

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 14, 1981

The meeting of the Local Government Committee was called to order by Chairman George McCallum on the above date in Room 405 at 12:30 p.m.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 192:

AN ACT TO AMEND SECTION 76-3-608, MCA,
TO MODIFY AND DEFINE THE PUBLIC INTEREST
CRITERIA FOR LOCAL GOVERNMENT REVIEW OF
SUBDIVISIONS.

Representative Moore, District No. 41, said this bill is reinserting language and clarifying a bill passed in 1975 which was to define public interest criteria of subdivisions. It will change 8 general criteria to 7 criteria which would be more specific. Local officials have expressed a concern in applying the criteria. Local officials and subdividers would profit from the bill as it is now written. It is important to know that this bill would in no way abridge the public's right to comment on public subdivision.

Cliff Christian of the Montana Association of Realtors submitted two amendments. (See attached Exhibit A.) The House Local Government Committee decided to strike wording on page 1, lines 11 and 12. There are plenty of safeguards under the current platting act without that.

Henry Oldenburg, representing himself and the Flathead County Commissioners, supports the bill as it is brought before the committee because they feel it is the best situation that can be obtained. They are concerned there will be changes which will make it more difficult to carry out their duties. If everything were equal, the original bill would be the preferred situation. They have operated under the 8 criteria in Flathead County and found they were useful but can live with the exclusion of 1. There is a concern on how we can put a limitation on public opinion. The words "at least" on page 1, lines 23 and 24 should be retained so county governments have flexibility to address criteria and make additional requirements that will be helpful. He finds a problem with dropping lines 17, 18 and 19 on page 1. He hopes they will be brought back into the bill if it is amended.

Senator McCallum then called for opponents of the bill.

Rose Leavitt, League of Women Voters, spoke in opposition of the bill. (See attached Exhibit B.)

Representative Moore, in closing, said he concurs with Mr. Christian's amendments to reinsert wording on page 1, lines 11 and 12. In regard to the opponent's remark on agriculture, he intended to do that because he has concerns with agriculture. He is concerned with subdivisions' effects on the environment.

Senator McCallum then called for questions from the committee.

Senator Van Valkenburg asked Mr. Christian what the Realtors' Association's feelings were on HB715.

Mr. Christian said they oppose the bill.

CONSIDERATION OF HOUSE BILL NO. 304:

AN ACT TO CLARIFY THE QUALIFICATIONS THAT A
NEWSPAPER MUST HAVE IN ORDER TO BE ELIGIBLE TO
BID ON COUNTY PRINTING CONTRACTS.

Representative Moore, District No. 41, said this bill is a clean-up bill, it clears up a problem with the recodification in 1973. It removed language which is being reinserted in this bill. Removal was made inadvertently, no one thought it would matter. This bill puts back into that section language which has been prevalent.

Mike Meloy, Montana Press Association, said this bill does reinstate language which was removed inadvertently in 1973. The problem arose when a newspaper which had been doing county printing had been responsible for providing legal notices in Lincoln County. They were underbid by a great amount by an entity known as the Shopper. The Shopper was awarded the contract and the county took them to court because they were not a newspaper within the meaning of the statute. The court ruled in favor of the Shopper and permitted them to have the contract, not because of language in the old law, but the Shopper changed its format and became a regular newspaper. The problem was the Shopper had not been in existence for one year prior to bidding. That is important because three months later the Shopper went out of business leaving the county without a contract. That cost the county more money. The committee should reinstate "published once a week". He submitted an amendment to the committee. (See attached Exhibit C.)

Representative Moore said he concurs with the requested amendment to be published at least once a week.

There were no questions from the committee.

CONSIDERATION OF HOUSE BILL NO. 643:

AN ACT TO REMOVE THE LIMITATION ON THE
NUMBER OF DEPUTIES THAT MAY BE HIRED BY
A COUNTY SHERIFF IN ANY COUNTY OF THE
STATE.

