

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

February 8, 1979

The meeting of the Local Government Committee was called to order by Chairman, George McCallum on Thursday, February 8, 1979 at 12:30 in Room 405 of the Capitol Building.

ROLL CALL: All members were present with the exception of Senator Lockrem who was excused.

Dennis Taylor, staff researcher, was also in attendance.

Several visitors and witnesses were in attendance. (See attachment.)

CONSIDERATION OF SENATE BILL 275: Senator Steve Brown, of Senate District 15, sponsor of the bill, gave a brief resume of the bill. This bill is an act to authorize local governing bodies to review and approve shopping centers under the Montana Subdivision and Platting Act. Senator Brown stated that he had introduced the bill in view of what has happened in Helena in the past year. The Helena City Commission imposed a one year moratorium on shopping center development that halted work on one project until a court recently declared the moratorium unconstitutional. Meanwhile, work proceeded on another development that was in an unzoned area outside the city limits and exempt from the moratorium. This bill will attempt to address the problem. Senator Brown stated that he feels this bill is totally constitutional in its terms.

Craig Winterburn, chairman of the Local Planning Board in Helena, stated that there is a tremendous problem and this legislation is much needed in his county. Zoning has not been a viable alternative. Taxpayers' money can be strongly affected by this.

John Wilkinson, Lewis and Clark County Commissioner, stated that shopping centers have a unique problem. They have not been able to enact zoning.

Bob Kiesling, representing the E.I.C., stated that SB 275 constitutes a wide case policy and will create wise use of the land.

Bob Decker, Lewis and Clark County Commissioner, stated that this bill would not be retroactive. Frontier Mall, outside of Helena, which has been proposed, could force the county to spend \$4 million just to upgrade the principal road to the complex. The additional taxes generated by the mall would not cover the costs. This bill will bring about local government responsibility with local government authority.

Rich Reese, of Helena, stated shopping malls can have a great impact on a community. Part of the problem lies in the weak sections of the laws.

Hal Johnson, representing the City of Great Falls, stated that the issue of this bill is a community's right to assess the overall impact of a proposed development on the existing services and environment. Mr. Johnson handed out written testimony to the Committee. (See attachment.)

David Hunter, representing the City of Helena, stated that cities and counties need some authority. The property taxes of the shopping centers and such developments is much smaller than one would expect.

Larry Gallagher, representing the Lawrence Gallagher Consultant Firm, stated that shopping malls do not always generate their fair share of the taxes.

With no further proponents, Chairman McCallum called on the opponents.

Sonny Hansen, representing the Montana Technical Council, stated that Helena has not had a very comprehensive plan. Mr. Hansen stated the bill should be for land use only. Zoning should handle the problem as it exists. (See attachment.)

Cliff Christiansen, representing the Montana Association of Realtors, spoke in opposition to Senate Bill 275. He felt that it would be unfair to require large shopping centers to be reviewed under the Subdivision Act while exempting downtown areas and main street shopping centers. The Subdivision and Platting Act was designed to regulate the division of land and setting design standards for residential subdivision. Mr. Christiansen contends that adding shopping centers to the Act is a major deviation from the original intent. He stated that zoning and comprehensive land use programs are the vehicles to plan for major impacts resulting from any new addition to an area. This bill would give an unfair competitive edge to the downtown developer.

Dennis Rehberg, representing the Montana Association of Realtors, stated that plans for shopping centers can change and with this bill they would have to submit a new application with every change.

With no further opponents or proponents, Senator Brown made the closing remarks. Senator Brown stated the time has come to make a tough decision as many cities and towns need this bill. This bill does not affect the downtown shopping centers as they would be exempt from the zoning provisions. The bill does not require a planner to have each and every plan change approved.

A question and answer period from the Committee was held. However, no action was taken at the time.

CONSIDERATION OF SENATE BILL 290: Senator Harold Dover, of Senate District 24, chief sponsor of the bill, gave a brief resume. This bill is an act authorizing the Department of Community Affairs to identify and mitigate aircraft hazards.

