MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

MARCH 10, 1979

The meeting of the Local Government Committee was called to order by Chairman George McCallum on Saturday, March 10, 1979 at 12:30 in Room 108 of the State Capitol Building.

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

Dennis Taylor, Staff Researcher, was also present.

Many, many visitors were in attendance. (See Attachment.)

CONSIDERATION OF HOUSE BILL 687: Represenative Joe Brand of District 28, chief sponsor of House Bill 687, gave a brief resume. This bill is an act to increase the county contribution for a veteran's gravestone from $20 to $30. There has been no increase on this for twenty years.

Tony Cummings, representing the American Legion, stated his support of the bill.

There were no further proponents or opponents.

The meeting was opened to a question and answer period from the Committee. Discussion was held.

Representative Brand closed by asking the Committee to concur with the House on this bill.

CONSIDERATION OF HOUSE BILL 84: Representative Earl Lory, sponsor of House Bill 84, of District 99 gave a brief resume. This bill is an act to prescribe the duties of clerks and recorders and city attorneys with regards to subdivision filing requirements. Representative Lory stated that this bill changes the requirements of clerk and recorders.

Sonny Hansen, representing the Montana Association of Land Surveyors, stood in support of the bill.

Cliff Christian, representing the Montana Association of Realtors, stated his support of the bill. Mr. Christain stated that clear and concise documents are needed with which to work.

There were no opponents to the bill. The meeting was opened to a question and answer period from the Committee.

Discussion was held.

Representative Lory made the closing remarks.

CONSIDERATION OF HOUSE BILL 46: Representative Lory of District 99, the sponsor of House Bill 46, gave a brief resume. This bill is an act to revise the Subdivision and Platting Act and related land statues. Representative Lory handed out an outline of the major provisions of HB 46. This bill has some good provisions that streamline the review process. There is no such thing as a perfect subdivision bill, on one side is the landowner and on the other side is the subdivision. (See attachment.)

Senator Dover who was also a member of the Interim Committee on Subdivisions stated that this bill is the result of much input and study from governments entities, (local, county, and state), realtors, surveyors, city-county planning boards, interested groups and individuals. Public meetings were opened to anyone who wished to attend. The Committee divided the process of subdividing into three main categories--- minor subdivisions; 5 lots or less, subdivisions with a master plan; and over 5 lots with no master plan. Senator Dover handed out written testimony. (See attachment.)

Bill Rinch, Flathead County Planning Board, stated that his group unanimously supports this bill. By the elimination of two major loopholes; the twenty acre split and reform of the occasional sale; county commissioners will be able to get a handle on the tremendous growth their areas have been experiencing. House Bill 46 will strengthen the position of better planning. It will discourage the careless division of the better agricultural lands of our state. Mr. Rinch presented a letter from the Flathead Conservation District stating their support of the bill also. (See attachment.)

Paul Brunner, a real estate broker from Missoula, stated that he believes very stronly in free enterprise and the profit motive. House Bill 46 will close some of the loopholes in the current law. Mr. Brunner presented a written statement and newspaper clippings which would back his statement. (See attachment.)

Bill Bradt, from Hamilton of the Ravalli Realty, stated the bill helps support "good" subdivision and good land use planning, especially the 40 acre minimum and the five year holding for occasional sale. House Bill 46 is a step in good planning.

Bette Hostad, representing the League of Women Voters, stated that her group supports House Bill 46. This bill is the work on the Interim Committee, a fair compromise with all sections of Montana's land development---ranchers, developers, environmentalists, realtors, planners, surveyors, county and city planning boards, clerks and recorders, sanitarians and concerned citizens groups. This bill removes the 20 acre limition, an abuse under the old law. This bill makes most land divided for resale subject to at least summary review. Mrs. Hostad presented written testimony to the Committee. (See attachment.)

John Fini, of the Billings-Yellowstone City County Planning Board, supports House Bill 46 and feels that the Interim Committee did a good job in a difficult area of the law.

Karen Brunner, of Ovando, stated her support of the bill. The town of Ovando is a great town, but should not have to be a bedroom for Missoula. Many people would like to review and reject any subdivion. Decisions made here today could well have a strong impact on the style of life everyone's grandchildren will have to live. If you want them to live wall-to-wall with their neighbors, fight eight lanes of traffic en route to work, and live on Maalox, she asked that the Committee oppose this bill, or move to Los Angelus and live the above way. If you would like to leave then something of real value, pass House Bill 46 and leave them Montana.

Gale Allen, of Butte-Silver Bow Planning Board, stated his support of the bill.

Terry Murphy, representing the National Farmers' Organization, Montana Farm Bureau, and the Farmers' Union, stated the support of his organizations of the bill. Mr. Murphy commented on the occasional sale and hopes that it will continue as in the past. Some provisions are needed.

Sonny Hansen, representing the Montana Association of Planners, stated he supports the concept of the bill. Planners should be protected and this bill will to just that.

Thurman Trosper, representing the Lake County Planning Board, stated that this is a good bill, as it will strengthen the local land use and planning process. House Bill 46 closes the loopholes. He asked the Committee to concur with the House on this bill.

Jackie Shiplet, representing the Park County Planning Board, stood in support of the bill. There have in the past been problems with the 20 acres and also the occasional sale, she stated.

Representative Art Shelden, who had served on the Interim Committee, stated that he felt it is a good bill and it comes as close as possible to adressing the problem as it now exists.

Patricia vonBorgen, of Kalispell, stated that she recommends further investigation into "developement rights" as a tool to insure equitable treatment of large landowners and to be used as an incentive to preserve open space and to assist in landuse planning. Inadequately controlled developement has caused problems elsewhere. A fair and stringent subdivision law in necessary to preserve the environment of Montana.

With no further proponents, those speaking in the gray area, were called upon.

Cliff Christian, representing the Montana Board of Realtors, stated that House Bill 46 has some excellent provisions that streamline the review process for subdivisions, however, those provisions are minor compared to the increased acreage definition to any division of land is a subdivion, the limits placed on the occasional sale and gift to the family exemptions, plus the addition of a "cummulative effect" section begining on page 18, line 15. In their opinion, the major defect in this bill is that virtually every land division will have some type of review, except severely restricted exemption section, by the local planning boards and governing bodies. Mr. Christian offered written testimony and proposed amendments to the bill. (See attachments)

Bob Champion, of the Montana Department of Highways, requested that House Bill 46 be amended to continue the exemptions in existing law relating to right-of-ways acquired by the Department of Highways. Mr. Champion offered written testimony and proposed amendments to the bill. (See attachments)

Chairman McCallum then called on the opponents.

Phil Baden, representing the Bitterroot Chamber of Commerce, stated that House Bill 46 does close the loop holes found in the existing law, however, there is no mandates to the legislature to abort its standing fight to limit government. This proposed bill would enhance the regulatory agencies controlled by exercising control over every aspect of land transfer in Montana. Mr. Baden presented written testimony and amendments to the Committee for the bill. (See attachments.)

Mel Palin, representing the Palin Enterprises of Drummond, stood in opposition to the bill with some mixed feelings. House Bill 46 is going to create so many criteria that no one will know how to administer them. The occasional sale concept is very bad.

Ruth Applebury, of Hamilton, stated that House Bill 46 has so many objectionable parts it would be better to not try to amend it. Improvements are needed, but this bill offers no solutions to the existing problems. Mrs. Applebury offered written testimony. (See attachments.)

Albertina Fausett, representing the Rock Creek Protective Association, stated that the bill is inflationary, totalitarian, and ridiculous. It will increase property taxes, red tape, bureaucracy, and control. It is a violation of one's constitutional rights.

Helen Hudson, of Stevensville, spoke an a landowner and an independent salesperson of real estate property. She stated that she is against the bill as it takes away our constitutional rights to own, buy, and sell real property. Ravalli County was originally subdivided in 1900-1910. The subdivision laws should be structured from the 1973 law forward. The procedure for amending subdivision plats is discriminatory to owners of the early 1900 orchard tracts which were filed as subdivisions at that time. Occasional sales are prevented because of the current cash in lieu of park regulations and minor subdivisions review procedures. Mrs. Hudson also presented a letter from Earle C. Wright, stating his opposition to the bill. Mr. Wright is past chairman of the Ravalli County Planning Board. (See attachment.)

Vera Cahoon, representing the Blackfoot Freeholders Association, stated that her group of 200 members, strongly and unanimously opposes House Bill 46. It is the worst piece of legislation ever. The constitution of the United States says private property shall not be taken for public use without just compensation. The subdivision law is in violation of this great document. Mrs. Cahoon offered written testimony to the Committee. (See attachment.)

Julie Hacker, also representing the Blackfoot Freeholders Association, stated that there are bills before the legislature having to do with landuse and subdivisions that will have serious and perhaps disasterous effect on all the landowners in the rural state of Montana. The landuse concept being interpreted under the law in this state is not use of land, but an exercise in social control of the people by bureacratic maneuvering the violation of private property rights. Mrs. Hacker offered written testimony. (See attachment)

Bill Spilker of Helena stated he is opposed to House Bill 46 because all divisions of land, with the exceptions of a few, would be subject to approval by the local governing body. This is an unnecessary and overly harsh infringement of property rights. The primary objection to the legislation is the broad powers and authority given to the local governing bodies. Mr. Spilker offered written stestimoney. (See attachment.)

Alfred Hutcheson, representing East Missoula, stated that House Bill 46 is "bureaucratic hogwash".

Carl Baldwin, of the Ravalli County Planning Board, stated that the restrictions of HB 46 put on the sale of rural land is most unfair and would not be tolerated if it pertained to the sale of city business or property. This bill puts restrictions on the sale of rural land. (See attachment.)

Paul Nelson, a member of the Blackfoot Freeholders Association, stated that he opposed HB 46, as its only purpose is control and he resents this attempt by government to control his life by controlling his land. Mr. Nelson offered written testimony and presented petitions to the Committee. (See attachment.)

Thelma Moody, of Stevensville, stated that this bill is just another measure of confusing the harrassing the people and it is very expensive. It is a form of Communism, and that will not do any of us any good for the people of Montana. It is nothing more that a communistic plan. Pretty soon people will not be able to buy the land. She asked the Committee to put the bill in the waste basket, where it belongs.

Jean McIntyre, of Stevensville, stated that she sincerely opposes the bill as it seriously jeopardizes real estate or property ownership; it is inequitable to buyers and sellers. There is no place for this bill in our government. Mrs.McIntyre stated she was very alarmed at the dictatorial powers written in this bill. It imposes a tremendous burden on family members inheriting real property, particularly if the inheritor needs to use an occasional sale to satisfy the federal and state inheritance taxes. She commented that she sincerely hoped that the Committee would seriously consider deleting many facets of the bill, if not to completely kill it. (See attachment.)

Hugh Cummings, a Ravalli County Commissioner, opposed the bill as it is an infringement on one's constitutional rights. The majority of the people in Ravalli County oppose restrictive, comprehensive planning.

Tom Murphy of Corvallis, stated that House Bill 46 should meet a quick and sudden waste basket death.

Paul Keller of Helena, stated he was surprised so many many people had read the bill the same way he did. Things do not always turn out the way planners hope. HB 46 increases the burden on the people and is bureaucratic and will drive up the cost of land.

Arnold Slagel, from Cascade County, stated that people should be able to do what they want with their land. If the government wants to control the land than perhaps they should buy and pay for it.

Senator Elmer Severson of District 46, stated that he has heard from the majority of people in Ravalli County and they are against HB 46. Subdivisions have caused many problems for those people.

With no further proponents or opponnents, Representative Lory made the closing remarks. He stated that the Interim Committee felt that this bill is the best compromise possible. It is a good piece of legislation. House Bill 46 does not require a master plan to be submitted. This is already in the law. Under the present law, if the governing body does not act within the legal time limits, the subdivision either must wait for local officials to take action or file a court action to force them to act. HB 46 would not affect the right of the subdivider and governing body to mutually agree to a time extension. HB 46 was reviewed several times, section by section, by the Interim Committee and Local Government Committee members at serveral meetings. Public comments were solicited and considered in preparing the final version.

Senator Dover also made a few closing remarks. The Interim Committee felt that the minor subdivision gives very minimal requirements to allow for proper developement of areas when we are going to have population growth. For larger subdivisions,provisions is made for cities and counties to make a master plan which will allow a developer to proceed without public hearing and finding of public interest. We have a club over our head it we don't take some action this session. The Supreme Court has recently ruled that all minor subdivisions will come under the public interest criteria. This will reqire more delay in time to develop minor subdivisions and undoubtedly encourage more use of the occasional sale and 20 acre limitation which will result in urban sprawl. The committee did not feel the public interest criteria was necessary in all minor subdivison and if this bill is passed it will supercede the Supreme Court ruling.

ADJOURN: With no further business the meeting was adjourned at 3:30. The next meeting will be held on Tuesday, March 13, at 12:30, in Room 405 of the State Capitol Building.

George McCallum

CHAIRMAN, George McCallum

Date Feb. 10

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

SENATE ____________________ COMMITTEE

BILL ____________ VISITORS' REGISTER DATE ________

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
U S Hanson	Mont. Ass. [illegible]	46	X	
Bob Champion	Mont Dept of Highways	46		AMEND
[illegible]	[illegible]	46		[illegible]
[illegible]	Helena			X
[illegible]	Helena			X
Paul Brenner	Eco Realty	46	X	
[illegible]	[illegible]	46		X
[illegible]	Clinton, Mt.	46		X
[illegible]	[illegible]			X
[illegible]	[illegible]	[illegible]	X	
Bill Bradt	[illegible]	46	X	
Cory Cumming	American Legion	687	X	
Bob Dunkee	V.F.W.	687	X	
[illegible]		46		X
[illegible]	self	46		X
Carl Baldwin	Self	46		V
Bill [illegible]	Mont LWV	84	X	
Lucinda K Willis	myself	46	X	
[illegible] von Bargen	myself	46	X	
[illegible]	[illegible]	[illegible]	X	
John B. F[illegible]	[illegible]	46	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE ____________________ COMMITTEE

BILL ____________ VISITORS' REGISTER DATE __________

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
[illegible]	[illegible]	[illegible]		X
[illegible]	[illegible]	[illegible]		
[illegible]	Myself	46		X
[illegible]	[illegible]	46		X
Helen Hudson	myself	46		X
[illegible]				X
[illegible]	myself	46		X
[illegible]		46		X
[illegible]		46		X
[illegible]	[illegible]			
[illegible]				
[illegible]	[illegible]	46		X
[illegible]	[illegible]	46		X
[illegible]	myself	46		X
[illegible]	[illegible]	[illegible]		X
[illegible]	East Missoula	46		X
[illegible]	[illegible]	46		X
[illegible]		46		X
[illegible]	[illegible]	46		X
[illegible]	[illegible]	46		X
[illegible]	Blackfoot [illegible]	46		X
[illegible]	[illegible]	46		X
[illegible]	[illegible]			
[illegible]				

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE [illegible] COMMITTEE

BILL HB 46 VISITORS' REGISTER DATE [illegible]

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
[illegible]	Mont. Cities & Towns	HB 46		
Thurman Trosper	Lake County Planning Bd	HB 46	✓	
[illegible] Swanson	Ravalli Co. [illegible]	HB 46		✓
[illegible] Murphy	NFO	HB 46		
[illegible]	Citizens Org. for Sensible [illegible]	HB 46		✓
[illegible] Christman	MT Assn of Realtors	46	with amend.	
Janelle Fallan	Mont. Chamber of Commerce	46		
[illegible]	E.I.C.	46	✓	
[illegible]	[illegible]	46		
[illegible]	[illegible]	46		
[illegible] Halliday	Rte 2 Wilsall	46		
[illegible]	[illegible] Livingston	46		

Please note bill no. (check one)

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Brad R. Hill DATE: 2-11-2019

ADDRESS: 913 Harrison Helena, MT 59601

PHONE: 442-1232

REPRESENTING WHOM? MCEC

APPEARING ON WHICH PROPOSAL: Hearing bill #6

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: [illegible]

ADDRESS: 50 [illegible]

PHONE: [illegible]

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: HB 46

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: I recommend [illegible] to the "DEVELOPMENTS RIGHTS" [illegible] tool to ensure equitable treatment of local land owners [illegible] incentive to preserve open space [illegible] in land use planning.

Inadequately controlled development has caused problems elsewhere. A fair & stringent subdivision law is necessary to preserve the environment of Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Cliff Rapkoch DATE: 2-6-09

ADDRESS: 501 N. Sanders - Helena

PHONE: 443-2632

REPRESENTING WHOM? MT Association of Realtors

APPEARING ON WHICH PROPOSAL: H.B. 46

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

COMMENTS: ATT

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Alberta M. [illegible] DATE: March [illegible] 1977

ADDRESS: Box 625 [illegible] Mt. [illegible]

PHONE: 825-3203

REPRESENTING WHOM? myself & Rock Creek Protective Assn

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: This bill is arbitrary, totalitarian and ridiculous. It will increase property taxes, add more bureaucracy and control. It is a violation of our constitutional rights.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Mingo DATE: _____

ADDRESS: 1505 N. Benton Helena

PHONE: 443-1155

REPRESENTING WHOM? Nat'l. Assoc. Soc. Wkrs. Mont. Fed. Teachers

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: ____________

ADDRESS: [illegible]

PHONE: [illegible]

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: ____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: William Rinck DATE: 3/16/79

ADDRESS: 187 6th Ave EN Columbia Falls MT

PHONE: 892-4514

REPRESENTING WHOM? Flathead County Planning Board

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: By the elimination of the major loopholes - the 20 acre split & reform of the occasional sale, our County commissioners will be able to get a handle on the tremendous growth our area has experienced.

In so doing HB 46 would enable our local govt to protect our communities' health, our good farm land - while saving our taxpayers a great deal of money i.e. "leapfrog" additions are not paying their way in Flathead County. Thank you

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ruth Copleburg DATE: 3-10-79

ADDRESS: Rt 1 4th St, Yreka, Ca 96097

PHONE: 961-4346

REPRESENTING WHOM? Self - I'm a member of Rawalt County Planning Board but not representing it

APPEARING ON WHICH PROPOSAL: H.B. 46

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

COMMENTS: H.B. 46 has so many objectionable portions, it would be better to not try to amend it. Improvements are needed, but this bill offers no solutions to existing problems.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert E Champion DATE: 3/10/79

ADDRESS: 1015 Highland

PHONE: 449-2008

REPRESENTING WHOM? Mont. Dept of Highways

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: The Dept of Highways is requesting HB 46 be amended to continue the exemptions in existing law relating to rights-of-way acquired by the Dept of Highways.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thom C. [illegible] DATE: [illegible]/10/79

ADDRESS: Box 341 [illegible] [illegible] [illegible] [illegible]

PHONE: (406)

REPRESENTING WHOM? Ravalli Realty

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS:

(1) the bill [illegible] [illegible] and [illegible]

and good land [illegible] [illegible]

especially the 1/10 minimum and the

5 year holding for occasional sale

(2) [illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John B. Fine DATE: 3-10-99

ADDRESS: 110 S 29th St

PHONE: 259-8455

REPRESENTING WHOM? Billings-Yellowstone City County Planning Board

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? X AMEND? ✓ OPPOSE?

COMMENTS: We support HB 46 and feel that the interim committee did a good job in a difficult area of law. The amendments are proposed in another testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Carol LaTulo DATE: 2-10-79

ADDRESS: 97 Woodland Dr.

PHONE: 442-2353

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: Transfers more Control and property rights to Government. Its economic effect will drive up land Costs. Will be a ~~[illegible]~~ bureaucratic nightmare to administer -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Kitty Wisted DATE: 2/10/19

ADDRESS: 8906 Douglas Circle

PHONE: 458-9?

REPRESENTING WHOM? Montana League of Women Voters

APPEARING ON WHICH PROPOSAL: HB 216

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

COMMENTS: Testimony on Record

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Paul Brown DATE: 1-25

ADDRESS: Buffalo Trail Ranch - Conrad, Mt.

PHONE: 793-6340

REPRESENTING WHOM? ECO REALTY

APPEARING ON WHICH PROPOSAL: HB46

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lou Sliver DATE: March 9, 199?

ADDRESS: 801 Harrison, Helena

PHONE: 442-2821

REPRESENTING WHOM? SOS

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Carl W. Baldwin DATE: 3-11 79

ADDRESS: Stevensville Mont By 150 R2

PHONE: 777-5837

REPRESENTING WHOM? Self Member & Past Chairman Ravalli County Planning Board

APPEARING ON WHICH PROPOSAL: H.B 46

DO YOU: ~~SUPPORT?~~ _____ ~~AMEND?~~ _____ OPPOSE? I

COMMENTS: H.B. 46 referred to "The Planners Delight" Puts restrictions on the sale of Rural Land -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rev. Gene Brewington DATE: 3/10/99

ADDRESS: Rt. 2 Box 45 Stevensville MT 59870

PHONE: 777-3464

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: H.B 46

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

COMMENTS: I seriously oppose this Bill. It seriously jeopardizes real estate & property ownership. It is unconstitutional to lawyers called out on jury. There is no place for this bill in our Code.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Helen Nielsen DATE: 3-15-79

ADDRESS: Rt 3 Box 46

PHONE: 777-3613

REPRESENTING WHOM? I am an individual and a landowner.

APPEARING ON WHICH PROPOSAL: H.B. 46

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

COMMENTS: I am against this bill. It takes away our constitutional rights to own, buy, & sell real property. Ravalli county was predominately subdivided in 1900 - 1910. I believe this division laws should be structured from the 1973 laws forward.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mel Dahl DATE: 3/10/79

ADDRESS: P O Box 156 Hamilton Mt 59840

PHONE: 363-3326

REPRESENTING WHOM? Dahl Enterprises

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: Approach with Open Mind Thought

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ken Colburn DATE: 2/10/15

ADDRESS: 1st St. Capitol Pl.

PHONE: 244-5553

REPRESENTING WHOM? Blackfoot Communications Inc.

APPEARING ON WHICH PROPOSAL: H-B-46

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Paul Nelson DATE: 3/19/02

ADDRESS: Potomac Maryland

PHONE: 424-5255

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: House Bill 442

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Boyd Hutcheson DATE: 3-15-79

ADDRESS: 460 Mont. Ave. Missoula, Mt.