Representative Matsko, District No. 38, said this is a repeal of the limitation of deputy sheriffs in the state, Section 7-32-2103. This section limits the allowable number of deputies in each county to one undersheriff and not more than six deputies in counties of the first, second or third-class, two in counties of the fourth-class and one in counties of the fifth, sixth or seventh-class. They are asking for the repealer because no one abides by this statute. All counties are way above the limit. Section 7-4-2402 authorizes county commissioners to determine the necessary number of deputies needed in the county. There is no foreseeable time when deputy sheriffs in the first-class counties will be at six or less because of population increases. They are asking that this section be removed and that the counties rely on Section 7-4-2402 which gives the county commissioners authority to set the number necessary.

Jim Burnes, undersheriff of Cascade County, totally supports the repealing of this law because every county ignores it because it is not workable.

There were no opponents of the bill appearing before the committee.

Representative Matsko, in closing, said there is a trend toward returning power and duties to the local level. It is more correct for county commissioners to decide how many should be in local government.

Senator McCallum then called for questions from the committee.

Senator McCallum asked if the county commissioners control this anyway through budgeting.

Representative Matsko agreed. He added that the original limitations were enacted in 1905.

CONSIDERATION OF HOUSE BILL NO. 661:

AN ACT ALLOWING FOR AN EXTENDED APPROVAL
PERIOD OF MORE THAN 1 YEAR FOR A PRELIMINARY
PLAT UNDER THE MONTANA SUBDIVISION AND
PLATTING ACT.

Representative O'Hara, District No. 62, said this deals with subdivision plat approval. Under the existing method, a builder

goes in and gets an approval for 1 year and then after that he can get a 1-year extension. Some subdivisions take 10 or 15 years to complete. Many times they have financial arrangements and if those arrangements are changed after 1 year, the financier and financee will be hurting as well as the people who bought the houses. The terms of the subdivision can be used as sales aids. In order to sell subdivisions the builder may say there will be a park behind the houses, then 3 years down the road there is a change in the plat approval so they can't put in a park and the buyers have nothing to say about it. This bill allows the authority to enter into a written agreement with the subdivider putting down terms and conditions that the term could be extended.

Cliff Christian, Montana Association of Realtors, said setting time periods in which a body has to act puts pressures on the subdivision and platting act. A proposed subdivision must be approved in 1 year and needs additional approval after that. In Billings they have a large land unit development going in that is comprised of thousands of acres. They want to establish a plan for the whole area. There will be consistency with this bill. If they need additional time after the approval process, it would happen under this bill.

There were no opponents of the bill appearing before the committee.

Representative O'Hara said Sonny Hanson of the Montana Technical Council also supports this bill.

Senator McCallum then called for questions from the committee.

Senator Van Valkenburg asked Mr. Christian if we have passed Senator Severson's bill.

Senator McCallum said we did not pass it. That bill is the same as this one.

CONSIDERATION OF HOUSE BILL NO. 575:

AN ACT TO GENERALLY CLARIFY THE POWERS OF
COUNTY COMMISSIONERS RELATING TO PLANNING AND
ZONING AND TO CREATE A CITIZEN ADVISORY
COMMITTEE TO ADVISE THE COUNTY COMMISSIONERS
ON PROPOSED AMENDMENTS TO ZONING REGULATIONS.

Representative Kitselman, District No. 60, offered testimony from the Montana Technical Council. (See attached Exhibit D.) This bill comes about out of some problems in the county zoning commission in Billings. The 5 member board has been in existence for many years. Judge Wilson ruled last year that the board and county commissioners could not sit jointly. They were required

to advertise two separate meetings and statements of intent. This bill clarifies zone classifications. What is to be looked at within zone changes is clarified also. The bill clarifies meeting procedures and allows county commissioners and zoning boards to sit at the same time. This makes legal what they have been doing for years. He added that one point in Sonny Hanson's letter is inaccurate. Mr. Hanson says it is county or city-county - it is the same board and does not create a new one.

Cliff Christian, Montana Association of Realtors, supports the bill. A study done by HUD showed 33% of the cost of housing is imposed by government regulations. They will support anything we can do to streamline costs.

There were no opponents of the bill appearing before the committee.

Senator McCallum then called for questions from the committee.

Senator McCallum asked if zoning districts are established by resolutions.


Representative Kitselman said that was correct. This allows a joint meeting, the final decision is in the hands of the county commissioners.