Tim Clavins, a pilot, testified in support of the bill. He stated that there are many hazards in flying. Mr. Clavins lost his brother in a flying accident. He feels that power and T.V. lines should be marked. Perhaps the bill should be amended to make it feasible for power and T.V. companies to mark their lines. The F.A.A. should be given authority to have the lines marked.

Patricia Johnson, secretary of the Montana Pilots Association, stated that Wyoming and Idaho do mark their power lines. Flying low is the only appropriate possibility sometimes.

Lee Baker, of Lewistown, presented a letter from Larry Calvert, Refuge Manager at Lewistown. In the letter, Mr. Calvert tells of the U.S. Fish and Wildlife Service's low level flights over the Refuge and the Missouri River and the hazards they face. He wanted to be on record as favoring Senate Bill 290.

A recess from Senate Bill 290 was called in order to hear Senate Bill 330 in the allotted time.

CONSIDERATION OF SENATE BILL 330: Senator Fred Van Valkenburg, of Senate District 50, sponsor of Senate Bill 330, gave a brief resume of the bill. This bill is an act to require enforcement of the Montana Subdivision and Platting Act by the attorney general when the county attorney fails to act. Senator Van Valkenburg offered two amendments to the bill. First, page 1, line 24 - strike the word "shall" and insert "may". Second, on page 1, line 25 - add the phrase, "including attorney's fees". Senator Van Valkenburg told of the strain on county attorneys and the problem of the people. He will try to correct the problem with Senate Bill 330.

Mike McGrath, from the Attorney General's office, discussed the offered amendments. Mr. McGrath felt that the second amendment was especially good so the county and the state would not have to bear the costs.

Bob Kiesling, of the Environmental Information Center, stated there has been alot of abuse of subdivision laws. Mr. Kiesling reported on a survey his group had taken and it seems there is virtually no prosecution regarding the Subdivision and Platting Act except perhaps in Yellowstone County. County attorneys in the smaller counties cannot survive on a county attorney's

income alone, therefore, they have reason to handle the relations carefully in the towns and cities and the land laws are being neglected.

With no further proponents, Chairman McCallum called on the opponents, hearing none Senator Van Valkenburg made the closing remarks. He asked the Committee to give Senate Bill 330 a do pass recommendation to clear up the problem as it now exists. Senator Watt stated there have been many cases of abuse of the laws regarding this.

CONSIDERATION OF SENATE BILL 290: The hearing on Senate Bill 290 was reopened.

Bill Merrich, from the Montana Aeronautics Association, stated his support of the bill as he felt that this was necessary in view of the fact of the lives being lost because of the problem.

John Marietto, a private citizen, stated that it is the responsibility of the power companies and T.V. companies to mark their lines. Lives should be protected. Sister states all have their lines marked.

Mike Ferguson, of the Montana Aeronautics Association, showed pictures taken at plane crashes caused by power and T.V. lines.

With no further proponents, Chairman McCallum called on the opponents.

Bob Gannon, representing the Montana Power Company, stated there seems to be conflicting approaches to the same problem. He asked the Committee to consider the costs to the power and T.V. companies who already have miles and miles of lines already constructed. Mr. Gannon stated he felt the thrust of the problem should be education of the pilots to be made aware of the lines. Perhaps maps of lines' locations could be provided for the pilots. Mr. Gannon felt that the amendments would clear up some of the problems with the bill.

Chris Johansen, representing the Montana Grain Elevators Association, stood in opposition to the bill. It was explained to Mr. Johansen that the bill no longer involves grain elevators.

Gene Phillips, representing Pacific Power and Light, stated that the standards are very evasive. He stood in opposition to Senate Bill 290.

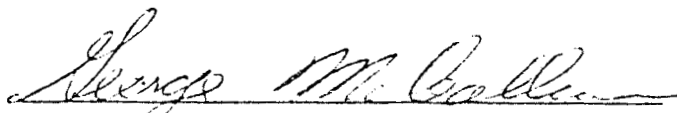
Les Lable II, representing the Montana Dakota Utilities Co., stated that this bill would bring on a great expense to the power and T.V. companies.

Riley Childers, representing the Montana Association of Utilities, stated that perhaps something could be worked out between the Pilots Association.

Jim Burnham, representing Mountain Bell, stood in opposition to the bill. Mr. Burnham feels this is already covered in the federal regulations.

