

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
February 11, 1983

The House Natural Resources Committee convened at 12:30 p.m., on February 11, 1983, in Room 224K of the State Capitol with Chairman Harper presiding and all members present except Rep. Quillici, who was excused. Chairman Harper opened the meeting to a hearing on HB 676.

HOUSE BILL 676

REPRESENTATIVE ROBERT REAM, District 93, chief sponsor, said this bill is at the request of the Department of Natural Resources and Conservation. He said this is to allow money and interest to be retained in earmarked funds that has come into the department because of a certificate. The money is to be used by the department for the purpose for which it came in.

LEO BERRY, Director, Department of Natural Resources and Conservation, said the bill rose out of a circumstance where the Board of Natural Resources and Conservation approved the construction of the pipeline that crossed a dry lake bed, Lake Broadview, and part of the negotiated settlement for mitigating the wild life habitat loss was \$118,000. This money was sent to the Board for replacement of wild life habitat lost due to construction of the line. Mr. Berry said some wild life habitat was purchased near there but only half the money was spent. The rest remained in an account. The Board has instructed the Department to monitor how many duck leases are held and secure some additional acreage. Mr. Berry said they would like to retain the interest on this money so it can all be used for the purpose given.

There were no opponents.

REPRESENTATIVE REAM closed.

Questions were asked by the committee.

Rep. Jensen asked how much money does this involve. Mr. Berry said \$9,000 over the biennium.

Rep. Mueller asked if it is standard practice that all interest from earmarked funds goes into the general fund. Rep. Berry said yes.

Chairman Harper closed the hearing on this bill and opened the hearing on HB 646.

HOUSE BILL 646

REPRESENTATIVE EARL LORY, District 99, chief sponsor, said the bill was partly at the request of the Missoula County Commissioners and partly on his own. He said he was part of the 1975-77 interim committee appointed to study the subdivision law. He said they worked for 18 months and drew up a report and 11 bills came out of this reworking the subdivision law. There weren't too successful. He said this is a compromise bill that he hopes will suffer a little better fate. He said the bill moves the law from state regulations to state option to makes the laws more restrictive in their area. He said 83 percent of the subdivided lands in Missoula County are not reviewed except for sanitation. He said many areas of the state are not interested in subdivisions and this gives them the option to let the state continue. He said this specifically allows the counties to have ordinances more restrictive than state law and not less restrictive.

CHARLES LANDMAN, Montana Environmental Information Center, said they strongly support the bill. A copy of his testimony is Exhibit 1 of the minutes.

JIM RICHARD, Montana Association of Planners, spoke in support. He said this issue has been raised in every session since 1973. He said this is a real problem for many parts of our state as the great bulk of subdivided land is not being reviewed. He said they have found in many cases where review has alerted both the lot buyer and the developer to some things they were not aware of. He said the review protects people down the line.

GERMAINE CONRAD, representing self and Missoula County, said she had copies of a letter from the Missoula County Commissioners for each member of the committee (a copy is Exhibit 2). She said they cite an example in the letter which illustrates why we need some kind of protection.

KRISTINA FORD, Director of Planning, Missoula County, spoke in support and a copy of a memo she left for the record is Exhibit 3.

BOB DECKER, Lewis and Clark County Commissioner, used a chart to illustrate what can happen with the exemptions in the subdivision law. He said it is even possible to create a lot that doesn't have proper access. He said these kinds of exemptions negate the effects of local government to promote proper land use development. He said there is a cost to the school districts and to the fire districts. He said the Lewis and Clark County Commissioners support this bill.

AL THIELEN, Billings, said they support the bill as it relates to local option. He said it is hard to have regulations that fit all parts of the state. He said this bill tries to provide some flexibility for that. He said there are mandatory provisions that subdivisions must be handled according to state law but it permits local people to adopt regulations to solve their own unique problems.

