

J.R. CASILLAS  
 DATSOPOULOS, MacDONALD & LIND, P.C.  
 201 West Main, Suite 201  
 Central Square Bldg.  
 Missoula, Montana 59802  
 Telephone: (406) 728-0810  
 Email: areiber@dmllaw.com; jrcasillas@dmllaw.com

*Attorneys for Plaintiff*

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT  
 FLATHEAD COUNTY**

Longbow Land Partners,  
 LLC, a Montana limited liability  
 company,

Plaintiff,

vs.

Flathead County, a political  
 subdivision of the State of Montana;  
 John Does 1-10; and,  
 Corporations A-J,

Defendants.

Cause No.: \_\_\_\_\_

Dept. No.: \_\_\_\_\_

**COMPLAINT**

COMES NOW the Plaintiff, Longbow Land Partners, LLC, by and through its undersigned counsel of record, the law firm of Datsopoulos, MacDonald & Lind, P.C., and for its Complaint against Defendant, Flathead County, to state and allege as follows:

## **NATURE OF ACTION**

Plaintiff filed an application for a subdivision under Montana Code Annotated Title 76, Chapter 3, and the Flathead County Subdivision Regulations. Defendant denied Plaintiff's preliminary plat by letter dated October 31, 2023.

Plaintiff brings this action pursuant to § 76-3-625, M.C.A. Defendant's decision, based on the record as a whole, cannot be sustained because it was arbitrary, capricious, and unlawful.

## **PARTIES, JURISDICTION & VENUE**

1. Plaintiff, Longbow Land Partners, LLC ("Longbow"), is a Montana limited liability company registered and in good standing with the Montana Secretary of State. Longbow is the developer.
2. Defendant, Flathead County ("County"), is a duly existing political subdivision of the State of Montana. The County is the local governing body responsible for processing and deciding Longbow's land use applications.
3. Defendants, John Does 1-10, are individuals with identities currently unknown which bear some or all of the liability associated with Longbow's claim.
4. Defendants, Corporations A-J, are entities with identities currently unknown which bear some or all of the liability associated with Longbow's claim.
5. The Court has original subject matter jurisdiction pursuant to § 3-5-302(1)(b), M.C.A. ("all civil and probate matters"). The Court also has subject matter

jurisdiction pursuant to § 76-3-625(1), M.C.A. (“A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court...”).

6. The Court has personal jurisdiction over the County because it is “found within the state of Montana.” M. R. Civ. P. 4(b)(1).

7. Venue is proper because Longbow’s claim is against a political subdivision, and it arose in Flathead County where the County is located. § 25-2-126, M.C.A.

### **FACTS COMMON TO ALL COUNTS**

8. Longbow fully restates the foregoing allegations herein.

9. Longbow owns and is in the process of responsibly developing 105.03 acres of land near Bigfork, Montana to, *inter alia*, help address the serious housing crisis.

10. With assistance from its professional consultant and technical representative, WGM Group, Longbow filed the following separate applications with the County for its project:

- Preliminary plat approval for a 51-lot residential subdivision;
- A Planned Unit Development (“PUD”) in the Bigfork Zoning District;
- and,
- A zoning map amendment from RC-1 (Residential Cluster) and R-1 (Suburban Residential) to R-2 (One Family Limited Residential).

11. Longbow’s subdivision application contained all the required elements and sufficient information for the County’s review.

12. Longbow's subdivision application and the additional information submitted clearly demonstrate that development of the proposed subdivision meets the requirements of the Montana Subdivision and Platting Act [§ 76-3-102, M.C.A., *et seq.*], including compliance with currently existing zoning. This is true irrespective of whether Longbow's separate PUD and zoning map amendment applications are approved, conditionally approved, or denied by the County Commissioners in the future.

13. A July 25, 2023, report (the "Staff Report") on the proposed subdivision was prepared by the Flathead County Planning and Zoning Office.

14. The Staff Report made findings of fact regarding the subdivision's impacts and the various review criteria.

15. The Staff Report proposed 18 standard conditions of approval and 11 project-specific conditions in order to mitigate the potential for adverse impacts in its findings, and, importantly, recommended approval of the preliminary plat subject to these conditions.

16. The Staff Report concluded that the "proposed subdivision appears to generally comply with the subdivision review criteria and design standards found in Section 4.7 [of the Flathead County Subdivision Regulations], pursuant to draft Findings of Fact prepared herein, or identified impacts can be mitigated with conditions of approval."

17. However, the Staff Report is very poorly drafted and replete with factual inaccuracies and other irrelevant information regarding the separate PUD and zoning map amendment applications and processes. This created significant confusion amongst the intended audience, including the County Commissioners.