Senator Dover made a few closing remarks. However, in view of the time, it was decided to allow Senator Dover to finish on Tuesday, February 13, 1979.

ADJOURN: The meeting was adjourned by Chairman McCallum at 2:30.


CHAIRMAN, Senator George McCallum

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
GEORGE MCCALLUM, CHAIRMAN	✓		
LLOYD LOCKREN, VICE CHAIRMAN			✓
MAX CONOVER	✓		
JESSE A. O'HARA	✓		
BOB PETERSON	✓		
A. T. (TOM) RASMUSSEN	✓		
PETE STORY	✓		
BILL THOMAS	✓		
ROBERT D. WATT	✓		

Each Day Attach to Minutes.

SENATE

COMMITTEE

BILL _____

VISITORS' REGISTER

DATE _____

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOS
<i>W. L. Litter Jr.</i>				
<i>Tom Clavin</i>		290	✓	
<i>John Mantello</i>		298	✓	
<i>James R. K. Perry</i>		245		✓
<i>Graig Winterburn</i>		275	✓	
<i>John Wilkinson</i>	LEWIS & CLARK COUNTY COMMISSION	275	✓	
<i>BOB DECKER</i>	"	275	✓	
<i>Les Loble</i>	Mont. D. ROTA 461 G	290		x
<i>Bob Reese</i>		275	✓	
<i>David Hunter</i>	City of Helena	275	✓	
<i>Larry Gallagher</i>	Concerned Citizens	275	✓	
<i>Al Johnson</i>	City of Great Falls	275	✓	
<i>Riley Childers</i>	Mont. Industrial Attaches	290		
<i>John Hansen</i>	Mont. Gen. Educ. Assn.	290		
<i>Mike M. G. G. G.</i>	ATTY GEN.	330		
<i>H. S. Hansen</i>	MONT. TECHNICAL COUNCIL	275		
<i>Sen. Fred Van Valkenburg</i>		330	✓	
<i>Richard Weddle</i>	DCA			
<i>Tom H. H.</i>	County Alliance	330		
<i>Larry Weddle</i>	MDR			
<i>John H. H.</i>		75	✓	
<i>John H. H.</i>	Mont. Gen. Educ. Assn.	275		
<i>John H. H.</i>	Mont. Gen. Educ. Assn.	290		
<i>John H. H.</i>	LE. Gen. Educ. Assn.	290		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

NAME: H.S. HANSON DATE: 2/9/79

ADDRESS: HELENA

PHONE: 449-5500

REPRESENTING WHOM? MONTANA TECHNICAL COUNCIL

APPEARING ON WHICH PROPOSAL: SB-275

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: _____

SEE SUBMITTED DATA.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Cary L. Lick DATE: 3-8-79

ADDRESS: 503 N. 2nd St., Houston, Texas.

PHONE: 363-2581 office 363-1822

REPRESENTING WHOM? Bitterest Citizens for Horrible Death

APPEARING ON WHICH PROPOSAL: *SB 330.*

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Fritz Tessiers DATE: 2/10/77

ADDRESS: 210 Granddell Rd

PHONE: 368-4366

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: 573 380

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Frederick B. Tossberg DATE: 2/5/79

ADDRESS: 210 Grantsdale Rd - Hamilton

PHONE: 363-4366

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: 5 B 330

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Avanti County has the state

with 336 subdivision substantially covering

some 1300 acres. This is no way

in which our half time attorney who

his half time assistant can do

a reasonable job of reviewing the

problem situations. In addition his

budget precludes the possibility of

hiring additional help.

I urge support of this bill

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Miss Woodger DATE: 2-8-78

ADDRESS: RT. 1 Box 143 F Stevensville

PHONE: 777-3659

REPRESENTING WHOM? Individual

APPEARING ON WHICH PROPOSAL: S.B. 330

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

*I believe this is needed legislation
I will be of benefit to the people of
Montana. It would tend to help the
Co. Attorney in that it would influence
better funding of the office & enable him
or her to do a better job.*

NAME: MIKE MURPHY DATE: 8/8

ADDRESS: APPO GARDEN AVE

PHONE: 2026

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SR 330

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thermon T. Jones DATE: 2-8-70

ADDRESS: RT #1 Road 2 Roman AIT 59264

PHONE: 676-2066

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 330

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: As a member of the Lake County Planning
Board I strongly support SB 330. We have
10-12 serious violations of the Subdivision
and Planning Act that our County Attorney
refuses to prosecute. This act (SB 330) will
provide strong incentives for the County Attorney
to do his job.