Opponents

DENNIS REHBERG, Association of Realtors, said they support SB 140 which provides for local option but only as far as using the current regulations. He could foresee all kinds of problems with all 56 counties plus other jurisdictions within the counties developing different regulations. He had several suggested amendments, Exhibit 4 of the minutes, which would allow the exemptions to go up as well as down. He pointed out that Wibaux might need the 20 acre limitation to have sales and occasional sales of 5 acre parcels would not create a danger so they should be given the option to do this. He said what happens if an area is on common boundary lines such as if Lewis Clark County adopts a regulation and Jefferson County doesn't. He questioned that 90 percent of the land is being divided without review and wondered where Mr. Richards came up with that number.

JOHN HOLLOW, Montana Home Builders Association, said in principal he agrees with the option of local options. He felt the local option should be restricted to things like lot access. He said he would be glad to work with the staff to come up with amendments. He said if cost of services is a problem then it should be addressed. Mr. Hollow said don't take a giant step if a simple step is better. He said the exemptions should not be thrown wide open but it should go through a restricted process that is developed on the legislative level. He felt it should not be opened up to local option. He said he would be glad to work with somebody toward that goal. He said the occasional sale is very important to a homebuilder getting a start as the house can be sold without high up front costs. He said they do oppose the bill but only partially.

STEVE PERLMUTTER, Department of Health, said he was neither a proponent nor an opponent. He said he had a question on what this bill would do with the Sanitation in Subdivision Act review. He said the bill restricts the exemptions that appear in the Act and if the local authority were to decide to turn down one of the exemptions would the department's authority of review be changed in any way. He said they take no position but would just like this point clarified.

PAUL KELLER, representing self and consumers, said something we forget is that many people have an income of less than \$15,000 and so must have a house of less than 4,000 square feet. He said lots are needed to accomodate a HUD 235 house. Young people can go out in the valley and buy 20 acres cheaper than a small lot in the city. He said we should do something about these people that are trying to get started in life. Mr. Keller said there is a field on which 235 houses could be built but the planning board has held it up for two years. He said the market is there. He said this bill would make matters worse.

Exhibit 5 is testimony supporting from Cathy Campbell, Montana Association of Churches.

REPRESENTATIVE LORY closed. He said the bill has nothing to do with the Sanitation Act of the Health Department. He said all they are saying in this bill is to let the county itself decide on what it wants to do. He said the 20 acre split is a real problem for them.

Questions were asked by the committee.

Rep. Jensen asked if the bill would inhibit the ability of the counties to have additional 235 houses. Mr. Thielen said that is more related to federal regulations than to anything in this bill.

Chairman Harper closed the hearing on this bill and opened the hearing on HJR 20.

HOUSE JOINT RESOLUTION 20

REPRESENTATIVE ROBERT MARKS, District 80, chief sponsor, said this directs the Health Department to review the rules adopted under the Montana Subdivision and Platting Act and to amend or repeal those which are not consistent with the pruposes of the Act, and to adopt rules to minimize the cost of reviewing. He said he had a couple of amendments to offer as there was an error in drafting and the bill refers to the wrong Act. In the title, line 7, strike "Subdivision and Platting" and insert "Sanitation in Subdivisions"; and wherever this might appear in the bill. He said the bill talks about sanitation and not platting. He said it seems that some of the regulations that have been adopted by the Department aren't serving the pruposes of the intent of the Act. Another amendment is in the title, line 5, to strike "direct" and insert "request"; and the same amendment on page 2, line 18. Rep. Marks said the time frame allowed in the bill would be difficult for the Department so he suggested changing it to 1984 rather than 1983. He said this bill asking the Department to review

their rules would be of benefit to the Department, the Sanitarians, the land owner/developers, and most importantly, the consumers.

TERRY CARMODY, Executive Officer, Montana Association of Realtors, said they support the bill. He said they stand ready to help the Department redraft and change the regulations as needed.

DONALD ERICKSON, Helena, representing self, spoke in support. He said he has been involved with the Subdivision Bureau and discussed a situation where the administrative review process had been burdensome and costly. He said this would help to weed out some of the unnecessary rules and help the Department focus in on the needed ones to promote the health and safety of the public.