18. County Commissioner Brodehl described the Staff Report as lengthy and hard to follow. “We have a packet that is mostly about a 125[-]lot proposal and we have to figure out what that means for a 51-lot subdivision. It has been very difficult for me to put this into a packet that makes sense to read from one end to the other.”

19. The Staff Report contains references throughout to Longbow’s separate applications for a PUD and zoning map amendment despite those issues not being before the County Commissioners as part of Longbow’s subdivision application. Each application is subjected to a unique set of review criteria. Longbow’s three (3) applications were procedurally segregated and have been processed on their own merits from the inception, but the Staff Report suddenly and improperly conflated them.

20. The subdivision statutes and procedures for local government review rely heavily on the role of Planning Staff in providing maximum input to the County Commissioners. Even though Planning Staff’s recommendations are advisory only, this is because the final subdivision authority is given to the County Commissioners rather than to Planning Staff. The intent of the statutes is to maximize input from

Planning Staff to the County Commissioners before they reach a subdivision decision. This is a recognition that Planning Staff is in continuing and closer touch with the land use issues than are the County Commissioners.

21. The Flathead County Planning Board heard Longbow's subdivision application on August 9, 2023. Public testimony was given, and written comments were considered. The Planning Board tabled the matter to a future date and asked Longbow to submit an updated traffic impact study showing the 51 lots at issue as opposed to 125 lots, which were not under consideration.

22. The County Commissioners treated Longbow's updated traffic impact study as new information and held a subsequent public hearing to consider it on October 11, 2023. Further public testimony was given regarding the updated traffic impact study. The Planning Board gave the County Commissioners a positive recommendation to conditionally approve the subdivision irrespective of whether Longbow's separate PUD and zoning map amendment applications are ultimately approved, conditionally approved, or denied.

23. § 76-3-605(1), M.C.A., required the County to hold a public hearing on Longbow's subdivision application to consider all relevant evidence relating to public health, safety, and welfare to determine whether the application should be approved, conditionally approved as recommended by Planning Staff, or denied.

24. The County Commissioners met on October 31, 2023, to consider Longbow's subdivision application. However, the County Commissioners did not make this a public hearing. Opening remarks by the County confirm this. "Just for the record there is no public comment at this time...this is not a public hearing..." Longbow was denied the opportunity to respond to questions from the County Commissioners or to rebut incorrect information that was presented about the project. Neither Longbow nor its representative, WGM Group, was allowed to speak. Responses from Planning Staff and the County Attorney to questions from the County Commissioners only created more confusion. The County Commissioners did not receive complete or accurate information.

25. County Planner Zachary Moon summarized the procedural history of Longbow's application and invited questions from the County Commissioners. Hearing none, Mr. Moon presented the Staff Report and read each of the Planning Staff's findings into the record.

26. Questions and comments from the County Commissioners clearly demonstrate that their review consisted not only of applicable subdivision criteria, but also PUD and zoning map amendment criteria not properly before them on October 31, 2023.

27. One Commissioner asked if a 40% traffic increase referenced in the traffic impact study was calculated based on the 51 lots under consideration. After Mr.

Moon confirmed this by responding “yes,” this Commissioner replied, “So if this goes forward to more lots [under a PUD and/or zoning map amendment] that number would increase by whatever that would be.” Mr. Moon confirmed this too. This exchange was improper and misleading because the County Commissioners are to review only what is before them, not what may or may not happen with Longbow’s separate applications for a PUD or zoning map amendment in the future.

28. The County Commissioners proposed and made various amendments to the Planning Staff’s findings based largely on uninformed and unsubstantiated personal concerns and other criteria not relevant to the decision actually before them on October 31, 2023.

29. Finding No. 22 in the Staff Report was a major source of concern and discussion. It relates to compliance with local zoning, and states: “The preliminary plat is under review concurrently with a proposal to establish a residential R-2 PUD, which would overlay the proposed R-2 and if the preliminary PUD and zoning are approved, the preliminary plat would comply with the applicable zoning because the subdivision and its lots would meet density, requirements of the Northshore Woods R-2 PUD, and *the existing layout currently complies with the existing RC-1 zoning.*” (emphasis added).

30. The emphasized language in Finding No. 22 is the only relevant part. The rest of Finding No. 22 is irrelevant and caused or contributed to confusion amongst the



County Commissioners. Longbow's subdivision application stands on its own merits and the County Commissioners' decision was not legally tethered in any way to Longbow's separate applications for a PUD or zoning map amendment. The 51-lot subdivision complies with existing RC-1 zoning, so neither a PUD nor a zoning map amendment is needed to approve it with or without conditions.