NAME: George Phillips DATE: 2/1/77

ADDRESS: Kalispell, MT

PHONE: 755-6644

REPRESENTING WHOM? Pacific Telephone Co.

APPEARING ON WHICH PROPOSAL: SB 290

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ADDRESS: Butte Mont

REPRESENTING WHOM? Mont Power

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jim Burich

DATE: 2/8/79

ADDRESS: Helen, Mont

PHONE: 449-5185

REPRESENTING WHOM? Mountain Bell

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Chas J. Harrison DATE: 7/8/79

ADDRESS: Box 328, Great Falls, 7107.

PHONE: 452-6406

REPRESENTING WHOM? Wetmore Grain Elevator Association

APPEARING ON WHICH PROPOSAL: SB 290

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: D. J. W. (C. L. W.) DATE: Feb 6/79

ADDRESS: 17620 4th Ave No. 100, No. 617, 618

PHONE: 454-1521

REPRESENTING WHOM? Mont Associated Builders

APPEARING ON WHICH PROPOSAL: SB, 290

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? i

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tim Clovin DATE: 2-8-79

ADDRESS: Blue Sky Hotel

PHONE: 933-5523

REPRESENTING WHOM? SJF

APPEARING ON WHICH PROPOSAL: SB 290

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: Very important for conduct of
safe flight of general aviation

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John P. Mantello DATE: 2/8/79

ADDRESS: 1600 Ohio Ave Helena

PHONE: 442-2499

REPRESENTING WHOM? SB

APPEARING ON WHICH PROPOSAL: SB 290

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: CRAIG WINTERBURN DATE: 2-2-79

ADDRESS: 4385 WYLLIE DRIVE NELENA

PHONE: 227 5208

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: 5215

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Williamson DATE: 2/23/79

ADDRESS: Leeds & Clark County Courthouse

PHONE: 442-10737

REPRESENTING WHOM? County Commission

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: BOB DECKER DATE: 2/8/79

ADDRESS: 115 PINE, HELENA, MT.

PHONE: 442-2566 (442-6737)

REPRESENTING WHOM? LEWIS & CLARK COUNTY COMMISSION

APPEARING ON WHICH PROPOSAL: SB 275

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rich Rice DATE: 2/15/70

ADDRESS: 29 So. ALTA ST.

PHONE: 2-0886

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 273

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

David Hunter

2/8/29

Civic Center, Helena

442-9920

City of Helena

5B 275

✓

AMEND?

OPPOSE?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lawrence Gallagher DATE: 2-8-79

ADDRESS: 303 North Fulling St.

PHONE: 443-5-900

REPRESENTING WHOM? Lawrence Gallagher Consultant.

APPEARING ON WHICH PROPOSAL: SR 275-

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: G. Allen Johnson DATE: 2-8-79

ADDRESS: 917 4th Ave. N. G. Falls, MT.

PHONE: 727-5881

REPRESENTING WHOM? City of Great Falls

APPEARING ON WHICH PROPOSAL: SB275

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Statement will be passed out to
Committee

\$2 million suit filed in plane crash

A \$2,285,000 damage claim has been filed in District Court against the Montana Power Company on behalf of a pilot, killed in 1977 when his plane struck transmission lines below Canyon Ferry Dam.

Timothy E. Clavin, brother of the pilot, Thomas J. Clavin, said in a brief filed Wednesday there were no warning or marking devices to alert pilots that the lines cross the Missouri River at a 500 foot elevation.

The area, known as Frenchman's Bar, is described as having a shoreline almost at water level to the west and with a cliff rising about 500 feet from the river to the east. The initial complaint, filed Oct. 17, states that a Cessna aircraft operated by Thomas Clavin struck with one or more transmission lines about 225 feet above the river.