Senator McCallum asked why this bill was any better than the others that they have always had problems with.

Mr. Christian said this legalizes what is being done all over the country.

Representative Kitselman agreed. He added that there are usually 8 zone changes per month in Yellowstone County and the cost is \$11,000 per zone change. Citizens bear the cost.

There being no further business before the committee, the meeting was adjourned at 1:25 p.m.


Chairman George McCallum

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/14/81

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum	✓		
Senator Jesse O'Hara	✓		
Senator H. W. Hammond	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas	✓		
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

NAME: Henry Oldenburg DATE: 3/14/81

ADDRESS: Box 373, Bigfork, Montana 59911

PHONE: 755-5300

REPRESENTING WHOM? Self & Flathead County

APPEARING ON WHICH PROPOSITION: 192

DO YOU: SUPPORT? AMEND? OPPOSE? ☒

COMMENTS: I oppose deleting any of the criteria, particularly
the public interest criterion! Also, how in our republic
can we put a limitation on the expression of public
opinion? That bothers us greatly, striking to the heart
of our political life.

We would like to have "the basis of need" returned
if any amendments are allowed. Also, line 17-18-19 on
page 1 must be returned to the bill if amendments
are allowed. Further, summary review subdivisions
should be included under these review criteria.
"at least" on lines 23-24, page 1, must be returned, please!

Respectfully submitted,

Henry Oldenburg

At Senator V. N. Volkenburg's request, please see
the reverse side!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

If any trouble, just keep the original bill.

If any amendments are considered, please
consider these also:

- 1) Return "the basis of the need for the subdivision"
to the bill.
- 2) Return lines 17-18-19 on page 1 to the bill:
"The governing body shall disapprove any
subdivision which it finds not to be
in the public interest."
- 3) Strike "provided that it is in the context of the
other criteria" from lines 8-9 page 2.
- 4) Retain "at least" on lines 23 & 24, page 1.
- 5) Retain "findings of fact" on line 27, page 1.
- 6) Summary review subdivisions (less than 6)
when lined up in a row equal a big one.
This is occurring in the Flathead. Review
under these criteria is absolutely necessary.
Part of our road funds are near red line due to
inflation. People cannot afford more taxes
to subsidize.

NAME: _____ DATE: 3/14/91

ADDRESS: 314 10th St

PHONE: 443-1

REPRESENTING WHOM? John J. McLaughlin

APPEARING ON WHICH PL. : _____

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: SA ROSAS DATE: 3/11/74

ADDRESS: 4213 CLARK GT. FALLS

PHONE: 402-8821

REPRESENTING WHOM? *Mr. J. L. Allen*

APPEARING ON WHICH PROPOSAL: *1-10-50*

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

AMENDMENTS TO H.B. 192

1. Amend page one (1) lines eleven and 12 (11 & 12) by re-inserting the words, Except for those sub-divisions eligible for summary review.

Insert a period after the word review , and strike the word ~~The~~ following the period, and insert the word the in its place.

H.B. 192 is introduced

by Representative Harce

HOUSE BILL NO. 192

Harce

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 76-3-608, MCA, TO MODIFY AND DEFINE THE PUBLIC INTEREST CRITERIA FOR LOCAL GOVERNMENT REVIEW OF SUBDIVISIONS."

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

Section 1. Section 76-3-608, MCA, is amended to read:
"76-3-608. Criteria for local government review. (1) ~~The Except for those subdivisions eligible for summary review, the basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations, and additional information demonstrate that development of the subdivision would be in the public interest. the governing body shall disapprove any subdivision which it finds not to be in the public interest.~~

(2) To determine whether the proposed subdivision would be in the public interest, the governing body shall issue a written findings finding of fact which weigh the following criteria for public interest that considers at least the following:

~~to the basis of the need for the subdivision~~

- 1 ~~(b) expressed public opinion~~
- 2 ~~(c) effects on agriculture~~
- 3 ~~(d) effects on local services~~
- 4 ~~(e) effects on taxation~~
- 5 ~~(f) effects on the natural environment~~
- 6 ~~(g) effects on wildlife and wildlife habitat and~~
- 7 ~~(h) effects on the public health and safety~~
- 8 ~~(a) the compatibility of the subdivision with adopted~~
- 9 ~~community goals, policies, or plans~~
- 10 ~~(b) if the effect the subdivision would have on~~
- 11 ~~public schools, services, and facilities (including the~~
- 12 ~~extent to which new or expanded services would be needed to~~
- 13 ~~serve the subdivision)~~
- 14 ~~(c) who would bear the various costs of the additional~~
- 15 ~~services~~
- 16 ~~(d) what legal constraints affect the provision of~~
- 17 ~~those services and~~
- 18 ~~(e) whether the subdivision would allow the~~
- 19 ~~installation or improvement of services not feasible for~~
- 20 ~~present landowners~~
- 21 ~~(f) the effects the subdivision would have on~~
- 22 ~~taxation, such as the effects on taxable valuation, local~~
- 23 ~~tax revenues, local mill levies, the local government's~~
- 24 ~~bonded indebtedness, and special taxing districts~~
- 25 ~~(g) the effect the subdivision and its construction~~

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To: Senate Committee on Local Government
From: League of Women Voters of Montana
Re: HB 192

The League of Women Voters of Montana would like to state its opposition to HB 192. Over the years the eight public interest criteria have provided useful guidelines for county planning boards and county commissioners in evaluating land developments. We believe the public interest criteria should remain in their present form and should continue to apply to all subdivisions.

The change proposed in lines 18 and 19 (to eliminate the requirement that a subdivision be disapproved if it is found not to be in the public interest) would clearly weaken the authority of any findings under the criteria.

The proposed elimination of the criterion dealing with the basis of needs concerns the League. The basis of need for a subdivision is an issue, particularly in many western Montana counties. There, in part through the use of the exemptions in the subdivision law and the relative ease of the summary review process, a pattern of widely scattered and only partially occupied rural subdivisions has developed, resulting in a demand for expensive services in outlying areas. The question of need in areas where so many platted subdivisions are unoccupied is clearly one that local authorities should be allowed to grapple with.

Similarly the right for expressed public opinion to be weighed along with the other criteria would seem to be a basic tenet of local control. The amendment on page 2, line 9 effectively and unnecessarily limits public comment on a proposed subdivision.

The proposed changes in the criteria do not appear to be an improvement. Where the criteria as originally proposed are brief and succinct, leaving specific elaboration to state and local regulations, the new versions are wordy and overly detailed. Some of the elaborations are self-evident and unnecessary. Others might open the legislative process to efforts to insert or delete the specific concerns of different groups at every legislative session. We believe that detailed guidelines for employing the public interest criteria in the review of subdivisions are best left to local regulations, where they may be tailored to local needs and conditions.

The League strongly supports the inclusion of subdivisions eligible for summary review under the provisions of 76-3-608. To eliminate the need to consider these subdivisions would create another huge loophole in Montana's subdivision laws.

The League also supports the consideration of agricultural land as a valid criterion.

The House responded to many of the League's initial concerns regarding HB192; however, for the reasons mentioned above we remain opposed to it.

AMENDMENT TO HB 304

1. Amend Page 1, line 22 after "as such" by adding
"at least once a week".

Exhibit D

The Montana Technical Council SUPPORTS H.B. 575

- 1) HB 575 distinguishes between the overall zoning district which may be created and the individual "zones" (called 'zoning classifications' in HB 575) which are within a zoning district. Currently the statute uses 'zoning district' to mean both the overall district and an individual zone. This dual meaning of 'zoning district' has created much confusion in the past.
- 2) HB 575 provides a new section which sets out minimum procedures for zone changes and amendments. The fact that the statute now does not give any direction for zoning amendments has created problems.
- 3) HB 575 would permit county commissioners to establish an advisory zoning commission to recommend zoning amendments. Currently the county or city-county planning board serve that function. HB 575 would allow for one joint hearing by the zoning commission and the county commissioners -- saving considerable procedural delay.

SUGGESTION: HB 575 would require that the zoning commission comprise five members. To give county commissioners some flexibility the words AT LEAST could be inserted on page 6, line 10 before "five."