31. Finding No. 22 misled the County Commissioners into apparently believing they could not or should not approve the subdivision without also approving Longbow's separate applications for a PUD and zoning map amendment. One Commissioner inquired with Mr. Moon about whether they were "getting ourselves ahead of this by talking about an R-2 PUD that is still being considered." This Commissioner inquired if Finding No. 22 should be stricken altogether. Mr. Moon was noticeably unsure about why Finding No. 22 was included in the first place. He explained that if R-2 zoning were approved without the PUD, the subdivision would no longer comply with current underlying zoning. Mr. Moon described Finding No. 22 as a finding to "clarify" how the subdivision, PUD, and zoning map amendment applications relate, if at all. Unfortunately, Mr. Moon's explanation had quite the opposite effect on the County Commissioners. Their heads were spinning as reflected by the record and subsequent media coverage of the meeting.

32. A Commissioner said he was concerned about getting into discussions about the requested PUD and zoning map amendment that are still in process and have not

yet been fully vetted by Planning Staff. He asked what the impact would be of striking Finding No. 22 altogether, which should have occurred. Mr. Moon replied by saying zoning must be considered as part of the statutory review criteria. However, there was already a finding regarding zoning – e.g., “the existing layout currently complies with the existing RC-1 zoning.” Future decisions on Longbow’s separate applications should not have been considered in the subdivision review.

33. A Commissioner referred to the Staff Report as “messy” and indicated he was trying to “clean up” parts of it through questions and proposed amendments to certain findings. Planning Staff responded that amending Finding No. 22 to say only that “the existing layout currently complies with the existing RC-1 zoning” would make things “messier” down the road. This dissuaded the County Commissioners from addressing Finding No. 22.

34. Commissioner Holmquist mentioned that Longbow’s request for a zoning map amendment was previously recommended for denial by Planning Staff, which she mistakenly believed put another “kink” in the subdivision review. A zoning map amendment is not needed because the 51-lot subdivision indisputably complies with currently existing zoning. Moreover, the County Commissioners have not yet heard Longbow’s application for a zoning map amendment.

35. Longbow's intent for future development, via PUD, zoning map amendment, or otherwise, should have no bearing whatsoever on the County Commissioners' decision on the subdivision application before them on October 31, 2023 as only a 51-lot subdivision was being reviewed at that time.

36. The County Attorney counseled the County Commissioners to play "judge" and decide which traffic impact study was more credible, the one commissioned by Longbow (as amended) or the one commissioned by a member of the public opposed to the development and which contains important factual inaccuracies. Longbow and WGM Group were not allowed to weigh in, answer questions, or quell unfounded concerns. The County Attorney advised that no public comment was allowed.

37. By the end of the meeting, the County Commissioners had completely lost sight of what was even properly before them for a decision. As Commissioner Holmquist put it, "It is really difficult for me to approve something that is so hard to anticipate what the intent is or what's really going on and how do you assess the impacts when you know that it is not just 50 lots going forward [and] it's actually going to be probably closer to 100 or more lots. So then how does that affect the intersections and the roads and fire and all the other stuff that we have to look at." Commissioner Holmquist admitted she was "really struggling" with the subdivision application due to speculation and conjecture about what Longbow's future

development may or may not look like. She said, “I don’t know if [the application] is really ready for prime time at this time.”

38. Another Commissioner said he was “in the same boat” as Commissioner Holmquist. He expressed his own confusion about the Staff Report’s references to 125 lots instead of 51 lots. He said references to a “potential PUD” made it difficult for him to digest the information in a way that makes sense. He indicated that, in his view, the application should have been pulled from the Planning Board’s agenda and Longbow should have been required to “start from scratch” for a 51-lot subdivision. However, that is all that was before the County Commissioners on October 31, 2023 in the first instance. He referred to speculative PUD impacts and non-existent future subdivision phases in his deliberating comments. Thus, he said he was unable to move ahead with approval of the preliminary plat. Nothing he considered had anything to do with applicable subdivision criteria.

39. The third County Commissioner concurred, stating that Longbow needed to come up with a different plan. Despite further explanation from Planning Staff, this Commissioner said he was unable to look at the Staff Report and understand what was being reviewed for approval. Planning Staff created this confusion in drafting the Staff Report, not Longbow.

40. Longbow's application did not require or authorize the County Commissioners to anticipate what may or may not happen with Longbow's other two (2) applications for a PUD and zoning map amendment in the future. Doing so was completely improper because the subdivision as presented satisfied applicable criteria and provided for sufficient mitigation as correctly stated in the Staff Report. Hence why Planning Staff recommended conditional approval of the preliminary plat.

41. The cacophony of confusion that permeated the October 31, 2023, meeting of the County Commissioners culminated in the arbitrary, capricious, and unlawful denial of Longbow's preliminary plat. The County Commissioners voted unanimously 3-0 to deny the application due to confusion created by Planning Staff and irrelevant considerations applicable to separate land use applications.