PHONE: 721-1610

REPRESENTING WHOM? East Missoula

APPEARING ON WHICH PROPOSAL: HB-46

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: J. L. Smith DATE: 3-10-79

ADDRESS: 3939 Poulin St Missoula

PHONE: 5490316

REPRESENTING WHOM? Helena Franchise

APPEARING ON WHICH PROPOSAL: HB 44

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 9-15-92

ADDRESS: Carrollton Mont

PHONE: Gar 961-3314

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: H 476

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Andy Cunning DATE: 3-15

ADDRESS: Rivelli Co / Commissioner

PHONE: 363-4799

REPRESENTING WHOM? Rivelli Co

APPEARING ON WHICH PROPOSAL: H.B. 46

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

COMMENTS: Infringement on Constitutional Right - Majority of people in Rivelli Co oppose Restrictive Comprehensive Planning —

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible handwriting] DATE: 2/15/79

ADDRESS: Rd. 1 Box 26 Stonewall

PHONE: 777-5217 ([illegible])

REPRESENTING WHOM? [illegible handwriting]

APPEARING ON WHICH PROPOSAL: HB 46

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

COMMENTS: See testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thurman Trosper DATE: 3-11-70

ADDRESS: Rt #1 Box 46 Ronan [illegible]

PHONE: 676-2066

REPRESENTING WHOM? Lake County Planning Board

APPEARING ON WHICH PROPOSAL: HB 46

DO YOU: SUPPORT? ✓ AMEND? ____ OPPOSE? ____

COMMENTS: Very good bill - it will [illegible] the local land use planning process

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

AMENDMENTS TO H. B. NO. 46

Amend Title

Title, Line 7 through line 8
Strike: "REDEFINING SUBDIVISIONS"

1. Page 6, line 11
Following: "~~roadways,~~"
Insert: "containing less than 20 acres, exclusive of public roadways,"

2. Page 6, line 20
Following: "~~acres~~"
Insert: "less than 20 acres"

3. Page 8, line 14
Strike: "5"
Insert: "2"

4. Page 8, line 25 through line 2 on page 9
Following: "purposes"
Strike: line 25 through "acres" on line 2, page 9

5. Page 9, line 9
Strike: "5"
Insert: "2"

6. Page 11, line 24 through line 25
Strike: subsection (b) in its entirety
Renumber: subsequent subsections

7. Page 17, line 10 through line 2 on page 18
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

8. Page 18, line 15 through line 25
Strike: Section 13 in its entirety
Renumber: subsequent sections

COMMENTS ON H.B. 46

CLIFF CHRISTIAN
MONTANA ASSOCIATION OF REALTOR

H.B. 46 HAS SOME EXECELLENT PROVISIONS THAT STREAMLINE THE REVIEW PROCESS FOR SUBDIVISIONS (SEE ATTACHED SHEET). HOWEVER, THOSE PROVISIONS ARE MINOR COMPARED TO THE INCREASED ACREAGE DEFINITION TO ANY DIVISION OF LAND IS A SUBDIVISION, THE LIMITS PLACED ON THE OCCASIONAL SALE AND GIFT TO THE FAMILY EXEMPTIONS, PLUS THE ADDITION OF A "CUMMULATIVE EFFECT" SECTION BEGINNING ON PAGE 18, LINE 15.

IN OUR OPINION, THE MAJOR DEFECT IN THIS BILL IS THAT VIRTUALLY EVERY LAND DIVISION WILL HAVE SOME TYPE OF REVIEW (EXCEPT THE SEVERELY RESTRICTED EXEMPTION SECTION) BY THE LOCAL PLANNING BOARDS AND GOVERNING BODIES. THERE IS NO WAY THAT THEY ARE EQUIPPED TO HANDLE ALL THESE REVIEWS IN A TIMELY MANNER. THE DCA CLAIMS THAT TODAY THE PLANNING BOARDS ARE ONLY REVIEWING 30% OF THE LAND DIVISIONS. YET, EVEN WITH THIS 30% FIGURE THEY SEEMED TO BE SWAMPED. DELAYS ARE THE ORDER OF THE DAY, RATHER THAN THE EXCEPTION. WE SUBMIT THAT, UNDER CURRENT OPERATING PROCEDURES THE PLANNING BOARDS HAVE NIETHER THE MANPOWER OR THE BUDGETS TO DO WHAT THIS BILL ASKS THEM TO DO. IN ADDITION, THE STATE DIVISION OF PLANNING HAS LOST, THROUGH AN APPROPRIATION SUBCOMMITTEE, 3 FULL TIME PLANNERS. AT BEST, THE DIVISION OF PLANNING WILL ONLY BE ABLE TO GIVE MINIMUM ASSISTANCE TO LOCAL GOVERNMENTS, WHO WILL MOST CERTAINLY BE PLEADING FOR HELP AND GUIDANCE. WITHOUT STRONG GUIDANCE, WE WILL PROBABLY END UP WITH 56 DIFFERENT COUNTIES INTERPRETING THIS ACT A DIFFERENT WAY.

WE WERE SUCCESSFUL IN GETTING THE AUTOMATIC APPROVAL SECTIONS INTO H.B. 46. WE HAD TO BECAUSE OF THE TERRIBLE TIME DELAYS WE ARE CURRENTLY EXPERIENCING IN SOME AREAS. THESE TIME DELAYS ARE COSTLY, BUT NOT AS YOU MIGHT EXPECT, TO THE DEVELOPER, BUT TO MONTANAN, BUYING THE LAND FOR A HOME. WE HOPE THESE TIME PERIODS REMAIN IN H.B. 46. HOWEVER, THEY REALLY DON'T MEAN MUCH. THE PLANNING BOARDS CAN STILL REQUEST

THE DEVELOPER TO WAIVE THE LIMITS IMPOSED. THE DEVELOPER WILL AGREE TO LIFTING THE TIME LIMITS EVERY TIME, BECAUSE THE ALTERNATIVE, IS THE DENIAL OF THE SUBDIVISION ON SUCH NEBULOUS GROUNDS AS THE ADVERSE EFFECT ON WILDLIFE OR AGRICULTURE.

THE SECOND MAJOR DEFECT (AND ITS A BIG ONE) DEALS WITH WHERE A PERSON CAN USE THE OCCASIONAL SALE OR FAMILY EXEMPTIONS. IF THIS BILL PASSES AS IS, EVERY DIVISION OF LAND WILL BE DEFINED AS A PLATTED SUBDIVISION. THE EXEMPTION SECTIONS FOR THE OCCASIONAL SALE AND GIFT TO THE FAMILY (PAGE 8 LINES 10 THROUGH 19 AND PAGE 9 LINES 5 THROUGH 13) STATE THAT YOU CAN USE THESE EXEMPTIONS ONLY OUTSIDE PLATTED SUBDIVISIONS. IN EFFECT, THESE LEGITIMATE EXEMPTIONS WILL BE WIPED OUT.

ANOTHER MAJOR CONCERN IS THE "CUMMULATIVE EFFECT" SECTION FOUND OF PAGE 18 BEGINNING ON LINE 15. THIS SECTION STATES THAT AFTER THE FIRST MINOR SUBDIVISION OF 5 PARCELS OR LESS, THE GOVERNING BODY CAN REVIEW ANY ADDITIONAL MINOR SUBDIVISIONS AS IF THEY WERE MAJOR SUBDIVISIONS. I'LL BET MY ENTIRE YEARS SALARY THAT EVERY MINOR SUBDIVISION, AFTER THE FIRST ONE, WILL BE REVIEWED AS MAJOR SUBDIVISIONS. THE ENVIORNMENTALISTS, THE PLANNERS AND THE LEAGUE OF WOMEN VOTERS WILL SEE TO THAT.

WE CONTEND THAT THIS SECTION DOES NOT ALLOW EQUAL TREATMENT UNDER THE LAW. THE FIRST DEVELOPER SUBMITTING A MINOR SUBDIVISION SHALL BE GIVEN ALL THE BENEFITS (35 DAY REVIEW, NO PUBLIC HEARING, WAIVER OF THE PUBLIC INTEREST CRITERIA, ETC.). YET THE SECOND LANDOWNER WITH THE SAME TYPE OF MINOR SUBDIVISION COULD BE FORCED TO UNDERGO A FULL BLOWN REVIEW. WE FEEL, THERE ARE SERIOUS LEGAL QUESTIONS REGARDING FAIR AND EQUAL TREATMENT UNDER THIS SECTION.

AS MENTIONED BEFORE, H.B. 46 STATES THAT ANY DIVISION OF LAND IS A SUBDIVISION. HOWEVER, FOR PARCELS GREATER THAN 40 ACRES, THE REVIEW IS ONLY FOR ACCESS AND EASEMENTS. IF THE ACREAGE DEFINITION PASSES AS IS, WE CAN MOST ASSUREDLY GUARANTEE

THIS COMMITTEE THAT THE 40 PLUS ACRE SUBDIVISIONS WILL BE COMMONPLACE. THAT, MEMBERS OF THE COMMITTEE IS HORRID LAND USE PLANNING. NEVERTHELESS, 40 ACRE SUBDIVISIONS WILL BE THE ORDER OF THE DAY. PAST HISTORY PROVIDES POSITIVE PROOF THAT EVERY TIME THE ACREAGE DEFINITION IS INCREASED, SO ARE THE SIZES OF THE INDIVIDUAL PARCELS. SOME LANDOWNERS WILL ALWAYS TAKE THE LEAST FOR OF RESISTANCE, REGARDLESS OF WHAT TYPE OF LAND PLAN RESULTS. AND, MEMBERS OF THE COMMITTEE, WE DON'T CONDEM THOSE LANDOWNERS FOR TAKING THE LEAST FORM OF RESISTANCE. EACH ONE OF US HERE I'M SURE CAN RELATE, EITHER A PERSONAL STORY, OR ONE OF A FRIEND, WHO ATTEMPTED TO FIGHT THEIR WAY THROUGH THE RED TAPE JUNGLE OF THE SUBDIVISION AND PLATTING ACT.

EACH AND EVERY LEGISLATIVE YEAR THIS ACT IS AMENDED DRASTICALLY. THE NEW CHANGES ARE ADOPTED THE FOLLOWING JULY. THEN, THE NEW RULES AND REGULATIONS ARE BROUGHT ON LINE; AND BY THE TIME THE PLANNING BOARDS AND THE PUBLIC BEGIN TO UNDERSTAND WHAT IS REQUIRES, A NEW LEGISLATURE HAS CONVENED, WITH MAJOR CHANGES AGAIN PROPOSED.

BY MANDATING AN OWNERSHIP PERIOD PRIOR TO THE USE OF THE OCCASIONAL SALE AND FAMILY EXEMPTIONS (WHICH WE FEEL SHOULD BE A MAXIMUM OF 2 YEARS RATHER THAN 5) THE ABUSE OF THESE SECTIONS WILL BE CURTAILED. ALSO, BY STREAMLINING THE REVIEW PROCESS IN AREAS WHERE DEVELOPMENT SHOULD TAKE PLACE (WHICH H.B. 46 DOES) LANDOWNERS WILL BE ENCOURAGED TO DEVELOP IN THESE AREAS. HOWEVER, BY PROPOSING TO MAKE EVERY DIVISION OF LAND A SUBDIVISION, SUBJECT TO SOME TYPE OF REVIEW BY GOVERNMENT, WE SUBMIT WILLFORCE EVEN MORE LANDOWNERS TO FIND THE LEAST FORM OF RESISTANCE - WHICH AS STATED BEFORE, DESTROYS THE VERY PURPOSE OF THIS ACT - GOOD LAND USE PLANNING.

CONSEQUENTLY, MR. CHAIRMAN, WE SUBMIT THESE AMENDMENTS, WHICH HOLD THE DEFINITION OF A SUBDIVISION TO LESS THAN 20 ACRES; REQUIRES A 2 YEAR HOLDING PERIOD PRIOR TO THE USE OF THE EXEMPTIONS; AND DELETES THE CUMMULATIVE EFFECT SECTION FOUND ON PAGE 18.

WITH THESE ADMENDMENTS, THE MONTANA ASSOCIATION OF REALTORS WILL BE STRONG PROPONENTS OF H.B. 46. THANK YOU.

STREAMLINING PROVISIONS OF H.B. 46

1. Subdivisions within the following categories must be given summary review:

   a. FOR THE FIRST MINOR SUBDIVISION FROM A TRACT:

      1) the governing body shall act on the plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.

      2) the requirement for a public hearing, preparation of an environmental assessment, state agency review and a finding of public interest shall be waived.

   b. FOR A SUBDIVISION OF PARCELS LARGER THAN 40 ACRES:

      1) the requirements are waived for:

         a) preparation of an environmental assessment and state review;
         b) public hearing;
         c) a finding of public interest

      2) the governing body must approve the preliminary plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.

      3) the local review shall be limited to a determination that appropriate access and any easements are properly provided.

   c. FOR SUBDIVISION WITHIN THE COPORATE BOUNDARIES OF A MUNICIPALITY:

      1) the requirements are waived for:

         a) an environmental assessment and state agency review
         b) a finding of public interest

      2) a hearing must be held

   d. FOR SUBDIVISIONS WITHIN AREAS COVERED BY A MASTER PLAN CONFORMING TO SECTION 76-1-606(3):

      1) the requirements are waived for:

         a) an environmental assessment and state agency review
         b) a finding of public interest

      2) a hearing must be held

The above summary review procedures provide a very expeditious review and approval process for subdivisions which are unlikely to create significant problems.

MONTANA DEPARTMENT OF HIGHWAYS
Helena, Montana 59601

MEMORANDUM:

TO: The Local Government Committee of the Senate

FROM: Department of Highways

RE: The effects of that portion of House Bill No. 46 which would repeal the Department's exemption from surveying requirements.

DATE: March 7, 1979

Section 4 of House Bill No. 46, beginning on page 6 of the Bill, strikes subsection (1) of Section 76-3-201, MCA, which exempts from survey requirements those divisions of property that could be created by an order of a court pursuant to the law of eminent domain. The effect of striking this subsection is to require a Certificate of Survey for every tract of land the Department of Highways acquires.

Under present law, the Department can acquire property by reference to its filed right-of-way plans. For the plans, the right-of-way is surveyed, but not necessarily by a registered land surveyor. The present procedure of the Department is more extensive than minimum compliance with the law would require. The Department prepares and files with each deed an individual plat showing the right-of-way acquired. This plat, however, is not equal to a Certificate of Survey. The plat is not necessarily prepared by a registered surveyor nor is it signed by the landowner.

Under the bill, each parcel of right-of-way would require that a Certificate of Survey be prepared. To prepare a Certificate of Survey, the services of a registered land surveyor would be required usually twice for each parcel. The first time would be during the Department's regular survey in order to find or establish and record all corners required to establish each property boundary that might eventually be intersected by one of the right-of-way lines. At least two corners would be required per parcel and the estimated average number of necessary corners would be three to four per parcel. Based upon past experience with section corner surveys, the first phase of additional survey work would cost an estimated $3,000 per parcel if done by consultants.

The project would thereafter proceed as usual until such time as the parcel is ready to be acquired and the deed prepared. To insure that construction would not obliterate the established points, the parcel would best be surveyed upon completion of construction. It is estimated that approximately ten points would need to be established and recorded per parcel. The additional estimated cost for this phase of the survey is $2,000 per parcel if done by a consultant. Thus the total additional cost is estimated at $5,000 per parcel, if the work is done by consultants.

If this work could be done by Department personnel, the cost would probably be reduced two to three thousand dollars per parcel. However, at this time the Department does not have nearly enough registered land surveyors to perform the work. Because of the salary levels of state surveyors and because surveyors are presently in demand, the Department is not able to retain an adequate number of registered surveyors to do this work.

The Department purchases approximately 500 parcels of right-of-way per year. If the Department were to retain consultants to do the additional work, the added cost would be about $2,500,000. This figure may be somewhat high; however, it is based upon past experience with consulting firms.

Another problem the Department would experience in addition to increased costs, should the bill become law in its present form, is delay. If the Department were required to implement the legislation by July 1, 1979, that requirement probably could not be met. At the present time there are approximately 700 parcels in various stages of acquisition. By July there probably would be an additional 200 parcels. There would not be sufficient time nor a sufficient number of consulting firms for completing Certificates of Survey on approximately 900 parcels. The consultant agreements would also have to be negotiated, approved by the Federal Highway Administration, signed, and the work completed. Future acquisition would probably be delayed for at least six months while currently pending parcels were resurveyed to meet the requirements of the legislation. The Department is currently purchasing right-of-way and doing design based upon surveys prepared by both Department crews and by half a dozen or more private consulting firms. These surveys would not meet the requirements necessary to prepare Certificates of Survey. Thus, before deeds could be recorded pursuant to this legislation, the parcels would have to be resurveyed.

Although the Department's acquisition may in some cases cause a problem for the owner of the remaining property, the money paid for the land should be sufficient to cover the

inconvenience. Under the proposed legislation, in order to sell the remainder, the landowner would have to have that property surveyed and a Certificate of Survey prepared. The Certificate of Survey prepared by the Department would be of the parcel taken, not the parcel remaining. The Department generally offers to buy what are called non-economic remnants, but in most cases landowners are unwilling to sell them.

For its purposes, the Department does not need a more precise survey for the area it is acquiring, since it does not have significant boundary or monumentation problems. The requirement of a more precise survey of the area taken does not solve the adjoining landowner's problems either because they too would be required to have a precise survey performed.

Another problem that may be caused by the legislation is that the requirement of precise survey would force the Department to determine where the property line is between two abutting owners. Where there is a dispute between the landowners as to the boundary line, the State would then be projected into the position of favoring one owner over another. Present procedure in disputed areas is to accept each landowner's assertion as to the location of the boundary even though the Department may have to pay for the same narrow strip of land twice. Because a precise survey will not usually end a boundary line dispute, the Department may find itself in litigation between two private parties.

The Department respectfully requests that the bill be amended so as to continue the present exemption for Department of Highways' right-of-way acquisition and for this purpose, proposes the attached amendments to House Bill No. 46.

BG/elm/5U

Attachment

Amendment to House Bill No. 46

(proposed by the Department of Highways)

Page 6, line 9
Following: "~~20-acres~~"
Reinsert: ", exclusive of public roadways,"

Page 9, lines 14 and 15
Strike subdivision ~~(f)~~ (G) in its entirety.

Page 7, lines 4-8
Reinsert subdivision (1) in its entirety.
Change numbering of (1), (2), and (3) back to (2), (3), and (4).

Comments before the
Local Government Committee

George McCallum, Chr.

March 10, 1979

I am Ruth Applebury, retired insurance secretary and present member of the Ravalli County Planning Board. I would like to present some of my personal views on H. B. 46.

Montana Land Use Law does need;

a) A clearly worded, indisputable definition of a minor subdivision;
b) Park requirements need to be defined and brought within reason. For instance, Ravalli County has gone from under $50 cash in lieu of park donation on a minor subdivision to $1,200 to $6,000 since August of 1978.
c) The Montana Supreme Court's ruling of Public Interest Statement should be deleted from the minor subdivision requirements.
d) Amendments to subdivision plats creating one additional lot should not be under the minor subdivision review requirement, but should be handled comparably to the occasional sale of land not situated within a platted subdivision.
e) Proper and clearly defined "family" for proper gifting is needed. Mr. Greely has defined family as being only those members living together in the same household.

H. B. 46 does not address or correct any of these deficiencies in the law. I propose that the bill be killed for the following reasons;

1) Government Control

The premise, that government control of the use of land is justifiable ONLY because of problems and concerns caused by density of habitation, is born out by the fact that any size parcel of ground used strictly for agriculture has been held exempt from controls. Up to now, density greater than one house per 20 acres is cause for concern. However, parcels as small as one acre per home with individual sewer and water system (7 homes per acre with community sewer and water) are presently allowed if created one parcel each year. It is called "Occasional Sale." If a property owner uses his God-given right to share land with his children, it is called "Gift To Family;" or, if he must have a lot free and clear of other debt for the purpose of securing a building loan, it is called "Mortgage Release." These are all good, legitimate exemptions from government control, but they are being called "Loop Holes." H.B. 46 effectively closes these so-called 'loop holes', if you see them as such. But, if you see them as proper areas to be held free from control, H.B. 46 deprives land owners of their proper rights.

It cancels the justification of government control for the purpose of

controlling density because it controls division of all parcels, regardless of size, density or use. It controls land for the pure conviction that all land should be under government control, re;

Page 2 - the required master plan

Page 6 - lines 11 and 20 - deletes 20-acre limit on control

Page 17, line 10 - gives the rules for subdivisions consisting exclusively of parcels larger than 40 acres.

I believe that he who controls the land, controls the people.

2) Cost

Counties with all voluntary planning staffs would be harder hit by the cost of implementing H.B. 46 than would those counties with existing paid staffs. For instance, Missoula County already budgets $350,000 + annual expense for land planning and control, whereas Ravalli County uses less than $17,000. We have been inquiring into the cost of having a master plan drawn up and have received bids ranging from $15,000 to $ 30,000. After drawing up a plan, if it were to be accepted by Ravalli County citizens, we would have the cost of County zoning to implement the plan and then the cost of enforcing the zoning to maintain the plan. Multiply these figures by the number of counties to estimate the cost to the state.

Also, H.B. 46 calls for a housing inventory listing existing housing by type and number of units. A conservative estimate of this inventory would be $30,000 in Ravalli County alone. Many people estimate this much higher.

The bill calls for a public services inventory and it could be equally costly, even if held to the suggested subjects. However, this inventory is not to be limited to the suggested subjects and any study deemed to be required could be added. For instance, 20 years ago I found a kangaroo mouse. If I could be persuasive enough and persistent enough, to convince the County Governing Body that it would be to the county's ecological advantage to know what has happened to the kangaroo mouse population in Ravalli County during the past 20 years, such a survey could be required under this section of the bill.

A sizeable staff is presently manning the Helena office of the Department of Community Affairs overseeing controls on 20 acres or less. Adding jurisdiction over all land would balloon the department's personnel and increase the costs to the State in direct proportion.