Timothy Clavin claims the wires were not brightly colored. "Rather, they are the color that blends into the landscape."

The court is asked to find Montana Power guilty of negligence in the "wrongful death" of Thomas Clavin in an accident that could and should have been prevented.

Timothy Clavin asks \$933,179 for the death, including loss of future earnings of Thomas Clavin;

\$500,000 for the "loss of services" to the surviving spouse and children; \$500,000 for the loss of "care, comfort and protection of the spouse and children"; \$200,000 for pain, suffering and mental anguish of Thomas Clavin; \$150,000 for loss to the children and for their prospective inheritance and \$2,500 for funeral expenses.

In a brief filed in District Court Thursday, Montana Power contends that the claim permits a form of double recovery prohibited by state law.

The MPC brief states that the attempt to recover loss of earnings and loss of prospective inheritance for Thomas Clavin's children is "nothing less than double recovery." It says the inheritance request is included in "at least a portion of future earnings."

SB-275

H. S. Hanson - Montana Tech Council

SB-275 Oppose - We feel that the Subdivision and Platting Act should be restricted to land use only. This bill starts a trend to place buildings under this act and that was not the intent nor is the law oriented to facilitate this type of approval. The problems addressed by this bill can be solved in an easier and more flexible manner by Zoning Laws. This requires a type of local action, as has been done in the Billings Area.

SENATE BILL 290

Dover, Marks, Etchart, Lowe.

A BILL FOR AN ACT ENTITLED: "An act authorizing THE DEPARTMENT OF COMMUNITY AFFAIRS TO IDENTIFY AND MITIGATE AIRCRAFT HAZARDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Sec. I. Definitions as used in [This act], the following definitions apply:

- (1) "Aircraft Hazards" means any structure constructed by man which obstructs the airspace required for safe flight of aircraft.
- (2) Same
- (3) Same
- (4) Same

Sec. 2. Designation and Identification of aircraft hazards and aircraft hazard zones. Any structure or obstacle which obstructs the airspace above ground or water level, that is located at river, lake and canyon crossings or man made cuts, determined

Section 3. delete

Section 3. Same

Section 4. Enforcement power of the department. The department shall require that any designated hazard within an aircraft hazard zone specified by Section 2 of the bill, be appropriately marked by the owner, operators, lessees, or others having control or management of the hazard.

Section 5. Period of time for marking. Upon adoption of this bill (SB290) the department will have until July 1, 1982, to determine and specify those hazards which are now in existence. The department as of July 1, 1979, will have the authority to determine those new structures which will be a hazard. Upon the date of notification by the department, designating those man made structures which now exist in the areas designated in Section 2 that are a hazard, the owners, operators, lessees, or others having control or management of the hazards have three years to complete the marking of hazards, to the specifications designated by the department. New structures which are determined by the department to be a hazard must be appropriately marked and meet department standards upon date of completion.

Section 6. Same

STANDING COMMITTEE REPORT

February 8, 19 79
Journal

MR. President:

We, your committee on Local Government

having had under consideration Senate Bill No. 290

Respectfully report as follows: That Senate Bill No. 290

introduced bill, be amended as follows:

1. Page 1, lines 11 through 15.

Following: "structure"

Strike: the remainder of line 11 and lines 12, 13, 14 and 15 in their entirety

Insert: "constructed by man which obstructs the airspace required for safe flight of aircraft."

2. Page 2, line 1.

Following: "Designation"

Insert: "and identification"

Following: "hazards"

Insert: "and aircraft hazard zones"

3. Page 2, line 3.

Following: "level"

Insert: ", that is located at river, lake and canyon crossings or natural and man-made cuts,"

Local Government

SB 290

-2-

February 8, 1979

4. Page 2, section 3, lines 11 through 16.

Strike: section 3 in its entirety

Renumber: subsequent sections accordingly

5. Pages 2 and 3, line 25 on page 2 and lines 1 through 4 on page 3.
Following: "department"

Strike: the remainder of section 5 in its entirety

Insert: "shall require that any designated hazard within an aircraft hazard zone specified by [section 2] be appropriately marked by the owner, operators, lessees, or others having control or management of the hazard."