42. The unlawful denial was memorialized in a letter dated October 31, 2023.

### **COUNT I – DECLARATORY JUDGMENT**

43. Longbow fully restates the foregoing allegations herein.

44. This Count is brought pursuant to M. R. Civ. P. 57 and Montana's Uniform Declaratory Judgments Act.

45. Longbow is entitled to a declaratory judgment in its favor and against the County that the County's denial of Longbow's subdivision application was arbitrary, capricious, and unlawful.

46. The County's decision to deny Longbow's subdivision application cannot be sustained and, therefore, must be reversed back to the County Commissioners with instructions to conditionally approve the application as recommended by Planning Staff in the Staff Report.

47. The declaration must be affirmative in form and effect, and in Longbow's favor.

48. Longbow is entitled to recover its costs of suit and supplemental relief, including reasonable attorney's fees, pursuant to §§ 27-8-311 and -313.

#### **COUNT II – ACTUAL DAMAGES [§ 76-3-625, M.C.A.]**

49. Longbow fully restates the foregoing allegations herein.

50. Longbow has a specific personal and legal interest in its subdivision application and has been specially and injuriously affected by the County's unlawful decision.

51. Longbow brings this Count pursuant to § 76-3-625(1), M.C.A., as a person who filed with the County an application for a subdivision to sue the County to recover actual damages caused by its arbitrary, capricious, and unlawful denial.

52. The County's arbitrary, capricious, and unlawful denial directly and proximately caused Longbow to suffer actual damages in amounts to be proven at trial.

### **COUNT III – DUE PROCESS VIOLATIONS**

53. Longbow fully restates the foregoing allegations herein.

54. The Constitutions of Montana and the United States prohibit deprivations of life, liberty, or property without due process of law.

55. The guarantee of due process has both a procedural and a substantive component, and the requirements are (1) notice, and (2) opportunity for a hearing appropriate to the nature of the case.

56. Due process generally requires notice of a proposed action which could result in depriving a person of a property interest and the opportunity to be heard regarding that action.

57. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.

58. The essence of substantive due process is that the County cannot use its police powers to take unreasonable, arbitrary, or capricious action against an individual. The means chosen by the County to accomplish its objectives were not reasonably related to the result sought to be attained.

59. The County violated Longbow's procedural and substantive due process rights in the handling of its subdivision application and its arbitrary, capricious, and unlawful denial of the preliminary plat.

60. Longbow is entitled to all remedies available as redress for these egregious constitutional violations, including actual damages.

**COUNT IV – RIGHT TO KNOW  
& RIGHT TO PARTICIPATE VIOLATIONS**

61. Longbow fully restates the foregoing allegations herein.

62. The County violated Longbow's constitutional right to know and right to participate in the handling of its subdivision application and its arbitrary, capricious, and unlawful denial of the preliminary plat.

63. Longbow is entitled to all remedies available as redress for these egregious constitutional violations, including actual damages.

**COUNT V – VIOLATION OF § 76-3-620, M.C.A.**

64. Longbow fully restates the foregoing allegations herein.

65. The County's written statement denying Longbow's preliminary plat does not include information regarding the appeal process for the denial or imposition of conditions.

66. The County's written statement denying Longbow's preliminary plat does not identify the regulations and statutes that were used in reaching the decision or how they apply to the basis for the decision.

67. The findings of fact attached to the County's written statement mirror Staff's findings as contained in the Staff Report, which recommended conditional approval of the preliminary plat, as amended and added to by the County Commissioners. The



County did not provide the actual facts or conclusions the Commissioners relied upon in making the decision or reference documents, testimony, or other materials that form the basis of the decision.

68. The County's denial of the preliminary plat is therefore invalid and void.

### **REQUEST FOR RELIEF**

Accordingly, Longbow requests judgment against Flathead County to the effect of: (1) a declaratory judgment in Longbow's favor as plead and requested herein; (2) for an award of actual damages to Longbow of every recoverable type, kind, and nature in amounts to be proven at trial; (3) for the Court to reverse the County's arbitrary, capricious, and unlawful denial of Longbow's subdivision application and to remand it back to the County Commissioners with instructions to conditionally approve the preliminary plat as recommended by Planning Staff; (4) for redress for the County's various constitutional and statutory deprivations and violations, including an award of damages in amounts to be proven at trial; (5) for Longbow's costs of suit; (6) for Longbow's attorney's fees; (7) for all recoverable judgment interest; and (8) for such other and further relief as the Court deems just or appropriate.

DATED this 27<sup>th</sup> day of November, 2023.

DATSOPOULOS, MacDONALD & LIND, P.C.  
*Attorneys for Plaintiff*

By: /s/ J.R. Casillas  
J.R. Casillas