In addition to the direct cost of implementing the bill, we would have less definable costs because of restricted land sales, throttled building programs, loss of jobs and loss of population. Montana has always been low on the list of prosperous states. We cannot afford this bill.

For these reasons, I believe H. B. 46 should be given a "Do NOT Pass" recommendation.

Ruth Applebury

Ruth Applebury

961 4346

Mar. 10,1979

Honorable George Mc Callum Chairman:

Dear Senator Mc Callum:

I would like to go on record as being in favor of House bill 46. This bill will strengthen the position of better planning. It will discourage the careless division of the better agricultural lands of our state.
I would like to see a provision to protect the prospective buyer by providing the necessary information to the purchaser regarding the availability of services, water, capabilities of sewage disposal and capabilities for housing. I think it appropriate to include in the bill wording that would make the developer responsible for the additional costs to the community for possible school expansion, law enforcement etc. that might be caused by the development.
Montana planning boards need a more comprehensive law that will allow them to act in the best interest of the subdivision and the community that will not put the boards in a position of taking the lesser of two evils.

Respectfully,

Henry L. Ficken
Chairman Flathead County Planning Board
710 N. Somers Rd.
Kalispell, Mt.
59901

Testimony from Flathead County Planning Board

HB 46--Senate Local Gov't. Com.--March 10--10:30

Introduction: name, FCPCPB (acct./bus.mgmt., own 100 acres in valley).

General Statement: The FCPB and the CC for which our Board serves in an advisory capacity, are committed to good land use planning. Our Board is made up of a large cross section of County residents--farmers, foresters, a rancher, realtor, college professor, geologist, accountant, retired corporate executive, homemaker, small businessman, and soils specialist. It is the policy of our board to carry out the wishes of the majority of the people residing within our jurisdiction. With this in mind our Board supports HB 46.

Background: Over the past few years our Planning staff has conducted surveys and put together a Comp.Land Use Plan for FC which saw thousands of people involved in public hearings--along with the formation of 23 individual Planning Units. From this our Board has formed the following policy:

1. encourage devel. in existing developed areas to minimize the increased demand on local services.
2. discourage devel. on Class I-IV soils (of over 1,000 residents surveyed 94% felt good ag. land s/b preserved).
3. discourage devel. that would degrade the environment, and
4. that a quality life style can be maintained.

The effectiveness of our Board in carrying out this policy has been negated by the existing loopholes in the law--most notably: the 20 acre split and the occassional sale escape review and the authority of our CC. These loopholes have caused great problems in FC:

1. Over a recent 10 year period, 1/4 of FC's ag. land was platted for SD.
2. Increased Property Tax Burden caused by "leapfrog" SD not paying their way--spreading their cost to all taxpayers of FC.
3. And, a developer using these loopholes can avoid Public Opinion--greatly altering an entire community's lifestyle.

Statistics: Of nearly 96,000 acres divided into parcels from July, 1973--Dec., 1977, 91%--42,000 acres--was subdivided without public review. For the year 1977, 39% of the acreage availing review came from the 20 acre split, while 16% came from the occassional sale. A total of 55% of the acreage availing review came from these two loopholes. HB 46 would help to rectify this.

Example #1: This past spring (the SD in front of you) 143 acres, 73 res. lots. public hearing drew 150-200 guests, 2 rented buses.
testifying against it were the sheriff, PHD, School Board & Principal, Cty. Sanitarian--even a st.leg.--along w/ dozens more.
Our board unanimously denied this SD for many reasons, most notably being:

1. Goals & Obj of Planning Unit
2. Comp. Plan
3. alvers effects on w/l
4. area's high water table
5. adverse effects on local serv.: patrol, school bond. cap & limit.
6. " " " community's lifestyle. snow removal.

So, the developer withdrew his proposal, and over the next 6 months, blew the use of the 20 acre split (pg 2), and the occasional and family split (last pg.) was able to split this piece into 24 parcels with no review at all.

Example #2: Now here's an ex. of a SD we were forced to approve (split vote) because of the loopholes in the law.

This summer ... had been a 560 a "working cattle ranch"--located 28 miles from MF on a winding, narrow DS road. Ranch was set in a valley were these streams met. Development was by a partnership--several of which were from out of state. Devel. called for 30 homes on 80 acres most of which were to be sold to Canadians. The area is sparsely populated, however, 30 people showed up to protest the deve. which bad points included:

1. Public Opinion--threat to life style--goat farmer, 600 acres.
2. effect on w/l inc. moose game range.
3. Pub. Hth & Safety--hi moist. ret.of soil; erosion; 10% road grade.
4. BIGGEST--Local Services--law enforc., 45 min, winter all day, min. $12,000
   Fire Protection--state forester indicated high fire danger.
   Energy Intensive--in terms of distance and elec.(FC winter outages,
   Road Maintenance--county would have to plow snow where it gets 5ft.
5. Taxes to the county upon completion $4500/yr--which is only a frac.o of the cost to the county. This cost is spread out over all CTY t.y

Even with all these points against the SD--we were FORCED to approve it because of the alt.--IF WE HAD DISAPPROVED THIS SD OF 30 LOTS ON 80 ACRES--the developer with the use of the 20 acre split & the occassional sale could have split this 560 acre ranch into 56 parcels virtually overnight. WE WERE FORCED TO APPROVE A SD THAT WAS NOT GOOD LAND USE PLANNING--A SD CREATING A BURDEN ON OUR COUNTY'S TAXPAYERS. HB 46 would help rectify this.

Summary: Passage of HB 46 would enable our Board & CC to effectively implemen the policy our residents have directed us to, and in so doing would enable us to preserve our communities' lifestyle and ag. land, while saving our taxpayers a great deal of money. Thank you.

Bill Rock
Vice Chairman
Flathead County Planning Board

Flathead Conservation District

35 W. Reserve Drive
KALISPELL, MONTANA 59901 PHONE 257-5242

Senate - Local Government Committe

The Flathead Conservation District has as its number one goal in their Long Range Plan -

Preserve Prime Farmland

Subject: HB 46

Two years ago the legislature saw the need for improvement in the existing laws governing growth in our state. HB 46 is a move in the right direction by narrowing down some of the loop holes that are in the present law. The interim sub-committee has spent time and money and above all, held hearings to obtain the feelings of people on this important matter. We feel that it is time that something has to be done to protect the agricultural base of our communities.

The 20 acre aplit, occcasional sale, and family transfer have been used in many instance which threaten the food production ability of the farms located in western Montan. The fragmenting of blocks of farmland - The threat of surrounding development - The uncompatible circumstances created by such elements as traffic, people, children, pets, horses and unsympathetic attitudes to the food production industry has got to stop.

The House has watered down the original bill and the Flathead Conservation District would like to go on record asking this committee to recommend to reinstate it to its original form with one ammendment removing the 40 acre portion. So that all land transfers would come under some type of public review to determine whether the sale of this land would be compatible to surrounding land use.

As a farmer I would like to speak on this subject.

I farm with my brother Bob, and our children will be the 5th generation - hopefully - to till some of the same land someday and produce the food which you and I need to exist on. Under present economic pressures and unfavorable attitudes to the prices of food commmodities it is becoming increasingly hard to justify our desire to remain in farming.

I figured out how much food our farm produces in one year. We produce enough potatoes to feed 50,000 people -- the national average of 122#/person. We produce enough barley if fed to cattle to furnish beef to 4,800 people at 120#/person a year. And also, enough wheat to make 1,386,000 loaves of bread.

If you continue to ignore this important issue of pressure on our agricultural production base, and water down H.B. 46 more or even give it an unfavorable support, you are not acting in the best interest of our society.

I, as a farmer, am getting very impatient with this game of using agriculture as the donkey and pinning the tail on it with the blindfolded attitudes of our legislature continually missing the mark and pricking away at our food production base. If H.B. 46 is not strengthened and passed many donkeys in this game are going to give up in disgust and sell out to the highest bidder.

We may be one of these donkeys - over 400 acres of the best irrigated land om the state of Montana that joins our farm was sold this winter for $3,400.00 per acre and it is already surveyed into 20 acre tracts and at the present time there is no way to control this type of disappearance of very productive land.

If our governing bodies cannot show responsibility to society why should society or the farming sector be responsible to the lacks of control threatening its existence.

A strong-solid farm economy is the most essential resource our nation can have.

Set your minds on this goal and consider these important factors.

Sincerely,

Flathead Conservation District

Flathead Conservation District
By: Herb Koenig
Herb Koenig
Supervisor

WE THE UNDERSIGNED ARE STRONGLY OPPOSED AND URGE THAT YOU <u>DO NOT PASS</u> HB-46 FOR THE REASONS GIVEN INTESTIMONY TO YOU BY THOSE REPRESENTING US IN HELENA TODAY. WE BELIEVE THIS BILL TO BE THE MOST DEVASTATING PIECE OF LEGISLATION TO LAND OWNERS AND TAXPAYERS TO COME OUT OF THE LEGISLATURE IN MANY YEARS. LISTEN TO THE VOICE OF THE PEOPLE AND <u>KILL THIS BILL!</u>

Rose S. Cruikshank [illegible] 410 So. 5 W.

Albert A. [illegible]

[illegible] - P.O. Box 767 Lolo, MT

[illegible] P.O. Box 767, Lolo, MT

[illegible] 101 [illegible] Missoula, MT

[illegible] 101 [illegible]

[illegible] Mill Creek Lolo

Joan Goller Msla

[illegible] Florence

[illegible] 1647 S. 10th, Missoula, MT

[illegible] 2001 S. 8th W

Sharon Stalcup #6 Russell Park West

David McEwen Msla

Shirley Jenkel Msla

Larry Johns Msla Mt.

Mike Buckley Msla

[illegible] Msla, Mt.

-OVER-

MR. CHAIRMAN, COMMITTEE MEMBERS
MY NAME IS PAUL NELSON. I LIVE IN POTOMAC_ -MISSOULA COUNTY. IAM A LANDOWNER AND A MEMBER OF THE BLACKFOOT FREEHOLDERS ASSOCIATION.

I STRONGLY OPPOSE HB-46. ITS ONLY PURPOSE IS CONTROL.AND I RESENT THIS ATTEMPT BY GOVERNMENT TO CONTROL MY LIFE BY CONTROLLING MY LAND.

BY MY OWN RECENT EXPERIENCE OF TRYING TO GIVE OR SELL AN ACRE OF LAND TO MY SON, I FOUND THE FAMILY GIFT ALREADY A TANGLEMENT OF RED TAPE, RULES AND REGULATIONS HB-46 ONLY FURTHER CONFUSES IT AND COMPLICATES IT BEYOND REASONABLE UNDERSTANDING. IT DEPRIVES ME OF THE RIGHT TO GIVE THIS LAND TO MY FAMILY WHEN I DECIDE TO DO SO AND NOT FIVE YEARS DOWN THE ROAD.

EXSISTING SANITATION LAWS PROVIDE FOR PUBLIC HEALTH AND SAFETY AND THE UNREALISTIC PERMIT SYSTEM NOW BEING USED TOGETHER WITH THIS IS ENOUGH REGULATION ON THE USE OF OUR LAND.

THE RIGHT TO PROPERTY IS NOT FROM THE LEGISLATURE, BUT FROM THE CONSTITUTION. THE WORD "PROPERTY" IN THE 14TH. AMMENDMENT EMBRACES ALL VALUABLE INTERESTS WHICH A MAN POSSESSES OUTSIDE HIMSELF.

A LAW IS CONSIDERED AS BEING A DEPRIVATION OF PROPERTY AND THERE FORE NULL AND VOID IF IT DEPRIVES AN OWNER OF ONE OF ITS ESSENTIAL ATTRIBUTES, DESTROYS ITS VALUE, RESTRICTS OR INTERRUPTS ITS COMMON, NECESSARY, OR PROFITABLE USE, HAMPERS THE OWNER IN THE APPLICATION OF IT TO THE PURPOSE OF TRADE OR IMPOSES CONDITIONS UPON THE RIGHT TO HOLD OR USE IT AND THEREFORE SERIOUSLY IMPAIRS ITS VALUE,

16TH. AMMENDMENT SEC. 167 CONSTITUTION OF THE UNITED STATES OF AMERICA.

I THINK THIS CLAUSE SAYS BETTER THAN ICAN THAT HB-46 SHOULD BE KILLED.

THANK YOU.

WE, THE UNDERSIGNED, ARE STRONGLY OPPOSED AND URGE THAT YOU DO NOT PASS H B - 46 FOR THE REASONS GIVEN IN TESTIMONY TO YOU BY THOSE REPRESENTING US IN HELENA TODAY. WE BELIEVE THIS BILL TO BE THE MOST DEVASTATING PIECE OF LEGISLATION TO LAND OWNERS AND TAXPAYERS TO COME OUT OF THE LEGISLATURE IN MANY YEARS. LISTEN TO THE VOICE OF THE PEOPLE AND KILL THIS BILL.

[illegible]

[illegible]

Mary Nelson

J. Burtram Nelson

R. W. [illegible]

Earl Gray

[illegible]

E. May Mann

[illegible] M. Nelson

[illegible]

WE, THE UNDERSIGNED, ARE STRONGLY OPPOSED AND URGE THAT YOU "DO NOT PASS" HB-46 FOR THE REASONS GIVEN IN TESTIMONY TO YOU BY THOSE REPRESENTING US IN HELENA TODAY. WE BELIEVE THIS BILL TO BE THE MOST DEVASTATING PIECE OF LEGISLATION TO LANDOWNERS AND TAXPAYERS TO COME OUT OF THE LEGISLATURE IN MANY YEARS. LISTEN TO THE VOICE OF THE GRASS ROOTS PEOPLE AND KILL THIS BILL.

Donna R. Zimmerman
Luther L. Zimmerman
Albert Hutchins
Paul M. Ott
Judson E. Potter
[illegible] Carman
Maybelle Carman
Vern Carman
Andrew Arnevalt
Linda Arnevalt
Eugenia F. [illegible]
[illegible]
Gary Zimmerman
Steve P. Hay
Scott W. Hinty
George E. Wiley
Anne Wiley
Chuck Harris
Richard L. Starr
[illegible]
Margie E. Braun
[illegible] Smith

WE THE UNDERSIGNED ARE STRONGLY OPPOSED AND URGE THAT YOU DO NOT PASS HB-46 FOR THE REASONS GIVEN IN TESTIMONY TO YOU BY THOSE REPRESENTING US IN HELENA TODAY. WE BELIEVE THIS BILL TO BE THE MOST DEVASTATING PIECE OF LEGISLATION TO LAND OWNERS AND TAXPAYERS TO COME OUT OF THE LEGISLATURE IN MANY YEARS. LISTEN TO THE VOICE OF THE PEOPLE AND KILL THIS BILL!

A. Wayne Whitmer

Deborah Whitmer

Henry [illegible]

[illegible]

Wendell Haupt

[illegible]

Charles [illegible]

Ralph [illegible]

Robert L. Hunter

William [illegible]

Ed A. [illegible]

Dale [illegible]

Gary Wise

Mary Jane Mast

W. Harold Mast

Glenna [illegible]

[illegible]

3/[illegible]/77

Dear [illegible] Committee,

[illegible] Mc[illegible] Esq.

My name is [illegible] McIntyre, [illegible] a [illegible] resident of [illegible] Co., Pennsylvania. I have a personal interest about land control & what is happening to it

Sec. 5 76-3-207 part D states in part "a parcel to be subdivided shall be held continuously by a person for a period of 5 years." It further states "Gifts or sales of a parcel to a [illegible] family member shall [illegible] [illegible] [illegible] [illegible]." thus letting into the [illegible] [illegible] [illegible] [illegible].

I have been very [illegible] the [illegible] potential [illegible] written into this bill. It imposes an undue burden on family members inheriting real property, particularly if the inheritor needs to use an occasional sale to satisfy the federal & state inheritance taxes. Many widows become property owners only as willed by a husband, deceased. It may even discriminate against our youth, who, considering the purchase of a land parcel, deem the risk of losing it too great. Many arguments are raised against the entire bill, [illegible] discussion the [illegible] [illegible] clause, plus others not mentioned.

I sincerely hope the Senate will seriously consider [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] bill.

[illegible] McIntyre
777-[illegible]

Stevensville Mont

HB. 46 150 Ex 2

My name is Carl Baldwin. I am a landowner and Cattle rancher in Ravalli County and am opposed to H.B. #46. as beeing too restrictive to Rural property Owners.

As a member of Ravalli County Planning Board, Past Chairman I have a hearty respect for the 8 criteria which have been developed by the State and which we use on evaluate every Subdivision to protect Montanans.

These Criteria cover: Effects on Public Health and Safety
Effects on Wildlife and Wildlife Habitat
Effects on Natural Environment
Effects on Taxation
Effects on Local Services
Effects on Agriculture
Expressed Public Opinion
Basis of Need

Beyond these needs, no overall Plan that would meet the needs of the varying economic parts of our State could be formed which wouldn't seriously aggravate conditions in some area.

The type of restrictions House Bill #46 puts on the sale of Rural Land is most unfair and wouldn't be tolerated if it pertained to the sale of City Businesses or Property.

Carl Baldwin

To- The House of Representatives.

Re: House Bill # 46

We, The Rock Creek Protective Association, representing two hundred forty five property owners, wish to go on record protesting passage of this bill. It is a complete totalitarian concept, with controlling private property as it's objective. We,as tax payers, resent this.

Bert Fried, President
The Rock Creek Protective [illegible]

Bert Fried

y/bp

The procedure for amending subdivision plats is discriminatory to owners of the early 1900 orchard tracts which were filed as subdivisions at that time. Occasional sales are ~~mostly~~ prevented because of the current cash in lieu of park regulations and minor subdivision review procedures. I am, therefore, opposed to H.B. 46.

Covenants on the land protect purchasers.
~~Time element is good~~
10 day time for governing body approval is good.
(Allowing 20 acre split.
People have been running scared. — They are afraid (concerned citizens) of the law

Helen Hudson
Rt 3 Box 66
Stevensville
777-5613

TO THE SENATE COMMITTEE STUDYING HOUSE BILL NO. 46:

Gentlemen:

As immediate past-chairman of the Ravalli County Planning Board and from the experiences the Board encountered in 1978, I respectfully submit the following suggestions to the committee. In all our deliberations, we should be careful not to lose sight of the importance of private ownership of real property with the right to buy and sell. This is a constitutional basic right, and is axiomatic in our form of government. If we compromise or infringe this right unduly, we have not served the public nor the individuals in our society. With this as a mantle over all the points to be considered, may I suggest the following items:

1. If House Bill 46 is passed with the mandatory comprehensive plan as it is outlined, many counties in the State will immediately be faced with from two to five hundred thousand dollars worth of new expense to comply with this requirement in adopting and putting together a comprehensive plan. The comprehensive plan should be left voluntary and at the discretion of the county.

2. The definition of a minor sub-division in House Bill 46 is helpful over the old law. It will give county planning boards better definitions under which to operate. There is still one difficulty as it stands, and that has to do with "proper access". At least one court action has resulted from this phraseology in the past and certainly should be cleared up before this Legislation is concluded.

3. The whole concept of parks as they apply to minor sub-divisions is ill-advised and poor legislation. Parks and the division of land should only be applied with regards to major sub-divisions. Families who have owned property for many years and determined that they need to sell off a part of their property as a sub-division should not be required to give either parks or part of the value to the county simply to retain their original right to sell their property. It is difficult enough to be persuaded that it should be done with a major sub-division, but at least it should not be imposed on the minor sub-divisi-

4. The section on summary review with a thirty-five day limit will be nearly impossible to meet by many counties whose boards are truly operating as boards without some professional staff trying to make the decisions. This time limit should be extended.

5. The bill has expanded the twenty-acre limit now to forty acres to avoid the review process. This can cause a great waste of land and is not in the public interest and should be allowed to remain at twenty acres in all areas where it is quoted.

6. It appears that the bill now intends to eliminate the public interest statement on minor sub-divisions. This is proper, but care should be taken that the bill is properly drawn to leave no doubt with regards to this provision.

7. It is somewhat difficult to determine from reading the bill if "family conveyance" is without restrictions. In any event, family conveyance should be without restriction. This area is not the one that is being abused.

8. The occasional sale has a time limit, but the mortgage release is not included. The mortgage release should be included along with the occasional sale and given a time limit. It would appear that the five years mentioned in the bill is too long a time limit for practical purposes. Two or three years would be more realistic.

Thank you very much for your consideration on these points.

Respectfully submitted,

Earle C. Wright

ECW/kg

My name is William M. Spilker. I live at 801 Harrison HELENA and am appearing on my own behalf. I am a licensed real estate broker and have been involved in land development myself and on behalf of clients. I am opposed to House Bill 46.

Under the concept of House Bill 46, virtually all divisions of land (with a few exceptions) would be subject to ~~review~~ APPROVAL by the local governing body. I believe this is an unnecessary and overly harsh infringment of property rights.

A primary objection to this legislation is the broad powers and ~~responsibilities~~ AUTHORITY given to local governing bodies, when it actually appears they have failed to accept responsibility under the existing act. The proponents of this legislation and under similar proposals in previous sessions have been quick to point out the number of land transfers made without a review and approval of the local governing body. The presumption being any transfer made without review is bad. There is ~~a broad~~ THE implication that anybody who has made an occasional sale or gift to the family is guilty of poor land use. No effort has been made to specifically identify and ~~enumerate~~ DOCUMENT those cases where ~~there is an indication of an evasion of the act~~ AN ABUSE HAS OCCURED. The accusation that a subdivision without review must be a bad subdivision is not necessarily the case. Conversely, not all reviewed subdivisions are good. Because of the numbers approach taken by the proponents of this legislation, the net effect is to penalize everyone because local authorities have failed to act responsibly.

~~It seems to me this extension of power and review authority to local governments is a very serious matter~~. The existing act clearly states certain divisions of land are exempt from review "unless the method of disposition is adopted for the purpose of evading this chapter." As I indicated above, there is an implication of guilt associated with unreviewed transfers, yet you can count on one hand the number of times anyone has been taken to task for a violation of the act.