6. Page 3, line 4.

Following: line 4

Insert: "Section 5. Period of time for marking. The department must determine and specify those hazards which are now in existence by July 1, 1982. As of July 1, 1979, the department has the authority to determine those new structures which are a hazard. Upon notification by the department, designating those man-made structures which now exist in the areas designated in [section 2] that are a hazard, the owners, operators, lessees, or others having control or management of the hazards have three years to complete the marking of hazards, to the specifications required by the department. New structures which are determined by the department to be a hazard must be appropriately marked and meet department standards."

And, as so amended,
DO PASS



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Charles M. Russell National Wildlife Service
P.O. Box 110
Lewistown, Montana 59457

IN REPLY REFER TO:

February 7, 1979

Chairman
Senate Local Government Comm.
Helena, Montana 59601

Re: Senate Bill 290

Dear Mr. Chairman:

The U.S. Fish & Wildlife Service does low level flights over the Charles M. Russell National Wildlife Refuge along the Missouri River for all types of wildlife surveys.

State Fish & Game personnel also do low level wildlife counts along the river and several ranchers do low flying in the area for checking cattle.

There are several sets of power line wires across the river that are hazardous to low flying aircraft.

The Fish & Wildlife Service contacted the FAA in Billings, and General Aviation District Office personnel flew the Refuge and concurred that the wires were hazardous. The State Aeronautics Division was then contacted and they in turn contacted the Power Company concerned. The Company said they did not wish to place orange visibility balls on the wires as it would constitute admittance that the wires were a hazard and may make the Company liable for accidents.

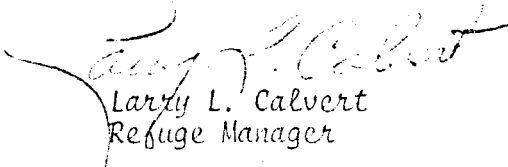
There is one set of wires approximately 2 miles west of the Fred Robinson Bridge on Highway 191 which is extremely hazardous, a set about 7 miles east of this bridge, and 3 or 4 sites within the first 5 miles below the Fort Peck Dam.

These wires are extremely hard to see and in some cases come off a high bank on one side of the river and cross to a low bottom on the other, thus being a hazard to low flying planes at a variety of altitudes.

We recommend that you give favorable consideration to Senate Bill 290 which will result in these hazards being marked.

Thank you for your consideration.

Sincerely,


Larry L. Calvert
Refuge Manager



REALTOR®

MONTANA ASSOCIATION OF REALTORS®

EXECUTIVE OFFICE
501 N. SANDERS
HELENA, MONTANA 59601
TELEPHONE:
(406) 443-4032

TESTIMONY ON S.B. 275

Mr. Chairman, members of the committee my name is Cliff Christian representing the MONTANA ASSOCIATION OF REALTORS®. We oppose S.B. 275 for a variety of reasons. One major reason is the definition of shopping center itself. In our opinion, the definition defines a shopping center as "... as single unit with common offstreet parking provided on the property." As we read this definition, we believe shopping center areas, such as in the downtown or main street areas would be exempt from the provisions of this act, as generally downtown areas utilize metered parking or parking ramps for their customers. If in fact main street or downtown shopping centers are exempt, then we question the fair and equitable treatment of all shopping center developers under this act.

Mr. Chairman, I would like to briefly review a small portion of the Subdivision and Platting Act as it would relate to shopping centers if S.B. 275 should pass. Specifically, Mr. Chairman I would like to relate to the review a developer would have to withstand in determining just two of the criteria of the public interest section, under this Act. In the following review, please keep in mind that this developer will be bringing in new competitive enterprises or will entice existing businesses away from established sites, such as the downtown area.

The two "public interest" criteria and comments thereon follow:

1. "The basis of the need for the subdivision" (shopping center)

If the need for the shopping center is reviewed as an absolute necessity (i.e. existing high prices, poor quality stock, monopoly) no developer could establish such a need. In any event no evaluation of the need for a shopping center could be made in the absence of a market analysis, public opinion poll and a great deal of political maneuvering all of which may be prohibitively costly.

