal from a decision regarding a subdivision application by the County Planner, he may do so by filing the appropriate request for appeal with the Planning and Zoning Board. If an Applicant wishes to obtain a reversal from a decision regarding a subdivision application by the Planning and Zoning Board, he may do so by filing the appropriate request for appeal with the County Board.

SECTION 8: VIOLATIONS AND PENALTIES

8.1 **Construction, Sale or Transfer Prior to Final Plat Approval.** Pursuant to N.D. Cent. Code § 11-33.2-15, any person, partnership, or corporation who or which, being the owner or agent of the owner of any lot, tract, or parcel of land, shall lay out, construct, open, or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or who or which sells, transfers, or agrees or enters into an agreement to sell or transfer any land in a subdivision or engages into an agreement to sell or transfer any land in a subdivision or engages in the subdivision of land or erects any buildings thereon, unless and until a plat has been finally approved in full compliance with the provisions of these regulations and has been recorded as provided herein, shall be guilty of a Class B misdemeanor.

8.2 **Separate Offenses.** Each lot, tract, or parcel created or transferred, and each building erected in a subdivision in violation of these regulations shall constitute a separate offense.

8.3 **Additional Remedial Measures Authorized.** If any lot, tract, or parcel of land is subdivided; or if any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or if any building structure, or land is used in violation of these regulations, the proper county authorities or any affected citizen or property owner, may institute any appropriate action or proceedings in addition to other remedies to:

8.3.1 Prevent such unlawful subdivision, erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

8.3.2 Restrain, correct, or abate such violations;

8.3.3 Prevent the occupancy or use of the building, structure, or land which has been unlawfully subdivided;

8.3.4 Prevent any illegal act, conduct, business, or use in or about such premises; or,

8.3.5 To vacate and nullify any recorded plat of such unlawful subdivision.

8.4 **Recordation Prior to Approval.** No plat of any subdivision shall be entitled to record with the Billings County Recorder or have any validity until the final plat thereof has been prepared, approved, and acknowledged in the manner prescribed by this Ordinance.

8.5 **Refusal to Record.** The County Recorder shall refuse to receive or record any deed, contract for deed, plat, replat, patent, Auditor's Lot, or any other instrument that changes the current property description unless there is entered thereon a Certificate of the County Auditor showing that a transfer of the lands described therein has been entered. (N.D. Cent. Code § 11-18-02).

8.6 **Taxes Required to be Paid.** The County Auditor shall not enter the transfer of the lands described in any deed, contract for deed, plat, replat, patent, Auditor's Lot, or any other instrument that changes the current property description unless and until all taxes have been paid on the parcel, and compliance with this Ordinance has been verified by the County Planner. This provision does not apply to the following: sheriff's or referee's certificate of sale on execution or on foreclosure of a mortgage; a mineral deed conveying oil, gas, and other minerals in or under the surface of lands; a final decree of distribution or any order terminating joint tenancy or any judgment or decree affecting title to real estate; any deed conveying to the state, or to any political subdivision or municipal corporation thereof, any right of way for use as a public street, alley, or highway; and any plat, replat, or Auditor's Lot accompanied by a resolution requesting the recording of the plat, replat, or Auditor's Lot by the governing body of a political subdivision. (N.D. Cent. Code § 11-18-02.)

SECTION 9: AMENDMENT

For the purpose of providing the public health, safety, and general welfare, the County Board may, from time to time amend the provisions imposed by these

subdivision regulations. Public hearings on all proposed amendments shall be held by the County Board in the manner prescribed by law.

SECTION 10: DEFINITIONS

For the purpose of this Ordinance, all definitions set forth in Billings County Zoning Resolution No. 1 apply. In addition, the following terms and words referred to herein are defined as follows:

10.1 Abutting: To physically touch or border upon; or to share a common property line.

10.2 Access: A way or means of approach to provide physical entrance to a property.

10.3 Applicant: A person(s) submitting an application to subdivide or his agents.

10.4 Area Sketch: A rough map of a proposed subdivision and the surrounding land to be used for the purpose of discussion and clarification of proposed land divisions.

10.5 Block: An area of land within a subdivision that is entirely bounded by streets, or by streets and the exterior boundary or boundaries of the subdivision, or a combination of the above with a river, stream, creek or lake.

10.6 County Board: The Board of County Commissioners of Billings County.

10.7 Central Sewage System: A community sewer system including collection and treatment facilities established to serve a new subdivision.

10.8 County Planner: An individual authorized by the Planning and Zoning Board to coordinate development within the County and to assist Applicants in complying with these regulations.

10.9 Design Standards: The specifications to land owners or subdividers for the preparation of plats, both preliminary and final, indicating among other things, the optimum, minimum or maximum dimensions of such items as rights of ways, blocks, easements and lots.

10.10 Drainage Plan: The plan of the subdivision showing the direction of surface water runoff and the removal of surface water or groundwater by drains, grading runoff controls, or other means.

10.11 Easement: A grant by one or more of the property rights by the property owner to and or for use by the public, an entity or a person.

10.12 Final Plat: A drawing or map of a subdivision meeting all the requirements of this Ordinance and in such form as required for the purpose of recording.

10.13 Grading: Any stripping, cutting, filling, stockpiling of earth or land, including the land in its cut or filled condition.

10.14 Individual Sewerage System: A privately owned and maintained system for the disposal of sanitary sewage.

10.15 Major Subdivision. Any subdivision of land into three (3) or more lots.

10.16 Minor Subdivision. Any subdivision of land no portion of which was part of any subdivision of land within the previous five (5) year period into two (2) lots in which no new streets or public facilities will be required.

10.17 Outlot: Any lot proposed by a subdivision that does not meet all requirements of this and other ordinances of the County for the construction of improvements thereon; and such lot shall be identified on the Final Plat as an Outlot.

10.18 Percentage of Grade: The distance vertically (up and down) from the horizontal in feet and tenths of a foot for each one hundred feet of horizontal distance.

10.19 Planning and Zoning Board: The Billings County Planning and Zoning Board.

10.20 Plat: A map of a subdivision showing the boundaries, dimensions, and locations of lots, Streets, and other required features.

10.21 Preliminary Plat: A tentative drawing or map of a proposed subdivision including all information required by this Ordinance.

10.22 Public Improvement: Any improvement or other facility for which a governmental unit may ultimately assume responsibility for maintenance and operation.

10.23 Street: A public right-of-way affording access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, road avenue, boulevard place or otherwise.

10.24 Subdivision: The division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, or building development. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under these regulations.

10.25 Variance: Permission to depart from the literal requirements of these regulations.