~~There has been a failure by local authorities to act in a responsible manner and enforce the existing act in its present form~~. In short, they do not have the courage of their own convictions, and now are asking for ~~broad based power~~ MORE AUTHORITY, backed by overly restrictive legislation so they do not have to take the initiative in enforcement of the act. I believe this aspect of House Bill 46 deserves very careful consideration by your committee. The proponents and sponsors of House Bill 46 state the summary review provisions would be a streamlining of the subdivision act. I strongly disagree with that suggestion. Let me cite an example. In the current act under 76-3-609, review of five or fewer parcels, it states, "the requirements for holding a public hearing and preparing an environmal assessment shall not apply to the first such subdivision created from a Tract of Record." What the law says and how its interpreted are two different things.

Two years ago I and a partner applied for a minor subdivision. Under the law, there is no public hearing required. Yet, in our case, and other minor subdivision applications in Lewis & Clark County, the land was posted, notices were sent to adjacent landowners and the proposed subdivision was discussed at a planning board meeting. The comments made at that meeting by the public did have an impact on the outcome of the subdivision. Since ~~this bill~~ HB 46 was introduced, I called the local planning office to inquire about the public hearings aspect and was informed they hold public meetings, not public hearings. Public meetings or public hearings: the net result is the same, and it is this kind of hair splitting interpretations that can only lead one to be suspect of the wisdom of increasing authority to local government. I am suggesting that while the sponsors are well intentioned in their belief House Bill 46 would streamline the procedures, the opposite will occur.

More specifically, I am concerned about the elimination of the 20-acre exemption, ~~and~~ the occasional sale and the new section regarding cumulative effect.

The 20-acre exemption should be retained in the act. Perhaps there has been some poor land use with this exemption, but won't raising the level to 40 acres compound the problem? Removing the 20-acre exemption will ~~tend to~~ penalize agricultural interests, because it will tend to reduce the price a farmer or rancher may receive for his land. Raising the acreage limitation does not seem to be in the best interests of anyone seriously interested in proper land utilization. IF ANYTHING A LOWERING OF THE ACREAGE LIMITATION WILL RESULT IN BETTER LAND USE.

The occasional sale should be retained in its present form IN THE ACT. This feature does provide some economic advantage to small landowners who are not in the land development business. Landowners are not always prepared financially NOR ARE THEY ~~or~~ knowledgable to go through a review process. ~~Eliminating~~ DELAYING the occasional sale may adversely effect the ability of a small landowner to raise needed capital or financing.

The five year provision SUBSTANIALLY reduces flexibility with respect to an individual's real property holdings.

The new section providing for impacts from a cumulative effect places too much power in the hands of the local governing body. The section can lead to arbitrary decisions by the governing body that can have major adverse impacts on landowners. It also appears there may be unequal treatment under the law if this provision is passed since persons developing their land first would have an unfair advantage.

As a final thought, it seems the bulk of the defense of H.B. 46 has been geared to the fact it is the result of 2 years study. Despite the time and conscientious COMMITTEE efforts, I do not buy the fact that study makes a good product. In fact, upon closer examination of the interim study report, H.B. 46 IN SOME CASES reflects ~~features contrary to the finds in the study.~~ LEGISLATION INCONSISTANT WITH THE FINDINGS OF THE STUDY.

Despite the labors of the interim committee, House Bill 46 seems like a rather poor substitute for what may or may not be a bad existing situation. Something is inheritantly wrong with the SUBDIVISION law when it is amended every session since its 1973 passage, let alone the many proposals that have failed in previous sessions. It would be beneficial if a solution could be reached to reduce the polarization in favor of a consensus.

Maybe ~~a final~~ THE ALTERNATE recommendation of the INTRIM committee is in order. That is, to consider a total rewrite of the subdivisions laws.

I urge you to vote against H.B. 46.

March 9,1979

To the members of the Senate Local Government Committee;;

There are bills before this legislature having to do with land use and subdivisions that will have serious and perhaps disasterous effect on all land-owners in the rural state of Montana. Iam speaking about HB#46 and HB#81. The land use concept as being interpreted under the law in this state is not use of the land, but an exercise in social control of the people by bureaucrat maneuvering and violation of private property rights.

I think it would be a service of great magnitude if this legislature would defeat all the bills revising the subdivision laws, repeal those already on the books, scrap the planning process in the counties and let the people who have to work to pay for the land they purchase live in peace, or at leat try to.

Millions of dollars of the peoples tax monies are being pumped into Montana in the form of Federal grants through the department of community affairs and the department of housing and urban development to gain complete control of our private property and our lives. This is serious business.

Montana subdivision laws are bad laws and I do not think you can make them better by putting on a band-aid every two years when what they need is a tourniquet around the neck. All the people involved with land have to constantly change procedures and the general public is kept in a constant simmer. Leave the laws alone this session. Do the property owners in Montana a service and let HB#46 and HB81 die.

Perhaps you folks who live in the eastern part of our state are not aware of the overzealous efforts being made in the western part of Montana. Our agriculture picture has not been so good andy many people have had to get out of farming. The Rocky mountain area is a good place to live, scenery is nice and there are ehough jobs to keep most people employed. We are not the bread-basket of the nation. There was alot of land changing hands and the social engineers took

advantage of our reluctance to change and got alot of laws passed. At the time the original law was passed, there were those of us who thought that it would be a good idea to know what was going on in the county, where the new divisions would be and that the problems of sewage, roads and water would be addressed..... nothing else. Little did we know that this law was simply a foot in the door for the DCA to step in and implement all their bureaucratic directives or how ddeply it would affect us in the end. The zoners, planners and bureaucrats have been busy controlling us in the west. We were dead wrong in ever thinking that this kind of law would be good for the people of our community. What we need is a free inventive society.

Two years ago a group of us people from Potomac successfully petitioned down an attempt to zone our land in Missoula county. At that time we were criticized by the commissioners for not being informed. since then we have been working to get on top of the situation and understand what is going on about land control. It is tough to do this when you must work for your living and have to battle the bureaucrats that do it as their job. We landowners must be onlour toes at all times, read the fine print in the legal ads, and wade through a mountain of not too generously provided paperwork from the county planning office.

HB#46 grants immense power to the DCA. Last summer some of my neighbors and I attended two meetings of the interim sub-committee on subdivisions and we found out that it is not the committee who writes the laws but that it is the hired hands of government whose jobs and departments will benefit. We were surprised to discover thatthe DCA was the major source for the changes in the bill and have since decided that they want total control of the land and the people in the state of Montana. Perhaps the public would be better informed if DCA were changed to the department of everybodys business. At a closed committee meeting, where we were told we could only listen, the DCA was busy putting in their ideas but the landowners present were never asked for their opinions. Maybe the fact that we were only landowners and had travelled 125 miles at our own expense didn't matter much.

Elected officials are listening to thewrong voices. People will not foot the bill for oppressive government and picky rules to govern their lives and property much longer.. There are groups forming in the state that are apt to have a very important impact on politics in the near future. We cannot afford to bankroll any more DCA or planners or zoners or inspectors or permit issuers in Missoula County. We should refuse to accept any more federal money and then proceed to untangle our lives and property from the mountain of red tape.. By granting more broad power to the DCA as these laws propose, you are issuing the bureaucrats a signed blank check. Be cafeful what you do to us and our land--you may find they've overdrawn our account.

There are alot of pressure groups dealing out large doses of rhetoric concerning Montana land. Social engineers, university professors, environmentalists, add planners who travel at our expense and as part of their job. Do the planners have authorization from their planning boards to spend money to lobby? How about the DCA? Maybe they would do a better job of getting the work done if they would let the laws stand and obey them. Maybe the DCA is too busy determining who is immediate family as a recent article in the Missoulian points out. I have four daughters and one son. Who is to say that their life partners are not members of my immediate family and that I could not give them a piece of land if I want to? Why all the fuss over denial of this or that subdivision? The planners have not solved a single problem dealing with traffic in Missoula and with all the rules and regulations, the place seems to get uglier all the time.People who move into an area seem to get the lock the gate syndrome--they forget that someone had to move over and make room for them. We can solve our local problems, accept our new neighbors, and get along if the government would leave us alone and quit changing the law every two years. Remember, this is the United States of America and we have a right to live anywhere we choose--that includes rural Missoula County and rural Ravalli County. Let's not forget that most of us are descendents of immigrants.

The people of Montana must work together to take care of what we have. We are obligated to educate our children, maintain law and order, and defend our shors. We cannot afford to have government agencies become surrogate parents to us all and build a bigger more expensive bureaucracy so that they will ultimately have total socail control of all the Montana people. Build our roads, repair our streets, inspect our sewange and waterif you will so that we will be safe and healthybut get out of our business and let the marketplace and the law of supply and demand, and the process of natural selection determine where and who shall buy or sell land. If injustice is done, it is the courts to determine if parties are wronged.

House bills#46 and 81 should be killed by this Senate. All the subdivision laws and rules and regulations should come up for public review.. Too much has happened too fast. We cannot afford to pay for any more red tape and governmental review of our business dealings. Give us proper technology so that we can take better care of the land and inturn raise a crop of sturdy, healthy people for an even better state.

Julie Hacker
Potomac Star Route
Bonner, Montana

MR. CHAIRMAN, COMMITTEE MEMBERS
MY NAME IS VERA CAHOON, I AM SECRETARY OF THE BLACKFOOT FREEHOLDERS ASSOCIATION POTOMAC, MT. MSLA. CO. AND I REPRESENT THE 200 MEMBERS OF THAT ORGANIZATION HERE TODAY. WE HAVE NO PAID LOBBYIST IN HELENA, WE PAY OUR OWN EXPENSES TO COME HERE AND SPEAK TO YOU. WE ARE A GROUP OF LANDOWNERS ORGANIZED TO PROTECT OUR LAND AND OUR CONSTITUTIONAL RIGHTS AGAINST GOVERNMENT WHEN NECESSARY AND TO WORK WITH GOVERNMENT WHEN POSSIBLE.

WE ARE STRONGLY AND UNANIMOUSLY OPPOSED TO HB-46 FOR THE FOLLOWING REASONS.
1. WE BELIEVE IT TO BE THE WORST PIECE OF LEGISLATION TO COME OUT OF THE STATE LAW MAKING BODY IN YEARS. IF THIS BILL IS PASSED HOW WILL YOU JUSTIFY THE IMPOSSIBLE WORK LOAD IT WILL PLACE ON THE PLANNING DEPARTMENTS OF THE STATE. IN MISSOULA COUNTY WE SEE THE BUDGET TRIPLING AND THE STAFF AT LEAST, DOUBLING. AND WHO WILL PICK UP THE TAB FOR ALL OF THIS?? THE TAXPAYER, OF COURSE!!!!!

WE TOOK THE TIME TO VISIT WITH THE CHRM. OF OUR BOARD OF COUNTY COMMISSIONERS IN REGARD TO THIS BILL. HIS WORDS WERE AND I QUOTE "IF THEY PASS THIS BILL, THEN THEY HAD BETTER FIGURE OUT SOME WAY TO FINANCE IT" WE ASKED WHERE THE ADDED EXPENSE WOULD COME FROM AND HIS ANSWER WAS AND AGAIN I QUOTE "IT WILL HAVETO COME FROM THE COUNTY TAXPAYERS, THERE IS NO OTHER WAY!!!!"

CONTINUING, ALWAYS TO PUT THEBURDEN ON THE TAXPAYER WILL SOONER OR LATER PUSH HIM OVER THE BRINK AND MONTANA WILL HAVE A PROPOSITION 13.

2.CONSIDER TOO, THE PLIGHT OF THE FARMER AND RANCHER. HE FEARS THE REVIEW, BUT IT IS NOT THE REVIEW ITSELF, IT IS THE COSTLY, TIME CONSUMING BURDEN IT PLACES UPON HIM. RANCHING IS A DAWN TILL AFTER DARK OPERATION AND AT TIMES, ALL NIGHT. STOCK TO FEED, CALVING SEASON , PLANTING, HARVESTING, ROUNDUP, THEN BACK TO FEEDING AND CALVING. HE DOES NOT HAVE THE TIME TO WATCH DOG GOVERNMENT AND RUN TO HEARINGS AND MEETINGS, REVIES AND WHAT HAVE YOU. AND WHY SHOULD HE HAVE TO IN ORDER TO SELL OFF 20 or 40 ACRES TO PAY HIS TAXES OR SAVE THE REST OF HIS OPERATION. THE BEAURACRATS ALREADY HAVE HIM ENTANGLED IN MORE RED TAPE AND CONTROL THAN EVER SHOULD HAVE BEEN ALLOWED. HE HAS TAKEN CARE OF HIS LAND AND FED THE MASSES FOR MANY YEARS WITHOUT THE HELP OF THE PLANNERS AND THE ENVIRONMENTALISTS. LEAVE HIM ALONE AND HE WILL CONTINUE TO DO SO. HE WILL NOT SUBDIVIDE HIS LAND UNLESS HE IS FORCED TO DO SO. THIS BILL DOES NOT CLOSE ANY SO CALLED LOOPHOLES, IT WILL ONLY FORCE THE RANCHER TO REALIZE HIS PROFIT FROM LAND SALE RATHER THAN LAND USE WITH MORE TAXES AND CONTROL. THE REVIEW EXEMPTION SHOULD BE LEFT ALONE OR LOWERED.

HB-46WILL BE COSTLY TO THE SELLER, THE BUYER AND THE TAXPAYER. IN THE LONG RUN, NO ONE WILL BENIFIT. THE PLANNING DIRECTOR OF MISSOULA COUNTY ESTIMATED THAT A 20 ACRE PARCEL OF LAND NOW SELLING FOR $20,000, divided into TWO 10 ACRE PARCELS WOULD SELL FOR $40,000 DUE TO SUPPLY AND DEMAND UNDER THIS BILL. HE THINKS THATS GOOD, WE SAY IT COMES RIFGT BACK TO INFLATION AND HIGHER TAXES, WHEN WE WILL ALL BE TAXED ON THE MARKET VALUE.

THE FAMILY GIFT OR SALE SHOULD BE LEFT ALONE ALSO. WHY TIE IT TO A 10 5 YEAR OWNERSHIP. WE ¢ØØ¢/ THE NEED TO GIVE A HOMESITE TO A FAMILY MEMBER COULD BE NOW NOT FIVE YEARS FROM NOW. WE COULD BE DEAD IN FIVE YEARS. THE GOVERNMENT SHOULD KEEP ITS NOSE OUT OF FAMILY AFFAIRS.

THE WORD "CONTROL" LEAVES US COLD. NO ONE SHOULD HAVE CONTROL OF OUR LIVES IN THIS MANNER. TO CONTROL OUR LAND IS TO CONTROL OUR LIVES, IT IS UGLY SOCIALISM. SIMPLE INTELLIGENCE TELLS US THAT WE MUST LIVE BY SOME RULES AND REGULATIONS, BUT NOT BY TOTAL CONTROL.

THE ENTIRE SUB-DIVISION LAW SHOULD BE REPEALED AND A SIMPLE AND SENSIBLE SET OF REGULATIONS WRITTEN, IF THAT IS POSSABLE. TO KEEP BANDAIDING IT IS ONLY TO CREATE AN UNMANAGEABLE MONSTER.

THE CONSTITUTION OF THE UNITED STATES SAYS PRIVATE PROPERTY SHALL NOT BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION. THE SUB-DIVISION LAW IS IN VIOLATION OF THIS. GREAT DOCUMENT.

IN CLOSING WE CAN ONLY SAY, GENTLEMEN HEAR OUR PLEA, KILL THIS AWFUL BILL OF CONTROL OR PERHAPS BE PREPARED TO ANSWER TO THE VOTERS AND THE TAXPAYERS OF THIS S STATE.

THANK YOU.

HB 46

WE, THE UNDERSIGNED, ARE STRONGLY OPPOSED AND URGE THAT YOU "DO NOT PASS" HB-46 FOR THE REASONS GIVEN IN TESTIMONY TO YOU BY THOSE REPRESENTING US IN HELENA TODAY. WE BELIEVE THIS BILL TO BE THE MOST DEVASTATING PIECE OF LEGISLATION TO LANDOWNERS AND TAXPAYERS TO COME OUT OF THE LEGISLATURE IN MANY YEARS. LISTEN TO THE VOICE OF THE GRASS ROOTS PEOPLE AND KILL THIS BILL.

	Box 184	
Daniel B Bailey	PO Box 10	Clinton, Mt.
		Clinton, MT
		Clinton, MT
		Clinton, Mt.
	Box 72	Clinton Mt.
	Box 94	
	Box 4	Clinton, MT.
	Rural Box 256	Clinton Mont
	Box 137	Clinton, Mt.
	Box 137	Clinton, mt.
		clinton, Mont.
	P.O. Box 105	clinton, Mont.
		Clinton, Mont
	RR Box 94 2	Clinton, MT
	RR Box 94 2	Clinton, MT
		Clinton, MT
	Box 125	Clinton, MT.
	Box 103	Clinton Mt.

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Mary K. Langen Board Member

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J Douglas Fawcett Box 625 Clinton, Mont. 59825

Alberta M Fawcett Box 625 Clinton, MT 59825

Rick Bessette 520 Colorado Missoula, MT 59801

Jenia J. McFarland Box 919 Clinton MT. 59825

Leroy M Farland Box 919 Clinton MT 59825

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Sally Gillard [illegible] Montana Ave
[illegible] Gallay [illegible] Montana Ave
Bernard M. Morton Box [illegible] [illegible]
Ronald Zachariasen Box 92 Clinton Mont
William P. Jones, Box 173 Clinton Mont.
[illegible] Box 182 Clinton [illegible]
[illegible] Box 12[illegible] Clinton Mont
Kay Mothlin [illegible]
[illegible] Box 32 Clinton
James [illegible] P.O. Box 177 Clinton, Mt.
Colleen Olson P.O. Box 236 Clinton, Mt. 59825
Linda [illegible] P.O. Box 153 Clinton Mt 59825
John [illegible] Box 797 Clinton, Mt [illegible]
Steve Montelius Box 204 Clinton Mt.
Shirley Stephens Box [illegible] Clinton, Mt

Contact [illegible] [illegible] [illegible]
Commissioner [illegible] [illegible]
staff [illegible] [illegible]

Allen P. Leischner Box 66 Clinton, Mont.
Merle R Busby Box 763 Clinton Mt
Mary Purington Starkl. Box 73. Clinton, Mt.
Silas Ward Box 93 Clinton, Mt.
Elmer Keith [illegible] Clinton

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Roy O. Wood
Beulah J. Hills
William S. Hills
Rosemary Zahradnik
Betty J. Bales Hall
Mary F. Hayes
Patrick F. Hayes
Metro Bassett
Lloyd Mueke

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Steve Bowen — Potomac, MT.
Dianna Bowen — Potomac, MT
Glen W. Fack
[illegible] — [illegible]
Nancy White
Robert H. Brown — Box 337 Alder Montana
Richard [illegible] — 733 [illegible] MT
David J. [illegible] — 13[illegible] Missoula
Mary York — Potomac, MT
P. A. York — Potomac, MT.
Lillian [illegible]
Ren Deschamps — [illegible] Rd [illegible] 59841
Diane L. Edwards — Potomac, MT.
Donald C. Buchanan
Ralph K. Spencer — 1245 W. Broadway #11 Missoula MT.
Joe [illegible] — 1335 Cooper St. Missoula
Roy S. [illegible] — Box 356 Milltown
JOHN F. [illegible] — 1015 STEPHENS — [illegible]
Norman C. Schmitz — 23[illegible] Cumberland [illegible] Mont.
Glen L. Munde — [illegible], MT
Sue Munde — [illegible], MT
Joe La[illegible] — Potomac, MT

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June E. Wilhelm
Mrs. Gary Anderson
Stuart Anderson
Kenneth Paul
Jim Walker
William Caswell
Charles E. Goff
Ella Barnes
Tom Collins
Connie Condon
Danny J. Holling
Nathan Hill
Eleanor Emerson
Martha B. Sparks
Leonard G. Moore
Paul Emerson
Hettie G. Cooper
R. M. Grizzo
Charles W. Roll - Condon, Mont.

Pete Rovero
Gary H. Morton
Pearl M. Morton
Amy Rovero
Laurence T. Parker
H. A. Carlson
Earl H. Sweet
Florence Holmes
Bert Seaman
Cary Melton
Lester Wilhelm
James E. Fowler
James T. Flood
W. E. Renwick
James J. Taft

Condon area
taxpayers
Missoula Co

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Jackie M. Taggart
Jamie R. Bailey
Ronald D. Bailey
Karen A. Nelson
[illegible]
[illegible]
Wells & Colleen
Elmer Cahoon

REALTY
LAND CONSERVATIONISTS

Mr. Chairman, committee members:

My name is Paul Brunner. Iam a realestate broker operating a brokerage in Missoula. I am also directly involved in the ownership and operation of three cattle ranches in western Montana. I am a business man and believe very strongly in free enterprize and the profit motive.

I also believe that no one has the right to profits derived from the destruction of our preciuos land. I believe that no person has the right to personal gain at the expense of existing lifestyles and communities.

I would like to address several issues in testifying in favor of House Bill 46. The first of these issues is the opposition, which seems to be led by the Montana Association of Realtors. I would like you to know that this group is not being truely represented here today, nor has it been in the past. The people who control the association are either developers or involved in the sale of subdivision land. The majority of Realtors are not in the subdivision business; they sell

325 East Broadway
Missoula, Montana
59801

Phone: Days: (406) 728-4230
Nights: (406) 793-6340

in-town properties. If these salespeople value their jobs and membership in the Association of Realtors, they will not speak in favor of better control of subdivision, even though many are sympathetic! When, as a Realtor, I spoke out about the need to control and preserve our resource, I was fired from my job, told that no other broker would hire me, and expelled from the Realtors for unethical conduct. This is what happens to the realtors who would husband their resource and guarantee that something will remain to sell in the future.

I would next like to address a myth of long standing which is that our state subdivision law stops all subdivision and imposes economic hardships on developers. As regards the claim that the law stops subdivision, let me say unequivocally that this is an outright lie; a lie fathered and supported by real estate developers. Developers are still able to plat and sell tracts of any size, IF they meet the criteria outlined under the law.