In a free market (or modified free market) system the determination of the need for goods or services is a business judgement to be made by the entrepreneur. The success of his enterprise depends largely on the soundness of this judgement. Given such an economic system it is inappropriate for the governing body to impose its assessment of need for additional sites or base disapproval of the center on this assessment.

2. "Expressed public opinion"

The implication of this provision is that a shopping center can or must be disapproved by the governing body if the "public" opposes the development.

Government may limit the constitutionally guaranteed right to acquire, use, and dispose of property only by either compensating the property owner for the loss of use of his property or by properly exercising its police power as is necessary to protect and promote the public health, safety, morals, or general welfare. Like the freedoms of speech and religion, property rights cannot be abridged by vote of the majority, or a vocal minority, and the weight of public opinion is legally irrelevant to the decision to grant or deny permission to develop land. Legislation authorizing or requiring governing bodies to disapprove a proposed shopping center because of its apparent lack of popularity is in our opinion not legally sound.

As any shopping center developer will confirm plans can change monthly, weekly or even daily during the negotiation stage with their tenants. Flexibility between developers and retail tenants is critical. First to insure financial success for both parties; and secondly so the developer can obtain a lease agreement which is critical to secure financing. Retail tenants have and will continue to absolutely refuse to "lock" themselves into an inflexible position early on in the development stage. A "locked" situation would be necessary under S.B. 275 to keep from filing time and again amended plats which must be re-reviewed.

Some problems arise Mr. Chairman regarding this proposal:

1. The original statement of purpose of this act reads.


"It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Our interpretation of this statement is that the Subdivision Act regulates the division of land. The division of improvements upon land not divided, in our opinion, radically amends the original intent;

2. The Subdivision and Platting Act states a minor subdivision of "5 or fewer parcels" is eligible for summary approval (which cuts a lot of tape). Apparently a shopping center with 5 or fewer stores is eligible for summary approval;
3. Apparently an existing shopping center with 50,000 square feet wishing to add an additional 50 plus thousand square feet is obligated to review the entire shopping center before the governing body (and his competitors);
4. Isolating shopping centers under this act and excluding such things as hospitals, nursing homes, mobile home sales lots, feed lots, etc. (which have similar impacts) is in our opinion unfair treatment under the law.

In summary, Mr. Chairman the Subdivision and Platting Act was designed to regulate the division of land and setting design standards for residential subdivisions. We contend that adding shopping centers to the Act is a major deviation from the original intent. We submit that zoning and comprehensive land use programs are the vehicles to plan for major impacts resulting from any new additions to an area. We hope that you will seriously consider the unfair competitive edge that this proposal gives the downtown developers and those exempted under Section four of this Act.

Sincerely,


Cliff Christian
Executive Vice President

MONTANA ASSOCIATION OF REALTORS®

CC:mb



City of GREAT FALLS Montana

59403

P.O. BOX 5021

TELEPHONE 406/727-5881

February 9, 1979

SB275: AUTHORIZING LOCAL GOVERNING BODIES TO REVIEW AND APPROVE SHOPPING CENTERS

STATEMENT BY THE CITY OF GREAT FALLS, MONTANA

* * * *

Local government officials devote a large portion of their time to considering and acting upon development proposals which substantially affect their communities in many ways. As the proposed projects increase in size, economic and environmental issues become more pronounced. In Great Falls, the City Commissioners have become more and more aware of the economic impact of local development on the municipal budget. The City has been faced with several incidents during the 1978-79 fiscal year where hidden and unforeseen costs have fallen to the City and the taxpayer as the result of inadequately planned development.

The issue is not whether local governments want to see new development. The answer to that is obvious. The issue, rather, is a communities right to assess the overall impact of a proposed development on the existing services, environment, etc.

While the City Commission has been taking a more thorough look at the fiscal impact of internal development, it is obvious that we would be concerned about the impact of proposed development around the periphery of the City of Great Falls. First of all, it is relatively safe to assume that eventually it would become a part of the city structure, requesting the various public services provided by the City. The City should have the privilege of receiving a detailed review of the possible impact of such development on the existing services. Secondly, the City is entitled to an analysis of the development on the existing economic base. Obviously, such impact may be pro and con. While the potential for a better tax base may be created, at the same time it is necessary to analyze the possible eroding impact on the existing economic strata.