As to the economic hardships, I find little sympathy for the developer who cries about extra costs when he is operating on a mark-up of 500-2000%. I find it especially difficult to be sympathetic when I know that these restrictions are there not to hurt the developer, but to protect the buyer, the land, wildlife, and the existing area residents.

In the past two years there have been tens-of-thousands of acres sold in

twenty acre parcels with the express intent of avoiding the current subdivision law. Some of these tracts were in areas suitable for subdivision; MOST WERE NOT! Most were on high-quality agricultural land, land with poor drainage, or land that was critical for wildlife. All of the tracts affected schools and property taxes locally. Please remember; at no time in the history of our country has a subdivision ever lowered taxes or "broadened the tax base".

By raising the limit to and including forty acres we will place a limit on developers. Developers will be forced by laws of economics and supply and demand to sell parcels under forty acres. They will be forced to meet sensible, bearable restrictions which will benefit the people, the land, and our wildlife.

By closing some of the loop-holes in the current law, which House Bill 46 would do, we will avoidthe type of chicanery which recently occured in the Florence area; and I submit the following article from the Missouian on "Hidden Valley". I won't comment on the conspiracy, so evident in this case, for fear of becoming apoplectic. Suffice it to say that the Florence-Carlton School is faced with the possibility of 290 new homes spewing children into their already over-crowded school. Why didn't they have a chance to review and comment on this subdivision?——because of loop-holes which this bill would close.

Montana is a beautiful place. It is filled with beautiful people (and a few land developers), not as yet effected by the high-speed lifestyles of Los Angeles or New York. We have productive agricultural land that still allows the living of a down-home, rural lifestyle. We have clean water and fine hunting and fishing. Most important, we still have something long-gone in high population areas——a measure of individual freedom that accompanies a sparse population.

Your decision here today could well have a strong impact on the style of life your grandchildren will live. I suggest that if you want them to live wall-to-wall with their neighbors, fight eight lanes of traffic en route to work, and live on maalox, that you oppose this bill or move to Los Anglees. If you'ld like to leave them something of real value, pass House Bill 46 and leave them MONTANA.

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in the Hidden Valley development east of Florence. Harkin had been directed by state Attorney General Mike Greely to look into the possibility that subdivision activity there had been illegal. Meyer's report was completed earlier this year but was not released by Harkin until last week.

The Hidden Valley development originally consisted of 1,450 acres platted as 71 parcels, each slightly more than 20 acres in size. A large number of the parcels were sold at almost the same time last year and then immediately divided into five-acre lots as minor subdivisions.

Meyer's job was to check into the possibility that there might have been some common plan to avoid the more stringent public review requirements of major subdivisions by developing the area as one large group of minor subdivisions.

Under state law, before a major subdivision can be approved, county officials must conduct a formal public hearing on the subdivision, assess the subdivision's probable environmental impact and determine whether the subdivision would be in the public interest.

At the time the land divisions in question were made, Ravalli County officials believed none of those review requirements applied to minor subdivisions — land splits which result in the creation of five or fewer lots, each containing less than 20 acres.

Since then, the state Supreme Court has said that counties must develop written findings of fact concerning whether a proposed subdivision would be in the public interest, regardless of the number of lots in the subdivision, but minor subdivisions continue to be free of environmental assessment and formal public hearing requirements.

Many of the persons who purchased land in the Hidden Valley development bought the 20-odd-acre parcels with the

ble intention of dividing them into five-
re lots and reselling them for a profit,
leyer said.

He said the possibility that there
ight have been a plan to avoid the re-
ew requirements of the subdivision act
as raised for three reasons:

- Most of the Hidden Valley parcels
ere sold within one or two weeks after
ey were first offered for sale.

- Some of the buyers appeared to
ve business or social relationships.

- During a two-month period in late
977 and early 1978 more than 20 propos-
ls for minor subdivisions were submit-
ed to the Ravalli County Planning
oard by buyers of the parcels in Hid-
en Valley and owners of adjacent land.

The Hidden Valley property was ini-
ally purchased from Wilbur Hensler by
William E.S. Reely, John L. Reely and
Delbert C.F. Ashmore, all of Missoula.
t was then assigned to Hidden Valley
Ranches, a partnership of the three

men, in October 1977. In December 1977, the partnership was amended to include Eldon J. Nicholson and Milton Datsopoulos, also of Missoula.

Meyer concluded that the partnership was able to sell the 20-plus acre parcels rapidly because of extensive promotion and advertising campaigns; because the land was "not overly expensive," selling generally between $1,500 and $2,000 an acre; and because the purchase terms were "not overly burdensome."

Some of the purchasers were employees of a common employer, some had the same mailing addresses, some were relatives and others lived in the same neighborhood or were social acquaintances, Meyer said.

He said, however, that he could find no evidence of a common loan or agreement among them. He said he could find no evidence of a common plan or scheme to file the minor subdivisions, and he said all individual sales transac-

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Paul Brenna

Western Montana

Hidden Valley developers cleared of

(Continued from page 1)

that this method was recommended was due to the fact that minor subdivisions allegedly received quick approval by the county at the time."

Also, Meyer said, minor subdivision proposals are reviewed only once a month by the county planning board, which explains in part why the subdivision proposals were submitted at the same time.

Although Meyer concluded that he could find no evidence of conspiracy to avoid the subdivision laws, he said that in the course of his investigation, he did turn up instances of apparent improper use of the family exemption and occasional sale provisions of the subdivision act.

Under the provision for family exemptions, a parcel of land less than 20 acres in size may be sold or given to a member of the landowner's immediate family without the transaction undergoing the public review procedures required for subdivisions. Montana codes do not define "immediate family," but an opinion from Attorney General Greely limits the term to spouses and children. An attorney general's opinion has the force of law.

Under the provision for occasional sales, one division of a tract may be made during any 12-month period without the division undergoing public subdivision review.

In his report, Meyer cited as one apparent improper use of the family exemption provision a case in which James and Mary McFarland transferred one lot to Mary McFarland's sister and one to McFarland's daughter and son-in-law. Meyer said that since the sister and son-in-law are not members of the immediate family, "the divisions are apparently illegal."

In another case, Meyer said, Robert Sanderson divided three tracts of land into two parcels each. In each case one of the two lots was a conveyance to his wife, Terry, the report said.

"Since...Ravalli County subdivision regulations provide that only one conveyance of a parcel of land to any one member of the grantor's immediate family is eligible for the family exemption, it would appear as though at least two of the above divisions are illegal," he said.

Meyer also listed various certificates of survey which were drawn up as family exemptions for transfer of land to an unnamed family member. The landowners he listed were Marsha Lowe and Lawson Lowe, both of Missoula; Jerry LeClair, Missoula; Harry Johnson, Billings; and Robert Sanderson.

Meyer also listed a certificate in which Robert and Margaret Twist of Stevensville created three parcels for family exemption transfers. The certificate listed the names of the family members the land was to go to but did not give their relationship, Meyer said.

He also suggested further investigation into why several land transactions which were first proposed as minor subdivisons were switched to family exemptions or occasional sales. The landowners involved in those transactions are Martin Eitel and Billy Lou Eitel, Missoula, and E.J. Nicholson.

The family exemption or occasional sales provisions of the law may not be used for the purpose of avoiding subdivision review, according to Meyer. He said in his report, however, that since Ravalli County subdivision regulations did not contain criteria for determining when such exemptions were being used to evade the Montana Subdivision Act, prosecution of violators would be difficult.

The state Department of Community Affairs required all counties to adopt such criteria by March 1, 1978, but the Ravalli County commissioners did not adopt the criteria until March 1 of this year.

Finally, Meyer and Harkin have suggested other areas of subdivision regulations and procedures that they believe should be clarified or investigated:

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Comments before
Local Government Committee
George McCallum, Chairman

March 10, 1979

I am Philip L. Baden, retired businessman, rancher with five years active experience in applying the subdivision laws and regulations as a member, the president of the County Planning Board. The Bitterroot Chamber of Commerce has asked me to bring their views to your attention.

House Bill 46 does close the "loopholes" found in existing law having to do with minor subdivisions and exemptions.

This proposed bill would enhance the regulatory agencies' control by exercising control over EVERY aspect of land transfer in Montana and thereby:

1. Strangle economic activity in real estate, building and related supply and service businesses.

2. Increase unemployment which is a constant problem, especially for our youth.

3. Increase the cost of homesites and homes.

4. Increase the number of government employees, the number of regulations, and, equally important, increase the cost to the taxpayers of local and state government.

Closing "loopholes" is one thing, but there is no mandate to the legislature to ABORT its standing fight to limit government.

Economic stability and growth can only be assured by absence of governmental constraint, not by increased governmental pressure.

The history of good government is the limitation, not the increase of government.

It is important to recognize the invisible dogma promoted by this issue from the philosophical standpoint. We totally reject the concept that we are simply caretakers of the land and thus mere pawns in the hands of bureaucratics.

Now, to address the required Public Interest Assessment. This seeks to have dictatorial power over Montanans in the name of public interest; such power does not protect us but violates us! The term "public interest", on close examination, is in fact meaningless: every group in Montana, including business, labor, taxpayer, rancher, farmer, and land owner is the public; everyone, including the producers, is a consumer and a member of the public; everything that exists is the environment and of public interest. Everyone is a member of one or another minority, but a part of public interest. The Public Interest Assessment, therefore, is not only impossible to determine fairly, but administratively is a costly can of worms.

While the attachment details the recommended changes, line by line, in summary, we do support the following:

1. Retain the present definition of a subdivision.
2. Modify the provisions of a master plan.
3. Clarify the definition of a minor subdivision.
4. Eliminate the park requirement and public interest statement for a minor subdivision.

Philip L. Baden

961 3634
961 9411

Enclosure

ENCLOSURE TO TESTIMONY OF P. L. BADEN

Specifically, the Bitterroot Chamber of Commerce urges the following changes be incorporated in H.B. 46:

Page 2 strike on line 21 through 25.

Page 3 strike on line 1 through 5.

Page 4 retain on line 11 through 17,
strike on line 18 through 19.

Page 5 insert on line 19 following "provided", on private or public roadways, on line 19 strike "and where if", insert NO, strike on line 20.

Page 6 retain all of lines 10 and 11.

Page 7 retain on line 1 through 8,
retain on line 15.

Page 8 substitute on line 14 the numeral 1 for "5",
strike on line 25 "and that".

Page 9 strike lines 1 and 2,
substitute on line 9 the numeral 1 for "5",
strike on lines 9 and 10 "and which is outside the platted subdivisions".

Page 11 retain lines 17 through 23,
strike lines 24 through 25.

Page 15 retain lines 21 through 23.

Page 17 strike lines 10 through 25.

Page 18 strike lines 1 through 2,
strike on line 16 the word "several" and insert 3 or more.
strike on line 17 the words "so many" and insert 3 or more.
strike on line 18 the words "same general" and insert 1/4 mi

MONTANA DEPARTMENT OF HIGHWAYS
Helena, Montana 59601

MEMORANDUM:

TO: The Local Government Committee of the Senate

FROM: Department of Highways

RE: The effects of that portion of House Bill No. 46 which would repeal the Department's exemption from surveying requirements.

DATE: March 7, 1979

Section 4 of House Bill No. 46, beginning on page 6 of the Bill, strikes subsection (1) of Section 76-3-201, MCA, which exempts from survey requirements those divisions of property that could be created by an order of a court pursuant to the law of eminent domain. The effect of striking this subsection is to require a Certificate of Survey for every tract of land the Department of Highways acquires.

Under present law, the Department can acquire property by reference to its filed right-of-way plans. For the plans, the right-of-way is surveyed, but not necessarily by a registered land surveyor. The present procedure of the Department is more extensive than minimum compliance with the law would require. The Department prepares and files with each deed an individual plat showing the right-of-way acquired. This plat, however, is not equal to a Certificate of Survey. The plat is not necessarily prepared by a registered surveyor nor is it signed by the landowner.

Under the bill, each parcel of right-of-way would require that a Certificate of Survey be prepared. To prepare a Certificate of Survey, the services of a registered land surveyor would be required usually twice for each parcel. The first time would be during the Department's regular survey in order to find or establish and record all corners required to establish each property boundary that might eventually be intersected by one of the right-of-way lines. At least two corners would be required per parcel and the estimated average number of necessary corners would be three to four per parcel. Based upon past experience with section corner surveys, the first phase of additional survey work would cost an estimated $3,000 per parcel if done by consultants.

The project would thereafter proceed as usual until such time as the parcel is ready to be acquired and the deed prepared. To insure that construction would not obliterate the established points, the parcel would best be surveyed upon completion of construction. It is estimated that approximately ten points would need to be established and recorded per parcel. The additional estimated cost for this phase of the survey is $2,000 per parcel if done by a consultant. Thus the total additional cost is estimated at $5,000 per parcel, if the work is done by consultants.

If this work could be done by Department personnel, the cost would probably be reduced two to three thousand dollars per parcel. However, at this time the Department does not have nearly enough registered land surveyors to perform the work. Because of the salary levels of state surveyors and because surveyors are presently in demand, the Department is not able to retain an adequate number of registered surveyors to do this work.

The Department purchases approximately 500 parcels of right-of-way per year. If the Department were to retain consultants to do the additional work, the added cost would be about $2,500,000. This figure may be somewhat high; however, it is based upon past experience with consulting firms.

Another problem the Department would experience in addition to increased costs, should the bill become law in its present form, is delay. If the Department were required to implement the legislation by July 1, 1979, that requirement probably could not be met. At the present time there are approximately 700 parcels in various stages of acquisition. By July there probably would be an additional 200 parcels. There would not be sufficient time nor a sufficient number of consulting firms for completing Certificates of Survey on approximately 900 parcels. The consultant agreements would also have to be negotiated, approved by the Federal Highway Administration, signed, and the work completed. Future acquisition would probably be delayed for at least six months while currently pending parcels were resurveyed to meet the requirements of the legislation. The Department is currently purchasing right-of-way and doing design based upon surveys prepared by both Department crews and by half a dozen or more private consulting firms. These surveys would not meet the requirements necessary to prepare Certificates of Survey. Thus, before deeds could be recorded pursuant to this legislation, the parcels would have to be resurveyed.

Although the Department's acquisition may in some cases cause a problem for the owner of the remaining property, the money paid for the land should be sufficient to cover the

inconvenience. Under the proposed legislation, in order to sell the remainder, the landowner would have to have that property surveyed and a Certificate of Survey prepared. The Certificate of Survey prepared by the Department would be of the parcel taken, not the parcel remaining. The Department generally offers to buy what are called non-economic remnants, but in most cases landowners are unwilling to sell them.

For its purposes, the Department does not need a more precise survey for the area it is acquiring, since it does not have significant boundary or monumentation problems. The requirement of a more precise survey of the area taken does not solve the adjoining landowner's problems either because they too would be required to have a precise survey performed.

Another problem that may be caused by the legislation is that the requirement of precise survey would force the Department to determine where the property line is between two abutting owners. Where there is a dispute between the landowners as to the boundary line, the State would then be projected into the position of favoring one owner over another. Present procedure in disputed areas is to accept each landowner's assertion as to the location of the boundary even though the Department may have to pay for the same narrow strip of land twice. Because a precise survey will not usually end a boundary line dispute, the Department may find itself in litigation between two private parties.

The Department respectfully requests that the bill be amended so as to continue the present exemption for Department of Highways' right-of-way acquisition and for this purpose, proposes the attached amendments to House Bill No. 46.

BG/elm/5U

Attachment

Amendment to House Bill No. 46

(proposed by the Department of Highways)

Page 6, line 9
Following: "~~20-acres~~"
Reinsert: ", exclusive of public roadways,"

Page 9, lines 14 and 15
Strike subdivision ~~(f)~~ (G) in its entirety.

Page 7, lines 4-8
Reinsert subdivision (1) in its entirety.
Change numbering of (1), (2), and (3) back to (2), (3), and (4).

Comments before the
Local Government Committee

George McCallum, Chr.

March 10, 1979

I am Ruth Applebury, retired insurance secretary and present member of the Ravalli County Planning Board. I would like to present some of my personal views on H. B. 46.

Montana Land Use Law does need;

a) A clearly worded, indisputable definition of a minor subdivision;
b) Park requirements need to be defined and brought within reason. For instance, Ravalli County has gone from under $50 cash in lieu of park donation on a minor subdivision to $1,200 to $6,000 since August of 1978.
c) The Montana Supreme Court's ruling of Public Interest Statement should be deleted from the minor subdivision requirements.
d) Amendments to subdivision plats creating one additional lot should not be under the minor subdivision review requirement, but should be handled comparably to the occasional sale of land not situated within a platted subdivision.
e) Proper and clearly defined "family" for proper gifting is needed. Mr. Greely has defined family as being only those members living together in the same household.

H. B. 46 does not address or correct any of these deficiencies in the law. I propose that the bill be killed for the following reasons;

1) Government Control

The premise, that government control of the use of land is justifiable ONLY because of problems and concerns caused by density of habitation, is born out by the fact that any size parcel of ground used strictly for agriculture has been held exempt from controls. Up to now, density greater than one house per 20 acres is cause for concern. However, parcels as small as one acre per home with individual sewer and water system (7 homes per acre with community sewer and water) are presently allowed if created one parcel each year. It is called "Occasional Sale." If a property owner uses his God-given right to share land with his children, it is called "Gift To Family;" or, if he must have a lot free and clear of other debt for the purpose of securing a building loan, it is called "Mortgage Release." These are all good, legitimate exemptions from government control, but they are being called "Loop Holes." H.B. 46 effectively closes these so-called 'loop holes', if you see them as such. But, if you see them as proper areas to be held free from control, H.B. 46 deprives land owners of their proper rights.

It cancels the justification of government control for the purpose of

controlling density because it controls division of all parcels, regardless of size, density or use. It controls land for the pure conviction that all land should be under government control, re;

Page 2 - the required master plan

Page 6 - lines 11 and 20 - deletes 20-acre limit on control

Page 17, line 10 - gives the rules for subdivisions consisting exclusively of parcels larger than 40 acres.

I believe that he who controls the land, controls the people.

2) Cost

Counties with all voluntary planning staffs would be harder hit by the cost of implementing H.B. 46 than would those counties with existing paid staffs. For instance, Missoula County already budgets $350,000 + annual expense for land planning and control, whereas Ravalli County uses less than $17,000. We have been inquiring into the cost of having a master plan drawn up and have received bids ranging from $15,000 to $ 30,000. After drawing up a plan, if it were to be accepted by Ravalli County citizens, we would have the cost of County zoning to implement the plan and then the cost of enforcing the zoning to maintain the plan. Multiply these figures by the number of counties to estimate the cost to the state.

Also, H.B. 46 calls for a housing inventory listing existing housing by type and number of units. A conservative estimate of this inventory would be $30,000 in Ravalli County alone. Many people estimate this much higher.

The bill calls for a public services inventory and it could be equally costly, even if held to the suggested subjects. However, this inventory is not to be limited to the suggested subjects and any study deemed to be required could be added. For instance, 20 years ago I found a kangaroo mouse. If I could be persuasive enough and persistent enough, to convince the County Governing Body that it would be to the county's ecological advantage to know what has happened to the kangaroo mouse population in Ravalli County during the past 20 years, such a survey could be required under this section of the bill.

A sizeable staff is presently manning the Helena office of the Department of Community Affairs overseeing controls on 20 acres or less. Adding jurisdiction over all land would balloon the department's personnel and increase the costs to the State in direct proportion.

In addition to the direct cost of implementing the bill, we would have less definable costs because of restricted land sales, throttled building programs, loss of jobs and loss of population. Montana has always been low on the list of prosperous states. We cannot afford this bill.

For these reasons, I believe H. B. 46 should be given a "Do NOT Pass" recommendation.

Ruth Applebury

Ruth Applebury

961 4246

Flathead Conservation District

55 W. Reserve Drive
KALISPELL, MONTANA 59901 PHONE 752-6042

Senate - Local Government Committee

The Flathead Conservation District has as its number one goal in their Long Range Plan -

Preserve Prime Farmland

Subject: HB 46

Two years ago the legislature saw the need for improvement in the existing laws governing growth in our state. HB 46 is a move in the right direction by narrowing down some of the loop holes that are in the present law. The interim sub-committee has spent time and money and above all, held hearings to obtain the feelings of people on this important matter. We feel that it is time that something has to be done to protect the agricultural base of our communities.

The 20 acre aplit, occcasional sale, and family transfer have been used in many instances which threaten the food production ability of the farms located in western Montana. The fragmenting of blocks of farmland - The threat of surrounding development - The uncompatible circumstances created by such elements as traffic, people, children, pets, horses and unsympathetic attitudes to the food production industry has got to stop.

The House has watered down the original bill and the Flathead Conservation District would like to go on record asking this committee to recommend to reinstate it to its original form with one ammendment removing the 40 acre portion. So that all land transfers would come under some type of public review to determine whether the sale of this land would be compatible to surrounding land use.

As a farmer I would like to speak on this subject.

I farm with my brother Bob, and our children will be the 5th generation - hopefully - to till some of the same land someday and produce the food which you and I need to exist on. Under present economic pressures and unfavorable attitudes to the prices of food commmodities it is becoming increasingly hard to justify our desire to remain in farming.

I figured out how much food our farm produces in one year. We produce enough potatoes to feed 50,000 people -- the national average of 122#/person. We produce enough barley if fed to cattle to furnish beef to 4,800 people at 120#/person a year. And also, enough wheat to make 1,386,000 loaves of bread.

If you continue to ignore this important issue of pressure on our agricultural production base, and water down H.B. 46 more, or even give it an unfavorable support, you are not acting in the best interest of our society.

I, as a farmer, am getting very impatient with this game of using agriculture as the donkey and pinning the tail on it with the blindfolded attitudes of our legislature continually missing the mark and pricking away at our food production base. If H.B. 46 is not strengthened and passed many donkeys in this game are going to give up in disgust and sell out to the highest bidder.

We may be one of these donkeys - over 400 acres of the best irrigated land in the state of Montana that joins our farm was sold this winter for $3,400.00 per acre and it is already surveyed into 20 acre tracts, and at the present time there is no way to control this type of disappearance of very productive land.

If our governing bodies cannot show responsibility to society, why should society or the farming sector be responsible to the lacks of control threatening its existence.

A strong-solid farm economy is the most essential resource our nation can have.

Set your minds on this goal and consider these important factors.

Sincerely,

Flathead Conservation District

Flathead Conservation District
By: Herb Koenig
Herb Koenig
Supervisor

COMMENTS ON H.B. 46

H. B. 46 has some good provisions that streamline the review process (see attached DCA sheet). However, those provisions streamlining the act are just "peanuts" compared to the DCA's attempt to increase the acreage definition to 40 acres or more, severely limit the occasional sale and family exemption plus their addition of a "cummulative effect" section beginning on page 18, line 15.

In our opinion, the major defect in this bill is that virtually every land division will have some type of review (except for the severly restricted exemption section) by the local planning boards and governing bodies. There is no way that they are equipped to handle all these reviews in a timely manner. The DCA claims that today the planning boards are only reviewing 30% of the land divisions. Yet, even with this 30% figure they seemed to be swamped. Delays are the order of the day, rather than the exception. We submit that, under current operating procedures the planning boards have neither the manpower or the budgets to do what this bill askes them to do. In addition, the State Division of Planning has lost, through the appropriations subcommittee, 3 full time employees. At best, the Division of Planning will only be able to give minimum assistance to the local governments who will most certainly be pleading for help and guidance. Without strong guidance, we will probably end up with 56 (counties) different ways to interpret this Act.

We were successful in getting automatic approval sections (35 days for minor and 60 days for major subdivisions) into the bill. We hope they stay. However, they really don't mean much. The planning boards can still ask the developer to extend the time limit. The developer will agree to lifting the time limits every time because the alternative is the denial of his subdivision on grounds like the effect on agriculture, wildlife, taxation, etc.

The second major defect (and its a big one) deals with where a person can use the occasional sale and family exemptions. If this bill passes, subdivisions of 20, 40, 60, etc., acres will be defined as platted subdivisions (the review is only for access and easements, but they are still platted subdivisions). The exemption sections for the occasional sale and gift to the family (page 8 lines 10 through 19 and page 9 lines 5 through 13) state that you can use these exemptions only outside platted subdivisions. In effect, if this bill passes, as is, these legitimate exemptions will be wiped out.

Another major concern is the new "cummulative effect" section found on page 18 beginning on line 15. This section states that after the first minor subdivision review (which really cuts the red tape) the governing body can review any additional minor subdivisions as if they were major subdivisions. I'll bet my entire years salary that every minor subdivision, after the first one, will be reviewed as major subdivisions. The environmentalists, the planners and the League of Women Voters will see to that!

we contend that this section does not allow equal treatment under the law. The first developer submitting a minor subdivision must be given all the benefits (35 day review, no public hearing, waiver of public interest criteria, etc.). Yet the second developer, with the same type of minor subdivision could be forced to undergo a full blown review (public hearings, environmental assessments, etc.). We feel, there are serious legal questions regarding fair and equal treatment under this section.

Should the Senate Local Government Committee be able to hold the acreage definition to "less than 20 acres", amend the occasional sale and family exemption from 5 to 2 year holding period and amend out completely Section 13, then H.B. 46 would be a good bill. We hope this can be accomplished.

STREAMLINING PROVISIONS OF H.B. 46

1. Subdivisions within the following categories must be given summary review:

   a. FOR THE FIRST MINOR SUBDIVISION FROM A TRACT:

      1) the governing body shall act on the plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.

      2) the requirement for a public hearing, preparation of an environmental assessment, state agency review and a finding of public interest shall be waived.

   b. FOR A SUBDIVISION OF PARCELS LARGER THAN 40 ACRES:

      1) the requirements are waived for:

         a) preparation of an environmental assessment and state review;
         b) public hearing;
         c) a finding of public interest

      2) the governing body must approve the preliminary plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.

      3) the local review shall be limited to a determination that appropriate access and any easements are properly provided.

   c. FOR SUBDIVISION WITHIN THE COPORATE BOUNDARIES OF A MUNICIPALITY:

      1) the requirements are waived for:

         a) an environmental assessment and state agency review
         b) a finding of public interest

      2) a hearing must be held

   d. FOR SUBDIVISIONS WITHIN AREAS COVERED BY A MASTER PLAN CONFORMING TO SECTION 76-1-606(3):

      1) the requirements are waived for:

         a) an environmental assessment and state agency review
         b) a finding of public interest

      2) a hearing must be held

The above summary review procedures provide a very expeditious review and approval process for subdivisions which are unlikely to create significant problems.

2. Minimum requirements would be set for master plans which are used to deny non-conforming subdivisions or to waive review procedures for subdivisions in areas covered by a master plan. Those master plans would have to contain, as a minimum, a land use plan, a housing plan and a public services plan.

3. If the governing body fails to act on a plat within the 60 or 35 day time limits the subdivision receives automatic approval.

Under the present law if the governing body does not act within the legal time limits, the subdivision either must wait for local officials to take action or file a court action to force them to act. House Bill 46 would not affect the right of the subdivider and governing body to mutually agree to a time extension.

SUMMARY OF HOUSE BILL 46 (Third Reading Version)

1. The acreage limitation would be deleted from the definition of "subdivision" (under current law only parcels of less than 20 acres are reviewed).

Deleting the acreage limitation would remove the present incentives to avoid review by dividing land into parcels 20 acres or larger. Parcels of this size are of little public benefit: they do not contribute to the housing supply because most people cannot afford such large parcels nor do they really want that much land; large parcels are a wasteful use of land; the increased miles of roads and utility lines needed to serve such low density developments create additional costs to property owners and taxpayers.

2. H.B. 46 would provide exemptions to create parcels:

   a. For agricultural purposes;
   b. For divorce or estate settlements by court order;
   c. That are subject to the law of eminent domain;
   d. By relocating common boundary line;
   e. For cemetary lots;
   f. To provide security for construction financing;
   g. As an occasional sale within 12 months where the landowner has held recorded ownership for five years or more; the exempted parcel may be further divided only through the subdivision review process.
   h. For transfer to each member of the immediate family within 12 months where the landowner has held recorded ownership of the land for five or more years; the exempted parcels may be further divided only through the subdivision review process.

Under H.B. 46 farmers and ranchers could use the agricultural exemption to sell agricultural land of any size without review by entering into a covenant with the buyer. The buyer later could convert the land to non-agricultural use under the subdivision review process. Agricultural land which can be described as an aliquot part of a government section (20 acres and larger) need not be surveyed. A farmer, rancher or anyone who has owned land for five or more years may take one occasional sale and transfer one parcel to each member of his immediate family each year without review. Requiring local review of the further division of 'occasional sales' or 'family transfers' would not interfere with the original landowner's right to use these exemptions but would prevent the abuses of creating sizeable land developments by using the exemptions in combinations. Persons buying a tract under a contract for deed may divide a parcel off the tract to offer as security for a construction loan.

These bodies having the power of eminent domain, such as utilities, counties or the State Highway Department may buy land without local review; however, under H.B. 46 the land must be properly surveyed before it is purchased.

3. Proposed subdivisions within the following categories must be given summary review as outlined:

a. FOR THE FIRST MINOR SUBDIVISION FROM A TRACT:

1) the governing body shall act on the plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.
2) the requirement for a public hearing, preparation of an environmental assessment, state agency review and a finding of public interest shall be waived.

b. FOR A SUBDIVISION OF PARCELS LARGER THAN 40 ACRES:

1) the requirements are waived for:

a) preparation of an environmental assessment and state review;
b) public hearing;
c) a finding of public interest

2) the governing body must approve the preliminary plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.
3) the local review ahll be limited to a determination that appropriate access and any easements are properly provided.

c. FOR SUBDIVISION WITHIN THE CORPORATE BOUNDARIES OF A MUNICIPALITY:

1) the requirements are waived for:

a) an environmental assessment and state agency review
b) a finding of public interest

2) a hearing must be held

d. FOR SUBDIVISIONS WITHIN AREAS COVERED BY A MASTER PLAN CONFORMING TO SECTION 76-1-606(3):

1) the requiresments are waived for:

a) an environmental assessment and state agency review
b) a finding of public interest

2) a hearing must be held

The above summary review procedures provide a very expeditious review and approval process for subdivisions which are unlikely to create significant problems.

4. Minimum requirements would be set for master plans which are used to deny non-conforming subdivisions or to waive review procedures for subdivisions in areas covered by a master plan. Those master plans would have to contain, as a minimum, a land use plan, a housing plan and a public services plan (see attachment A).

5. If the governing body fails to act on a plat within the 60 or 35 day time limits the subdivision receives automatic approval.

Under the present law if the governing body does not act within the legal time limits, the subdivision either must wait for local officials to take action or file a court action to force them to act. House Bill 46 would not affect the right of the subdivider and governing body to mutually agree to a time extension.

6. For subdivisions located contiguous to cities or towns the municipality must find that deisgn and location of roads and central water and sewer facilities are compatible with those of the city before the county commissioners may approve the plat.

This provision would assure that development occurring adjacent to a city would have streets and water and sewer facilities that are compatible with those of the city, should the land ever be annexed or city services extended to serve the development.

ATTACHMENT A

Proposed Master Plan Requirements

(3) For purposes of this section and 76-3-505, 76-3-604, and 76-3-609(3), the master plan must contain:

(a) a land use plan that identifies geographic areas suitable for residential, commercial, or industrial land uses or sets forth community policy regarding quality or location of urban development;

(b) a housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units;

(c) a public services plan that identifies existing public service facilities including but not limited to systems for water supply, sewage treatment and solid waste disposal, parks and recreation, schools, roads and bridges, and police and fire protection; the capactiy of each; and identifies the needs for improvement or expansion of those services and facilities.

Outline of Major Provisions of HB 46, Third Reading Copy, as Proposed by the Interim Subcommittee on Subdivisions and Amended by the House

March 10, 1979

I. Master Plan Qualifications. (Section 1)

Specifies qualifications for a master plan when local government officials use it as a basis of approval or denial of subdivisions or for certain summary review. For these purposes the plan must contain:

A. A land use plan that identifies geographic areas suitable for residential, commercial, or industrial land uses or sets forth community policy regarding quality or location of urban development;

B. A housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units;

C. A public services plan that identifies existing services and facilities including but not limited to supply systems, sewage and solid waste disposal, parks, roads and bridges, and police and fire protection; the capacity of each; and identifies needs for expansion of those services and facilities.

II. Definitions. (Section 2)

A. The following terms have been amended:

1. "Occasional sale" - clarifies definition to provide for one division for sale within 12 months of the preceding sale [subsection (6)]

2. "Preliminary plat" - "utility easements" added to list of elements required [subsection (9)]

3. "Subdivision" - removes 20-acre limitation [subsection (16)]

B. The following term has been deleted:

1. "Irregularly-shaped tract of land" - this term is no longer used in the act [old subsection (6)]

C. The following terms have been added:

1. "Minor subdivision" - this term is used in several sections and was defined elsewhere in the law; [however, the original definition is modified to clarify that where park dedication is required it must be met by cash in lieu of land - [subsection (11)]

2. "Relocating a common boundary line" - this term is defined because of past confusion over whether new parcels could be created by such a relocation [subsection (14)]

III. What Constitutes a Subdivision. (Section 3)

This section remains the same except for deletion of the "less than 20-acre" limitation.

IV. Exemptions from all review. (Section 4)

The following exemptions were deleted from this section:

A. Divisions created by court order and divisions that could be created by the law of eminent domain [subsection (1)]

B. Divisions created by the reservation of a life estate [subsection (5)]

C. Divisions created by lease or rental for agricultural purposes [subsection (6)]

V. Exemptions from review but subject to survey requirements - exceptions. (Section 5)

The following major changes were made in the exemptions to the review process:

A. If the landowner has owned the land for at least 5 years, one conveyance per year may be made to each immediate family member; any subsequent division of the exempted parcel must be reviewed under the summary review procedure; [subsection (b)]

B. When a person utilizes the exemption for agricultural purposes residential, commercial, and industrial uses or structures will be excluded for parcels of less than 40 acres; [subsection (c)]

C. The occasional sale exemption is subject to the same restrictions as for the family conveyance; [subsection (d)]

D. When the exemption for relocating common boundaries is used, the survey must be filed as an amended plat; [subsection (e)]

E. An exemption for divisions made according to an order of a court of record pursuant to the Uniform Marriage and Divorce Act or the law of decedent's estates, provided that the case number is noted on the certificate of survey, is added; [subsection (f)]

F. An exemption for divisions that could be created pursuant to the law of eminent domain is added. These last two exemptions exist under present law in a section [76-3-201] that did not require survey of those parcels.

By moving these exemptions, court-ordered divisions and divisions that could be created by eminent domain, including divisions for state highways, are now subject to survey requirements. [subsection (g)]

VI. Section 6 simply contains one minor housekeeping change.

VII. Summary review for certain subdivisions. (Section 7)

The subdivisions meeting any of the following conditions will be reviewed under summary review procedures, and local governments must provide for this review in their subdivision regulations.

A. Minor subdivisions

B. Subdivisions consisting exclusively of parcels larger than 40 acres

C. Subdivisions within an incorporated municipality or within areas for which a qualified master plan has been adopted (see section 1)

VIII. Section 8 deletes the requirement that locally adopted subdivision regulations superceding DCA promulgated regulations shall be no less stringent. DCA argued that small communities needed this flexibility and the Subcommittee agreed.

IX. Submission of preliminary plat for review. (Section 9)

New provisions are made for the governing body of a city or town to provide input into subdivisions contiguous to municipal boundaries or separated by a public road. County officials may only approve such subdivisions when a written finding is submitted by the municipality that the subdivision will be compatible with the existing facilities of the municipality. [subsection (2)(b)(iii)]

X. Review of preliminary plat. (Section 10)

A. Preliminary plats must be reviewed for conformance to a qualified master plan (see section 1).

B. New provisions are added to provide for automatic approval of subdivisions if the governing body fails to act on them within the prescribed time periods. [subsection (2)]

XI. Hearings on preliminary plats. (Section 11)

A. Notice must be sent by certified mail. [subsection (2)]

B. The requirement that a planning board's recommendation on a subdivision must be submitted in writing to the governing body not later than 10 days after the public hearing is deleted. This provision placed undue hardship on rural planning boards that met only once a month. [subsection (3)]

XII. Summary review procedures. (Section 12)

Summary review procedures are as follows:

A. For minor subdivisions:

(1) the subdivider must submit a preliminary plat that complies with local regulations. The governing body shall act on the plat of the first minor subdivision from a tract within 35 days of submittal in accordance with 76-3-610; automatic approval occurs upon failure to act by the governing body within 35 days;

(2) the governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision;

(3) the requirements for holding a public hearing, preparing an environmental assessment, and finding that the subdivision is in the public interest do not apply to the first minor subdivision created from a tract of record;

(4) second and subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

B. For subdivisions consisting exclusively of parcels larger than 40 acres in size:

(1) through (4) of the above apply, except that either a preliminary plat or a final plat may be submitted;

(5) review and approval are limited to a written determination that access and easements are properly provided.

(C) For subdivisions within a municipality or within an area covered by a qualified master plan:

(1) a preliminary plat must be submitted and acted upon except that preparation of an environmental assessment and a finding that the subdivision is in the public interest are not required; failure to act constitutes automatic approval;

(2) a final plat may be approved only after review pursuant to 76-3-611.

XIII. Impact resulting from cumulative effect of several minor subdivisions. (Section 13)

This section allows the governing body to decide if "multiple minors" have major impact and to review them as a major subdivision.

XIV. Repealer of one section. (Section 14)

Section 76-3-210 in which certain subdivisions are exempted from an environmental assessment is repealed. The language from the section is reworded in section 76-3-609.

The above bill was reviewed several times, section by section, by the Interim Subcommittee and Local Government Committee members at several meetings. Public comments were solicited and considered in preparing this final version.

Mar-10
12:30 (105) (Boone Darby) HB-46

[illegible], [illegible]

Honorable Elmer [illegible]
Montana State Senate
Helena, Montana 59601

Dear Elmer;

I have studied H.B. 46 rather thoroughly, and I would like to give you some comments that could, perhaps, help you understand how many of your constituents in Ravalli County see it. For your convenience, I am giving you page and line numbers along with comments.

Section 1 - 76-1-606

(1) Page 1, Line 16; Striking "shall" and using "when" implies a master plan is to be mandatory. I see that many thoughts are unsatisfactory. The law should be specifically clear. If a County is to be given the opportunity to have or not have a comprehensive plan, the word "if" or "whenever" would be more suitable wording and therefore better.

If "when" is not interpreted to mean "in the event you have the required master plan", the rest of H.B. 46 has no meaning. The whole bill has been based on the master plan concept. If a County does not have one, none of the Sections 76-1-605, 76-1-604 or 76-1-609 are relevant-therefore, "when" is to mean "you must have a master plan."

(2) The master plan must identify "geographic" areas.
(a) A map must be compiled showing the exact locations of where residential, commercial and industrial activities will be allowed. Fighting to kill this was at issue put you in Helena, Elmer. Are you still representing the people who helped you get elected?

QUESTION: Who will prepare this map and make the choices? Will the local planning boards be assigned the task and trust? If not, have you thought of the great extra expense for those counties who are not now paying thousands of dollars each year on planning staffs?

(b) calls for a complete inventory of existing housing by type and number. What does "type" mean? Single family, duplex, multi-family? Frame, brick, tent, ?

(c) calls for a complete inventory of public services and a list of those services is given. The inventory is "not to be limited to" the the list, so, any gung-ho County or State official who gets carried away with a desire for data can add to the list. Elmer, have you thought of the cost of these inventories? It could run into millions

of dollars.

(4) Section 4 [illegible] power is being enlarged. [illegible] and deny approval of it.

Section 2 76-3-103

(11) Page 5 Line 11

The definition of "minor subdivision" is still vague and subject to varied interpretations. It should be clarified by adding "by private or public roadways" immediately following the word "provided". In the same line 17 of page 5, following "and where", the word "if" should be changed to "no" park dedication is required. The words "it shall be met by cash in lieu of land donation" should be deleted, and the following words added, "no public hearing and no public interest shall be shall be required."

(16) Page 6, lines 10 and 11; the words "[illegible] less than 10 acres exclusive of public roadways." have been deleted and should be returned. Government must not be allowed to control all the land. It is a page of Socialistic move and only [illegible] from State ownership of the land.

Section 3 - 76-3-104

Page 6, line 20 - "less than 10 acres" should be returned. Striking these words puts all land under this act. It is imperative that they be returned to the bill.

Section 4 76-3-201

Page 7, Lines 16 and 17 - return Agricultural purposes to the exemptions. Controlling agricultural land has no place in the effort of controlled development.

Section 5 - 76-3-207

Page 8, Line 14 - "5 years" should be changed to "1 year".

Every change made in the subdivision laws has increased the cost of developing land. These costs are presently well above the capability of the average landowner. This is especially true in Kandiyohi County where practically of land required additional [illegible] of the land" employment by both Mr. and Mrs. Landowner. To force developers to financially able to buy and create developments to pay taxes on land for five years before they can hope for any kind of return on their investment is to paralyze land sales, and thereby, stop the real estate, building, and related businesses. This means the ruin Kandiyohi County into a total depression.

Comment - continued

The thought that there is impact from small minor subdivisions is fine. However, because many minor subdivisions are prepared by small developers, and no developer knows that there are not the only one in the area, the planning board has no way of knowing how many subdivisions are going to be presented in an area, we have this question; Will subdivision 1, 2 and possibly 3 enjoy minor subdivision review without financing an assessment and then subdivision 4 pay it all? Of course, that is far from equitable and could be taken to court on the grounds of discrimination. Will the County or the State pay for such assessments? Perhaps that is the proper answer since the assessment is for the general public good, therefore, it is reasonable that it should be paid for by the public.

Thanks for listening, Elmer.

Sincerely,

Ruth Applebury

Missoula, Montana
February 27, 1979

To the members of the Senate Local Government Committee: There are bills in this legislature having to do with land use that are very serious to the people of the State of Montana and should not BECOME LAW. There are others that have merit. Those that should not become law are LORY'S HOUSE BILL #46, Scully's house bill on the same subject, and Hurwitz's Bill #81. All of these effect property rights one way or another. Because of the bad bills proposed it seems necessary to speak out. In fact, House bill #46 is such a bad bill that it will hurt the proponents if it becomes law. There are organized groups in Missoula County now that are out to secure the political defeat of those Missoula County representatives that voted for these bills, especially House bill #46.

Many of us are tired of having history professors tell us what is good land use. We do not believe they even understand the definition of LAND. Land, in Webster's unabridged dictionary, has many definitions. However, in land use planning it is generally accepted to be the natural resource, that is the soil and the plants that grow upon it. It is not, in land use planning, concerned with space alone. This is what all of the bad bills actually consider. They are not land use bills. They are growth control bills. If the philosophy of these bills prevailed, many of us would not be here. Certainly my parents would not have been able to homestead 160 acres in Eastern Montana shortly after the turn of the century. I am particularly upset when I hear one respected history professor make the statement over statewide television, that there never has been an acre of land successfully re-claimed in the State of Montana. I consider myself particularly qualified to dispute that statement as I was a graduate of the agricultural college, brought the first crested wheatgrass seed from the experiment station to Eastern Montana, saw the reclammation of the Northern Great Plains into again productive grasslands, and spent at least ten years of my life conducting studies of condition and trends of livestock and wildlife ranges, learning to identify and recognize the importance of a host of plant species, and attempting to write meaningful management plans based on logical geographic units. Let me comment here that House bill #46 talks about county land use plans by GEOGRAPHIC UNITS. The preferred definition of geography is the soil and the plants that grow thereon. I have yet to see a county land use plan that even remotely considers either one! The very fact of the present number and boundary delineation of the various counties precludes any county land use plan from being meaningful. Montana once operated quite well, even with the horse and buggy, with thirteen counties. For POLITICAL reasons, the number was expanded to 56. Rarely do county lines conform to major drainages where there might be some homogeneity of soils and plants to facilitate any meaningful plans for the actual use of those lands. First, counties should be re-structured and reduced drastically in number. Nevada runs with seven counties. Oregon, with almost 3 million people, functions with 30 senators. IF WE HAD LESS SENATORS AND REPRESENTATIVES, THERE WOULD BE FEWER BAD BILLS AND MORE TIME TO WORK ON THOSE THAT ARE MEANINGFUL.