The costs of providing the public service infrastructure nationally have risen dramatically over the past several years. While the costs of new development to the public infrastructure were formerly estimated at something like \$15,000 per person on a national average, today those costs have risen to approximately \$25,000 per person in order to expand the existing municipal infrastructure.

On SB 330.

To: Senate committee on Local Govt.

I recently approached the county attorney of Ravalli County on some illegalities of local planning bodies and local government officials in the subdivision area.

The answer was that he Douglas Harkin, did not have the time or the funds to address land use problems. He is only a part of the problem. As in we are a small county like a majority of Montana counties.

A copy of that letter will be forwarded to your committee.

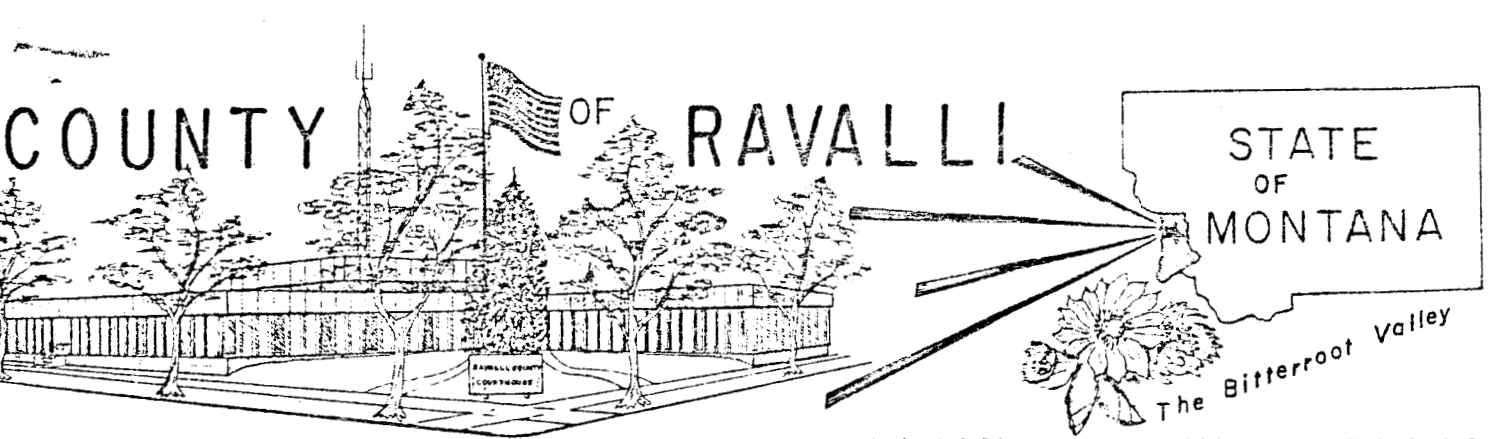
To avoid the legal problems we have seen in Ravalli County, I urge you to pass SB-330.

Thank you

Gary Locke

Bitterroot citizen

COUNTY OF RAVALLI



STATE
OF
MONTANA

The Bitterroot Valley

HAMILTON, MONTANA 59840

115 Bedford

January 25, 1979

Gary Locke
502 N. 2nd
Hamilton, MT 59840

Thank you for your inquiry to my office regarding a possible conflict of interest for planning board member Ruth Applebury as well as the question of the legality of developers signing impact statements. Unfortunately, because of other questions that have arisen over the past several months concerning the planning board we have nearly exhausted the time and money that has been budgeted for planning board legal problems.

It has become fairly obvious to me that my next budget, which must be approved by the county commissioners, must include a substantial allocation for planning board problems. I would certainly appreciate your cooperation and assistance at that time in enabling me to obtain sufficient funds to properly address the type of questions raised by your inquiry.

Sincerely,

Douglas G. Harkin
Ravalli County Attorney

DGH:vj

City of GREAT FALLS *Montana*

59403

P.O. BOX 5021

TELEPHONE 406/727-5881

February 9, 1979

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STATEMENT BY THE CITY OF GREAT FALLS, MONTANA

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