Now, let's talk about property rights. Many of us took an oath to defend the Constitution of the United States. More recently, all of you in the Legislature took an oath to uphold the Constitution of the State of Montana. Article V of the Bill of Rights of the Constitution of the United States states in part " .....;NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION". (Capital letters mine). The Constitution of the State of Montana reiterates this under Section 29, page 8, which states: "PRIVATE PROPERTY SHALL NOT BE TAKEN OR DAMAGED FOR PUBLIC USE WITHOUT JUST COMPENSATION TO THE FULL EXTENT OF THE LOSS HAVING FIRST BEEN MADE TO OR PAID INTO COURT FOR THE OWNER....."(Capitals mine). As I read these, all of those restrictions and regulations that defeat the right of the owner to buy and sell his land as he sees fit and that actually deflate the value of the land, ARE UNCONSTITUTIONAL ON BOTH COUNTS. That is, unless there is a public nuisance or actual damage to the health of the neighbor. Certainly, the requirement for park dedication under the subdivision laws is a taking of property and, in my mind, unconstitutional under both constitutions. There is no doubt in my mind that this will some day be declared and governing bodies be sued for return of the property and damages. If the public needs the park, THE PUBLIC, should have the opportunity to PURCHASE at the fair market value. The SELLER should not be penalized. The park requirement has resulted in undeveloped tracts scattered everywhere that are nothing but weed patches and the poorest kind of land use.

There seems to be a phobia that small tract management is poor land management and harmful to agriculture. Nothing could be farther from the truth. While working as a bureaocrat, from which I hope I have reformed, (no-one is a greater teetotaler than a reformed drunk!) we once conducted a soil survey on a section of land in the Frenchtown area. We came up with 80 different major soil types, each one implying a different type of land management. On this basis alone, 640 acres divided by 80 would imply units of 8 acres! This on soils alone. Then compound this by the realization plant communities are even more complex and intergrading. HOW IN THE NAME OF HEAVEN CAN ANYONE IN HIS RIGHT MIND ADVOCATE THAT A RECTANGULAR AREA OF 40 ACRES, OR ANY OTHER RECTANGULAR TRACT REGARDLESS OF SIZE, IS GOOD LAND USE. Nature just does not work that way! Much has been said about the effect of small tracts on agriculture and on wildlife. Montana wildlife is "going to the dogs!" It is not the resident on the small tract but the hordes of dogs running loose that are harmful to wildlife. The dog is only a few generations removed from the wolf. Read Jack London's "Call of the Wild." On my small tract, the deer retreat when my neighbors turn their dogs loose. Have you ever witnessed dog packs running deer and killing calves at the outskirts of the larger towns? How many grouse nests do they destroy? Did you know of the newcomer citizen in the Yaak community who bragged in a bar about killing 44 deer last winter? When someone suggested that was a waste of meat, his reply was that he had four big dogs to feed. Is anyone so naive as to think they forget the taste of venison or that individual would

quit poaching deer when spring came? A sheepherders greatest asset was his dog, but a sheep-killing dog didn't last long. The greatest boon to wildlife would be to legislate against loose dogs and again give authorities that right to shoot game or stock-killing dogs on sight. Many species of wildlife, particularly chinese pheasants, thrive with additional fence rows and cover. White-tailed deer thrive in clearings in the timber. A solid stand of lodgepole pine has often been said to be a biological desert. On my 4.6 acres, 800 trees per acre is a normal, healthy, productive stand of mixed species that with thinning and pruning will produce the maximum growth increment. This is 3680 trees of mixed species, each tree of which can require some attention each year. I am above average in health and stamina and I learned to work as a boy. I can hardly take care of so many trees, yet I will show the stand to anyone as an example of good timber management. In talking about agriculture, I'm afraid our professors of history overlook HORTICULTURE, SYLVICULTURE, FLORICULTURE, and all the other types of culture that are part of agriculture. How many acres does it require for a profitable raspberry patch?

Let's talk about agricultural production for a bit. I have a friend in the Bitterroot, in the general area of the highest controversy, that is a retired air-force colonel. He is the first to admit that he had no background in agriculture, farming if you please. Yet his commercial production of high quality vegetables for human consumption is phenomenal, and incidentally profitable on 5 acres. The Lawyer Nursery below Plains produces a large volume of nursery products, including tree seedlings for large areas of coniferous forest, on a very few acres. In Wisconsin, at a like latitude, a few years ago an experiment proved it possible to graze 25 head of grown dairy cows on 4 acres divided into 4 1-acre pastures and rotated each week and between pairs of pastures night and morning. In Oklahoma, herds of beef cattle are born and brought to slaughter without ever having grazed. They are kept in paddocks and the forage mowed and hauled to them in their feed bunks. Thus they do not trample and compact the soil and maximum production is obtained. I am afraid some of our historians are misled into thinking the West of Charlie Russell was good land use and resulted in the greatest beef production. There is a certain truth to the statement that "AN ENVIRONMENTALIST IS A GUY THAT BOUGHT HIS LOT LAST YEAR!"

Now let's talk about "big-brotherism" and cost. I am afraid our legislators, many of them, are unaware of the sentiment that is sweeping the nation to get big government out of our hair and return to some semblance of free enterprise. I find this in my travels throught-out the nation. Proposition 13 in California was a revolt of the people against government intervention. It was NOT AN ATTEMPT TO GET RID OF ESSENTIAL GOVENMENT SERVICES. But it worked, and is having a profound effect across the nation. Note the change in the words and melodies of some of the most liberal legislators when they begin to think about re-election.

No county in the state has the time and the staff to review ALL LAND SALES which is about what some of these bills would amount to, even by "summary review". I looked up

"summary" and I guess it means "brief". Yet, what in the HELL is brief and who is going to do it? The effect it will have is that if the commissioner likes you, he'll O.K. the deal!

I am afraid the proponents and sponsors of at least some of these bills are not aware of some of the most basic principles of land surveying. They all talk about preliminary plats prepared by a registered land surveyor and some of them for REVIEW by another registered land surveyor. This accounts for the hordes of people in the office of the County Surveyor in Missoula County. Anyone who has ever worked with a metes and bounds description knows the test is whether or not the description CLOSES. Retracing steps on the ground is totally un-necessary, yet it is being done. Furthermore, I doubt many are aware of the potential surveying costs in mountainous country. I was quoted a bid of $3000 to locate the four outside corners of an 80 acre tract for a lady in California, as much as the land was worth at the time. When they talk about the survey and plat, I wonder if they know that the corners and quarter-corners are on the perimeters of the section and that the general land office never sets corners in the center of sections, the corner that is common to the four contained 160 acre or quarter-section tracts. All of these bills seem to disregard describing parcels of land as aliquot parts of sections and the age-old principle that adjoining owners could agree to corner locations by mutual consent.

I wonder if the proponents are aware that a movement is growing, Statewide, for free-holders to band together and express themselves. Their wishes will be expressed at the ballot-box, regardless of party affiliation. A similar group is off and running in Alaska. I wonder also if proponents are aware, especially during this legislature, that many of the people who attend hearings, both in and out of Helena, are often those on food stamps and welfare who have nothing better to do and, since they do not own property, do not foot the bill. Those who have worked hard to make a living and provide for their families are out of the state during the winter months and trust their legislators to guard their interests.

States are beginning to wonder about all this zoning and planning. Some are beginning to throw out the subdivision laws and zoning plans. The City of Houston has none, yet it is almost a model city. I read the first draft of the Montana Subdivision Laws a few years ago while on the plane en route to Washington, D.C. I said then they were unworkable and would only result in prohibitive costs to the young couple wanting to build a home. I believe history will prove me correct. Let's try to live with the law as it is rather than try to patch a bad harness.

KILL THE BILLS !!

George R. Wolstad

For Board Mtg.

TOTAL [illegible] CERTIFICATES OF SURVEY

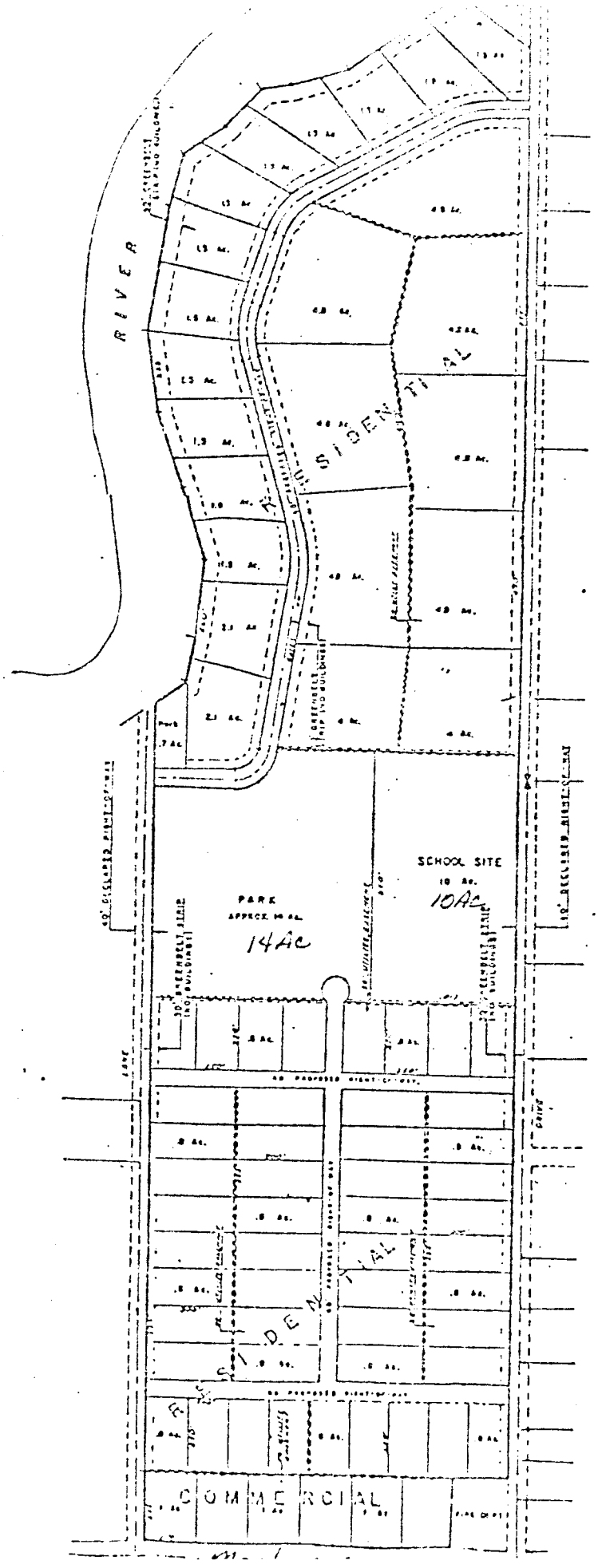
Dec. 22, 1976 - Dec. 22, 1977

EXEMPTIONS	TOTAL ACRES	NUMBER OF PARCELS	AVERAGE ACRE PER PARCEL
Agricultural or Over 20	12,192.4	456	26.73
Occasional Sale	2,525.0	446	5.66
Family Conveyance	423.9	107	3.96
Mortgage Release	146.4	57	2.56
Court Order	78.1	1	78.1
Total =	15,365.8	1067	14.40

TOTAL PARCELS & ACREAGE
July 1, 1973 - Dec. 22, 1977

CERTIFICATE OF SURVEY			SUBDIVISION			
ACRES	PARCELS	AVERAGE ACRE PER PARCEL	ACRES	LOTS	AVER. ACR. PER LOT	TOTAL
~~13,045.9~~ 41,924.4	~~1,949~~ [illegible]	~~13.36~~ [illegible]	3,916.38	4,050	.96	~~[illegible]~~ 45,840.78

stp/ee
1-16-79



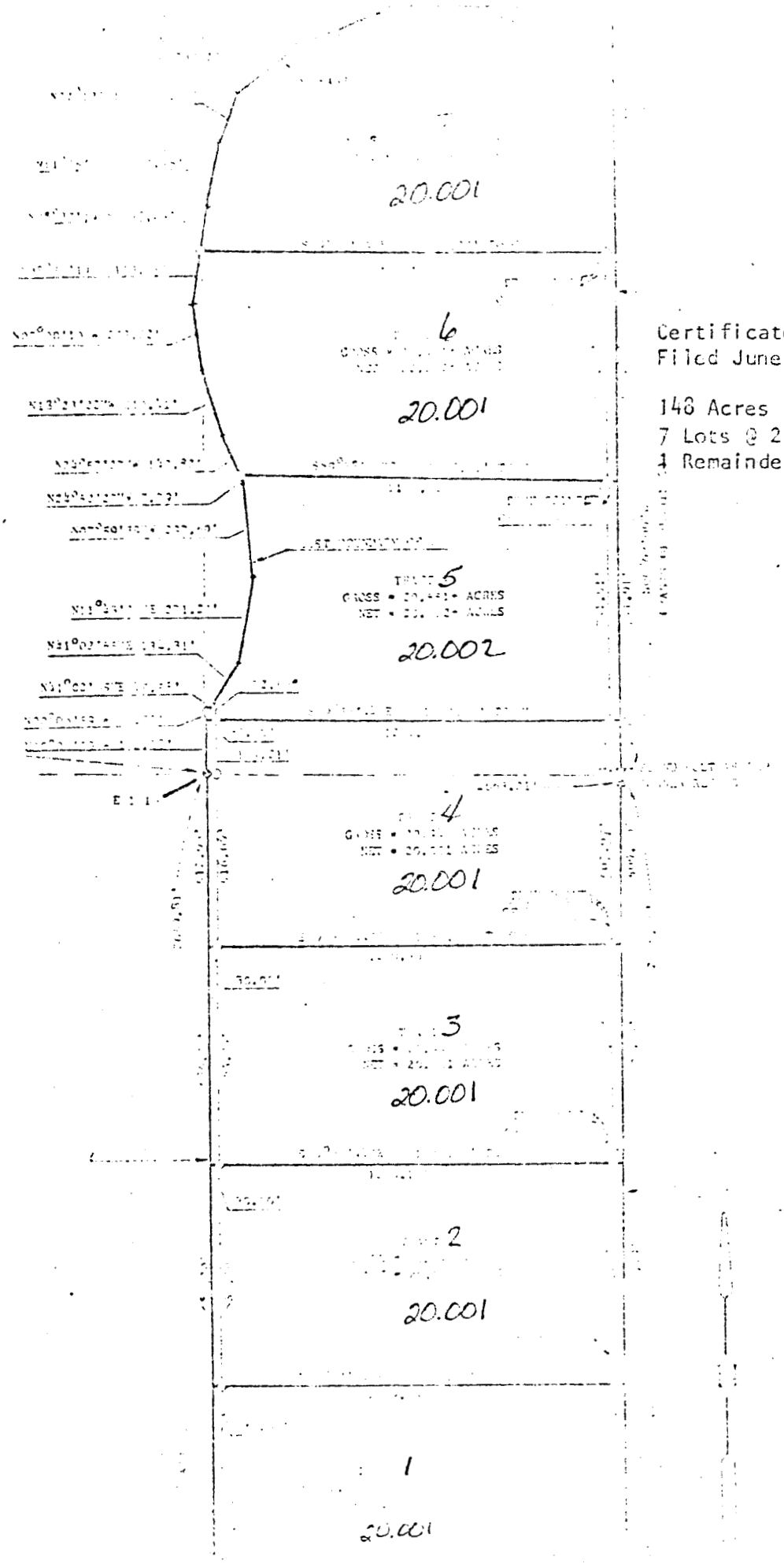
Subdivision Plan
submitted for revie..
4-21-78

Public hearing on
5-10-78

Denied by Planning Board
5-10-78
Application withdrawn by
developers 5-18-78

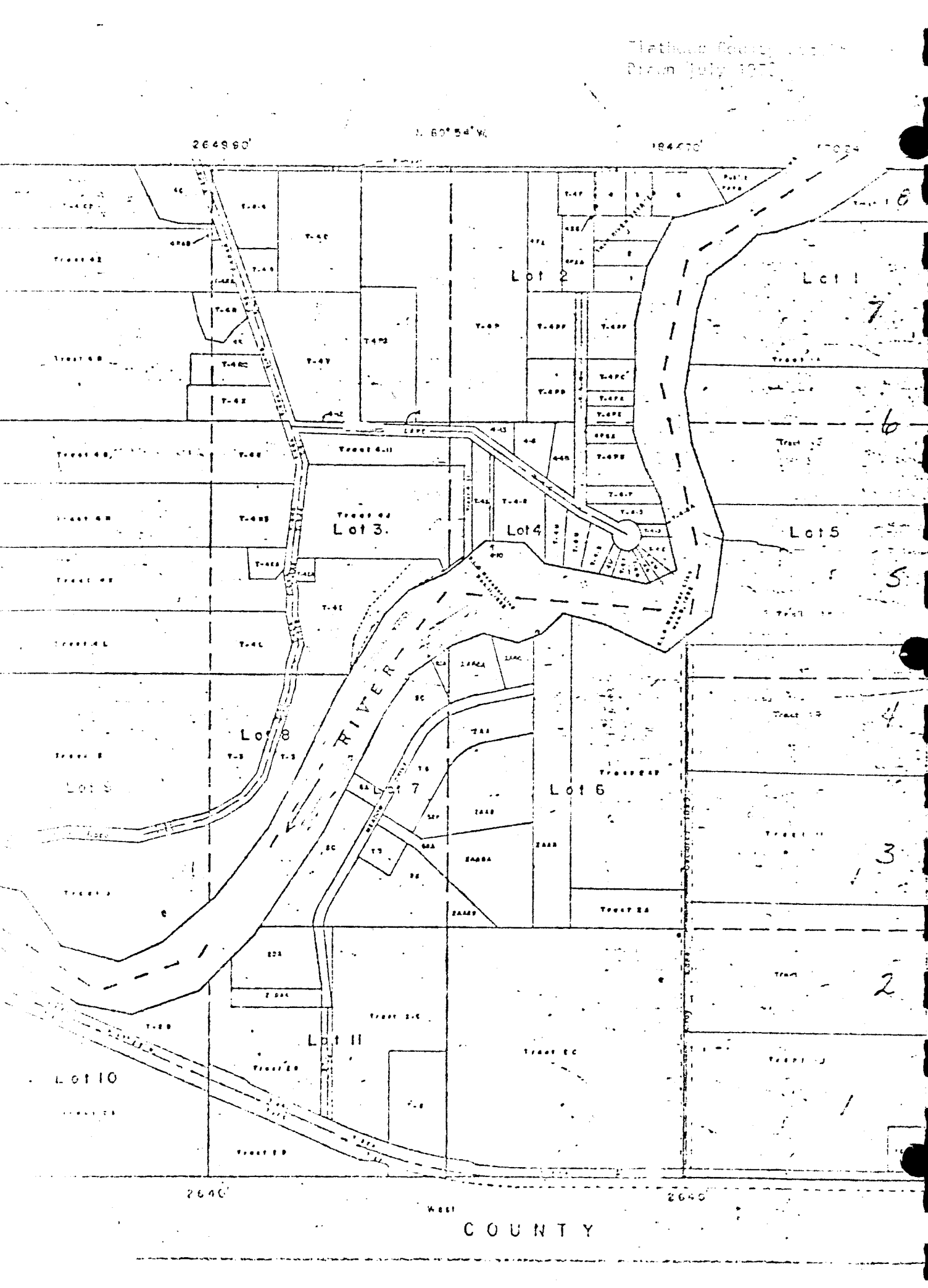
148 Acres
73 residential lots
6 Commercial lots

No Local Court Action
Taken



Certificate of Survey
Filed June of 78

148 Acres
7 Lots @ 20 Acres +
1 Remainder of 2.951


Flathead County
From July 1972
N. 89° 54' W.
2649.90'
1844.70'
Lot 1
Lot 2
Lot 3.
Lot 4
Lot 5
Lot 6
Lot 7
Lot 8
Lot 9
Lot 10
Lot 11
RIVER
2640'
2640'
West
COUNTY


N. 89° 54' W.
1844.70'
Lot 2
Lot 3.
Lot 4
Lot 5
Lot 6
Lot 7
Tract 4-11
Tract 4J
Tract 1K
Tract 1G
Tract 1E
Tract 1D
Tract 2AB
Tract 2A
Tract 2-E
Tract 2C
Public Trail
T-4F
T-4PG
T-4PF
T-4PC
T-4PD
T-4PA
T-4PE
4PBA
T-4PB
T-4-7
T-4-5
T-4-3
T-4Z
T-4-8
T-4S
T-4U
4-15
4-4
4-6B
4-10
4FA
4FAA
2ARC
2AA
2AAB
2AAA
2AABA
2AABC
2AACA
5C
5B
5BA
5BB
T5
T-2
Fire
Fire
RIVER
G.L.O. Meander Line
Meadow Drive
Declared 1896
Lane
Drive
2640'
N. 0° 3' W.
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"26"

Outline of Major Provisions of HB 46, Third Reading Copy, as Proposed by the Interim Subcommittee on Subdivisions and Amended by the House

March 10, 1979

I. Master Plan Qualifications. (Section 1)

Specifies qualifications for a master plan when local government offici use it as a basis of approval or denial of subdivisions or for certain summary review. For these purposes the plan must contain:

A. A land use plan that identifies geographic areas suitable for residential, commercial, or industrial land uses or sets forth community policy regarding quality or location of urban development;

B. A housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units;

C. A public services plan that identifies existing services and facilities including but not limited to supply systems, sewage and solid waste disposal, parks, roads and bridges, and police and fire protection; the capacity of each; and identifies needs for expansion of those services and facilities.

II. Definitions. (Section 2)

A. The following terms have been amended:

1. "Occasional sale" - clarifies definition to provide for one division for sale within 12 months of the preceding sale [subsection (6)]

2. "Preliminary plat" - "utility easements" added to list of elements required [subsection (9)]

3. "Subdivision" - removes 20-acre limitation [subsection (16)]

B. The following term has been deleted:

1. "Irregularly-shaped tract of land" - this term is no longer used in the act [old subsection (6)]

C. The following terms have been added:

1. "Minor subdivision" - this term is used in several sections and was defined elsewhere in the law; [however, the original definition is modified to clarify that where park dedication is required it must be met by cash in lieu of land - [subsection (11)]

2. "Relocating a common boundary line" - this term is defined because of past confusion over whether new parcels could be created by such a relocation [subsection (14)]

III. What Constitutes a Subdivision. (Section 3)

This section remains the same except for deletion of the "less than 20-acre" limitation.

IV. Exemptions from all review. (Section 4)

The following exemptions were deleted from this section:

A. Divisions created by court order and divisions that could be created by the law of eminent domain [subsection (1)]

B. Divisions created by the reservation of a life estate [subsection (5)]

C. Divisions created by lease or rental for agricultural purposes [subsection (6)]

V. Exemptions from review but subject to survey requirements - exceptions. (Section 5)

The following major changes were made in the exemptions to the review process:

A. If the landowner has owned the land for at least 5 years, one conveyance per year may be made to each immediate family member; any subsequent division of the exempted parcel must be reviewed under the summary review procedure; [subsection (b)]

B. When a person utilizes the exemption for agricultural purposes, residential, commercial, and industrial uses or structures will be excluded for parcels of less than 40 acres; [subsection (c)]

C. The occasional sale exemption is subject to the same restrictions as for the family conveyance; [subsection (d)]

D. When the exemption for relocating common boundaries is used, the survey must be filed as an amended plat; [subsection (e)]

E. An exemption for divisions made according to an order of a court of record pursuant to the Uniform Marriage and Divorce Act or the law of decedent's estates, provided that the case number is noted on the certificate of survey, is added; [subsection (f)]

F. An exemption for divisions that could be created pursuant to the law of eminent domain is added. These last two exemptions exist under present law in a section [76-3-201] that did not require survey of those parcels.

By moving these exemptions, court-ordered divisions and divisions that could be created by eminent domain, including divisions for state highways, are now subject to survey requirements. [subsection (g)]

VI. Section 6 simply contains one minor housekeeping change.

VII. Summary review for certain subdivisions. (Section 7)

The subdivisions meeting any of the following conditions will be reviewed under summary review procedures, and local governments must provide for this review in their subdivision regulations.

A. Minor subdivisions

B. Subdivisions consisting exclusively of parcels larger than 40 acres

C. Subdivisions within an incorporated municipality or within areas for which a qualified master plan has been adopted (see section 1)

VIII. Section 8 deletes the requirement that locally adopted subdivision regulations superceding DCA promulgated regulations shall be no less stringent. DCA argued that small communities needed this flexibility and the Subcommittee agreed.

IX. Submission of preliminary plat for review. (Section 9)

New provisions are made for the governing body of a city or town to provide input into subdivisions contiguous to municipal boundaries or separated by a public road. County officials may only approve such subdivisions when a written finding is submitted by the municipality that the subdivision will be compatible with the existing facilities of the municipality. [subsection (2)(b)(iii)]

X. Review of preliminary plat. (Section 10)

A. Preliminary plats must be reviewed for conformance to a qualified master plan (see section 1).

B. New provisions are added to provide for automatic approval of subdivisions if the governing body fails to act on them within the prescribed time periods. [subsection (2)]

XI. Hearings on preliminary plats. (Section 11)

A. Notice must be sent by certified mail. [subsection (2)]

B. The requirement that a planning board's recommendation on a subdivision must be submitted in writing to the governing body not later than 10 days after the public hearing is deleted. This provision placed undue hardship on rural planning boards that met only once a month. [subsection (3)]

XII. Summary review procedures. (Section 12)

Summary review procedures are as follows:

A. For minor subdivisions:

(1) the subdivider must submit a preliminary plat that complies with local regulations. The governing body shall act on the plat of the first minor subdivision from a tract within 35 days of submittal in accordance with 76-3-610; automatic approval occurs upon failure to act by the governing body within 35 days;

(2) the governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision;

(3) the requirements for holding a public hearing, preparing an environmental assessment, and finding that the subdivision is in the public interest do not apply to the first minor subdivision created from a tract of record;

(4) second and subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

B. For subdivisions consisting exclusively of parcels larger than 40 acres in size:

(1) through (4) of the above apply, except that either a preliminary plat or a final plat may be submitted;

(5) review and approval are limited to a written determination that access and easements are properly provided.

(C) For subdivisions within a municipality or within an area covered by a qualified master plan:

(1) a preliminary plat must be submitted and acted upon except that preparation of an environmental assessment and a finding that the subdivision is in the public interest are not required; failure to act constitutes automatic approval;

(2) a final plat may be approved only after review pursuant to 76-3-611.

XIII. Impact resulting from cumulative effect of several minor subdivisions. (Section 13)

This section allows the governing body to decide if "multiple minors" have major impact and to review them as a major subdivision.

XIV. Repealer of one section. (Section 14)

Section 76-3-210 in which certain subdivisions are exempted from an environmental assessment is repealed. The language from the section is reworded in section 76-3-609.

The above bill was reviewed several times, section by section, by the Interim Subcommittee and Local Government Committee members at several meetings. Public comments were solicited and considered in preparing this final version.

SUMMARY OF HOUSE BILL 46 (Third Reading Version)

1. The acreage limitation would be deleted from the definition of "subdivision" (under current law only parcels of less than 20 acres are reviewed).

Deleting the acreage limitation would remove the present incentives to avoid review by dividing land into parcels 20 acres or larger. Parcels of this size are of little public benefit: they do not contribute to the housing supply because most people cannot afford such large parcels nor do they really want that much land; large parcels are a wasteful use of land; the increased miles of roads and utility lines needed to serve such low density developments create additional costs to property owners and taxpayers.

2. H.B. 46 would provide exemptions to create parcels:

   a. For agricultural purposes;
   b. For divorce or estate settlements by court order;
   c. That are subject to the law of eminent domain;
   d. By relocating common boundary line;
   e. For cemetary lots;
   f. To provide security for construction financing;
   g. As an occasional sale within 12 months where the landowner has held recorded ownership for five years or more; the exempted parcel may be further divided only through the subdivision review process.
   h. For transfer to each member of the immediate family within 12 months where the landowner has held recorded ownership of the land for five or more years; the exempted parcels may be further divided only through the subdivision review process.

Under H.B. 46 farmers and ranchers could use the agricultural exemption to sell agricultural land of any size without review by entering into a covenant with the buyer. The buyer later could convert the land to non-agricultural use under the subdivision review process. Agricultural land which can be described as an aliquot part of a government section (20 acres and larger) need not be surveyed. A farmer, rancher or anyone who has owned land for five or more years may take one occasional sale and transfer one parcel to each member of his immediate family each year without review. Requiring local review of the further division of 'occasional sales' or 'family transfers' would not interfere with the original landowner's right to use these exemptions but would prevent the abuses of creating sizeable land developments by using the exemptions in combinations. Persons buying a tract under a contract for deed may divide a parcel off the tract to offer as security for a construction loan.

Those bodies having the power of eminent domain, such as utilities, counties or the State Highway Department may buy land without local review; however, under H.B. 46 the land must be properly surveyed before it is purchased.

3. Proposed subdivisions within the following categories must be given summary review as outlined:

a. FOR THE FIRST MINOR SUBDIVISION FROM A TRACT:

1) the governing body shall act on the plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.
2) the requirement for a public hearing, preparation of an environmental assessment, state agency review and a finding of public interest shall be waived.

b. FOR A SUBDIVISION OF PARCELS LARGER THAN 40 ACRES:

1) the requirements are waived for:

a) preparation of an environmental assessment and state review;
b) public hearing;
c) a finding of public interest

2) the governing body must approve the preliminary plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.
3) the local review ahll be limited to a determination that appropriate access and any easements are properly provided.

c. FOR SUBDIVISION WITHIN THE CORPORATE BOUNDARIES OF A MUNICIPALITY:

1) the requirements are waived for:

a) an environmental assessment and state agency review
b) a finding of public interest

2) a hearing must be held

d. FOR SUBDIVISIONS WITHIN AREAS COVERED BY A MASTER PLAN CONFORMING TO SECTION 76-1-606(3):

1) the requiresments are waived for:

a) an environmental assessment and state agency review
b) a finding of public interest

2) a hearing must be held

The above summary review procedures provide a very expeditious review and approval process for subdivisions which are unlikely to create significant problems.

4. Minimum requirements would be set for master plans which are used to deny non-conforming subdivisions or to waive review procedures for subdivisions in areas covered by a master plan. Those master plans would have to contain, as a minimum, a land use plan, a housing plan and a public services plan (see attachment A).

5. If the governing body fails to act on a plat within the 60 or 35 day time limits the subdivision receives automatic approval.

Under the present law if the governing body does not act within the legal time limits, the subdivision either must wait for local officials to take action or file a court action to force them to act. House Bill 46 would not affect the right of the subdivider and governing body to mutually agree to a time extension.

6. For subdivisions located contiguous to cities or towns the municipality must find that deisgn and location of roads and central water and sewer facilities are compatible with those of the city before the county commissioners may approve the plat.

This provision would assure that development occurring adjacent to a city would have streets and water and sewer facilities that are compatible with those of the city, should the land ever be annexed or city services extended to serve the development.

ATTACHMENT A

Proposed Master Plan Requirements

(3) For purposes of this section and 76-3-505, 76-3-604, and 76-3-609(3), the master plan must contain:

(a) a land use plan that identifies geographic areas suitable for residential, commercial, or industrial land uses or sets forth community policy regarding quality or location of urban development;

(b) a housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units;

(c) a public services plan that identifies existing public service facilities including but not limited to systems for water supply, sewage treatment and solid waste disposal, parks and recreation, schools, roads and bridges, and police and fire protection; the capactiy of each; and identifies the needs for improvement or expansion of those services and facilities.

COMMENTS ON H.B. 46

H. B. 46 has some good provisions that streamline the review process (see attached DCA sheet). However, those provisions streamlining the act are just "peanuts" compared to the DCA's attempt to increase the acreage definition to 40 acres or more, severely limit the occasional sale and family exemption plus their addition of a "cummulative effect" section beginning on page 18, line 15.

In our opinion, the major defect in this bill is that virtually every land division will have some type of review (except for the severly restricted exemption section) by the local planning boards and governing bodies. There is no way that they are equipped to handle all these reviews in a timely manner. The DCA claims that today the planning boards are only reviewing 30% of the land divisions. Yet, even with this 30% figure they seemed to be swamped. Delays are the order of the day, rather than the exception. We submit that, under current operating procedures the planning boards have neither the manpower or the budgets to do what this bill askes them to do. In addition, the State Division of Planning has lost, through the appropriations subcommittee, 3 full time employees. At best, the Division of Planning will only be able to give minimum assistance to the local governments who will most certainly be pleading for help and guidance. Without strong guidance, we will probably end up with 56 (counties) different ways to interpret this Act.

We were successful in getting automatic approval sections (35 days for minor and 60 days for major subdivisions) into the bill. We hope they stay. However, they really don't mean much. The planning boards can still ask the developer to extend the time limit. The developer will agree to lifting the time limits every time because the alternative is the denial of his subdivision on grounds like the effect on agriculture, wildlife, taxation, etc.

The second major defect (and its a big one) deals with where a person can use the occasional sale and family exemptions. If this bill passes, subdivisions of 20, 40, 60, etc., acres will be defined as platted subdivisions (the review is only for access and easements, but they are still platted subdivisions). The exemption sections for the occasional sale and gift to the family (page 8 lines 10 through 19 and page 9 lines 5 through 13) state that you can use these exemptions only outside platted subdivisions. In effect, if this bill passes, as is, these legitimate exemptions will be wiped out.

Another major concern is the new "cummulative effect" section found on page 18 beginning on line 15. This section states that after the first minor subdivision review (which really cuts the red tape) the governing body can review any additional minor subdivisions as if they were major subdivisions. I'll bet my entire years salary that every minor subdivision, after the first one, will be reviewed as major subdivisions. The environmentalists, the planners and the League of Women Voters will see to that!

we contend that this section does not allow equal treatment under the law. The first developer submitting a minor subdivision must be given all the benefits (35 day review, no public hearing, waiver of public interest criteria, etc.). Yet the second developer, with the same type of minor subdivision could be forced to undergo a full blown review (public hearings, environmental assessments, etc.). We feel, there are serious legal questions regarding fair and equal treatment under this section.

Should the Senate Local Government Committee be able to hold the acreage definition to "less than 20 acres", amend the occasional sale and family exemption from 5 to 2 year holding period and amend out completely Section 13, then H.B. 46 would be a good bill. We hope this can be accomplished.

STREAMLINING PROVISIONS OF H.B. 46

1. Subdivisions within the following categories must be given summary review:

   a. FOR THE FIRST MINOR SUBDIVISION FROM A TRACT:

      1) the governing body shall act on the plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.

      2) the requirement for a public hearing, preparation of an environmental assessment, state agency review and a finding of public interest shall be waived.

   b. FOR A SUBDIVISION OF PARCELS LARGER THAN 40 ACRES:

      1) the requirements are waived for:

         a) preparation of an environmental assessment and state review;
         b) public hearing;
         c) a finding of public interest

      2) the governing body must approve the preliminary plat within 35 days of submittal. Review procedures may provide an administrative review and recommendation by an agent designated by the governing body.

      3) the local review shall be limited to a determination that appropriate access and any easements are properly provided.

   c. FOR SUBDIVISION WITHIN THE COPORATE BOUNDARIES OF A MUNICIPALITY:

      1) the requirements are waived for:

         a) an environmental assessment and state agency review
         b) a finding of public interest

      2) a hearing must be held

   d. FOR SUBDIVISIONS WITHIN AREAS COVERED BY A MASTER PLAN CONFORMING TO SECTION 76-1-606(3):

      1) the requirements are waived for:

         a) an environmental assessment and state agency review
         b) a finding of public interest

      2) a hearing must be held

The above summary review procedures provide a very expeditious review and approval process for subdivisions which are unlikely to create significant problems.

2. Minimum requirements would be set for master plans which are used to deny non-conforming subdivisions or to waive review procedures for subdivisions in areas covered by a master plan. Those master plans would have to contain, as a minimum, a land use plan, a housing plan and a public services plan.

3. If the governing body fails to act on a plat within the 60 or 35 day time limits the subdivision receives automatic approval.

Under the present law if the governing body does not act within the legal time limits, the subdivision either must wait for local officials to take action or file a court action to force them to act. House Bill 46 would not affect the right of the subdivider and governing body to mutually agree to a time extension.

Mar-10
12:30

108

(Boone Daley) HB-46

January 24, 1977

Honorable Elmer Severs
Montana State Senate
Helena, Montana 59601

Dear Elmer;

I have studied H.B. 46 rather thoroughly, and I would like to give you some comments that could, perhaps, help you understand how many of your constituents in Ravalli County see it. For your convenience, I am giving you page and line numbers along with comments.

Section 1 - 76-1-606

(1) Page 1, line 16; Striking "where" and using "when" implies a master plan is to be mandatory. I've that EVERY thought are many dissatisfactory. The law should be unmistakeably clear. If a County is to be given the opportunity to have a NON-binding comprehensive plan, the word "if" or "whenever" would be more applicable than the word "when" or the former latter.

If "when" is not intended to mean "that if you have the required master plan", the rest of H.B. 46 has no meaning. The whole bill has been based on the master plan concept. If a County does not have one, none of the Sections 76-1-605, 76-1-604 or 76-1-609 are relevant-therefore, "when" is to mean "you must have a master plan."

(2) The master plan must identify "geographic" areas.
(a) A map must be compiled showing the exact locations of where residential, commercial and industrial activities will be allowed. Fighting to kill this exact issue put you in Helena, Elmer. Are you still representing the people who helped you get elected?

QUESTION: Who will prepare this map and make the choices? Will the local planning boards be assigned the task and trust? If not, have you thought of the great extra expense for those counties who are not now paying thousands of dollars each year on planning staffs?

(b) calls for a complete inventory of existing housing by type and number. What does "type" mean? Single family, duplex, multi-family? Frame, brick, tar paper?

(c) calls for a complete inventory of public services and a list of those services is given. The inventory is not to be limited to the the list, so, any guy-the County or State official who gets carried away with a desire for data can add to the list. Elmer, have you thought of the cost of these inventories? It could run into millions

of dollars.

(4) Section 4 is an admission (unintentionally, a warning) that government power is being enlarged. Might there be reason enough to fear this bill and deny approval of it.

Section 2 76-3-103

(11) Page 5 Line 11

The definition of "minor subdivision" is still vague and subject to varied interpretations. It should be clarified by adding "by private or public roadways" immediately following the word "provided". And on the same line 17 of page 5, following "and where", the word "if" should be changed to "no" park dedication is required. The words "it shall be met by cash in lieu of land donation" should be deleted, and the following words added, "no public hearing and no public interest statement shall be required."

(16) Page 6, lines 10 and 11; the words "containing less than 20 acres exclusive of public roadways" have been deleted and should be returned. Government must not be allowed to control all the land. It is a vagrant Socialistic move and only one step away from State ownership of the land.

Section 3 - 76-3-104'

Page 6, line 20 - "less than 20 acres" should be returned. Striking these words puts all land under control. It is imperative that they be returned to the bill.

Section 4 76-3-201

Page 7, Lines 16 and 17 - return Agricultural Purposes to the exemptions. Controlling agricultural land has no place in the effort of controlled development.

Section 5 - 76-3-207

Page 8, Line 14 - "5 years" should be changed to "1 year".

Every change made in the subdivision laws has increased the cost of dividing land. These costs are presently well above the capability of the average landowner. This is especially true in Ravalli County where ownership of land required additional income from "off the land" employment by both Mr. and Mrs. Landowner. To force developers who are financially able to buy and create developments to pay taxes on land for five years before they can hope for any kind of return on their investment is to paralize land sales, and thereby, stop the real estate, building, and related businesses. This means throwing Ravalli County into total depression.

If you are sold on the 5-year limit, then you must make changes that relieve the costs to development, such as restrict the amount of land that can be confiscated for park donation, relieve the environmental assessment and public interest requirements, and be content with lesser quality road development as a requirement for approval by planning boards.

Also, Page 8, Line 16 - delete the word "immediate" in Gift or Sale to Family. The Attorney General's interpretation of "immediate family" is "only those family members residing in the same household." So, we have the phenomena of parents being related to children, but children can not be classified as being related to parents. Parents are allowed to gift to an adopted child, but can not gift to their own blood mother or father. Line 16 should read, "gift or sale to the landowner's father, mother, husband, wife or children, whether by blood, marriage or adoption," and "each member of the landowner's immediate family" should be deleted.

(c) Page 9, Line 2 - change "40" back to "20".

Page 9, Line 3 - strike "5 years" and make it "1 year".

Section 5 76-3-207

(2) (a) Page 10, Line 6 - there should be added, "and no park donation shall be required." Park requirement on a change in an existing subdivision is unfair discrimination against owners of subdivided land as opposed to unsubdivided land where an occasional sale is allowed without park donation. Many land owners in Ravalli County are not really aware that the land they own is in an old orchard tract subdivision until they try to make one sale. Now, however, point this up is certainly not intended to invite park donation requirement being added to the occasional sale of all land.

Section 7 76-3-505

(1) (b) Page 11, Line 24, again, strike "4 0" and replace "20".

Section 11 76-3-605

(3) A time limit for submitting recommendation should be restored. No more than 15 days should be allowed.

Section 11 76-3-609

Page 16, Line 11 - delete "40" and return "20".

Comment: New Section

Comment - continued

The thought that there is impact from cumulative minor subdivisions is fine. However, because many minor subdivisions are proposed by small developers, and no developer knows that they are not the only one in the area, the planning board has no way of knowing how many subdivisions are going to be presented in an area, we have this question; Will subdivision 1, 2 and possibly 3 enjoy minor subdivision review without financing an assessment and then subdivision 4 pay it all? Of course, that is far from equitable and could be taken to court on the grounds of discrimination. Will the County or the State pay for such assessments? Perhaps that is the proper answer since the assessment is for the general public good, therefore, it is reasonable that it should be paid for by the public.

Thanks for listening, Elmer.

Sincerely,

Ruth Applebury

HB 46

3/10/79

I am Bette Hostad, representing Montana League of Women Voters. The League of Women Voters, under its' Land Use Position, supports HB 46. This bill is the work of the Interim Committee, a fair compromise with all sectors of Montana's land development--ranchers, developers, environmentalists, realtors, planners, surveyors, county and city boards, clerks and recorders, sanitarians, and concerned citizen groups.

This bill removes the 20 acre limitation, an abuse under the old law. This bill makes most land divided for resale subject to at least summary review.

In its' limiting of the occasional sale and family conveyance, a real effort has been made to give the long term landholder the right to divide his land while re-division would come under review. It was, afterall, for the long term landholder that these two exemption were made under the law. These limitations will slow down rapid growth and allow local governments a chance to review sub-division planning.

Further amending of these two sections and indeed the whole bill will seriously weaken the law. It is our hope that HB 46, WITH NO FURTHER CHANGES, will receive a due pass from this committee.

Thank you

Proposed from Aubyn Curtiss

HB 46

1. Page 15, line 25,
Following "plats"
Insert: "The subdivider is required to furnish disclosure statements to prospective clients informing them of

(a) additional tax assessments that may be applied under the roll back

(b) scope of services provided by local government

(c) responsibilities of land purchasers related to water and sewage - depth of water table, sanitation regulations, etc.

(d) cost of getting power and phone service to the property

2. No subdivider receiving approval of a minor subdivision may submit an additional proposal of any size near or adjacent to the prior one approved for a period of at least 3 years.