CHET DREHER, Colorado Gulch, Helena, said he was speaking for himself and his wife. Exhibit 6 is a chronology of events which he went through to secure approval for an occasional sale. He read from this chronology attempting to show how burdensome and unreasonable some of the regulations can be. He said their treatment by the Bureau was not courteous or pleasant. He said they strongly urge the passage of this resolution.

RALPH A. KNAUSS, Clancy, representing self, said he supports the resolution and feels the regulations should be examined to give the local authority more leeway in approving or disapproving minor divisions of land.

DR. JOHN DRYNEN, Department of Health, said he supports the resolution. He said he would like to point out that they have begun the process already. He said they have mailed the letter to the sanitarians, and when the answers come back will call a meeting of the developers to review the rules and regulations.

Opponent

CHARLES LANDMAN, Montana Environmental Information Center, said they would like to clarify that they are not opposed to the Department reviewing their rules. He said they question whether a resolution is the proper way to do this. He said an interested party can push for rule making with the Department. Mr. Landman said he was not sure the Legislature wants to encourage this sort of policy that every aggrieved party can come to the Legislature before they try the other route. A copy of his testimony is Exhibit 7 of the minutes.

REPRESENTATIVE MARKS closed. Rep. Marks thanked Dr. Drynan for supporting the Resolution and for starting on the review process. He said if reasonable people sit down to develop ways to settle problems it will get done.

Questions were asked by the committee.

Chm. Harper asked Dr. Drynen if he had a time table for when he would be working on the rules. Dr. Drynen said they would first get the letters back and compile that information. This would probably take until the middle or later part of February. He said then they would work at reviewing the actual rules to be sure they agree with the actual intent of the law.

Chairman Harper closed the hearing on this bill and opened the meeting to an executive session.

EXECUTIVE SESSION

HOUSE BILL 676 Rep. Jensen moved DO PASS. Rep. Mueller opposed the motion saying it is a bad precedent to take interest of earmarked funds out of the general pot. He said this would erode money away from the process of the total operation of our state government.

Rep. Ream asked if there are any similar situations where money is paid by a company and put into a fund for a particular purpose. He said this is not like other state money that comes from taxes. Rep. Mueller said he doesn't pretend to be too knowledgeable on this. He said the Fish and Game Department puts money into certain earmarked funds and the interest goes into the general fund. He said they would like to see the interest remain in the funds. Rep. Mueller said he understands their concerns but is concerned about the total picture of all the funds.

A roll call vote was taken and the motion failed with 13 voting no, 3 voting yes and 1 abstaining. The 3 yes were Reps. Ream, Metcalf, and Veleber; abstaining was Rep. McBride; and absent were Reps. Nordtvedt and Quillici.

Rep. Ream moved to reverse the votes and this motion carried so HB 676 receives a DO NOT PASS recommendation.

HOUSE BILL 108 Rep. Iverson mentioned this is a policy statement and if passed the bill will go to Appropriations. He urged that the committee give this policy statement. He moved a DO PASS.

Rep. Neuman said the reason this is a bill rather than a project proposal is that Muddy Creek is an on-going project where the RRD Program is a two year program at the most. He said they have their request in again for this program but will withdraw if they were to receive this. Under this the source of funding could continue until 1990.

Rep. Bertelsen said the thing that concerns him is that if we start accepting and giving projects priority we will have a bill from every project and so take away the choosing ability of the people that have that job to do. He said he can see the value of the project.

Chm. Harper asked if he is saying we should pass the bill without recommendation.

Rep. Curtiss said we have a question before us with this bill. Are we going to put the money where it will really do something rather than the hit and miss of a few dollars here and a few dollars there. She said this is an opportunity to do something really meaningful.

Rep. Iverson said he was going to try to put something together on a state policy of how the RIT fund should be used.

Rep. Fagg asked about the possibility of a committee bill to do this.

Rep. Hand moved a substitute motion that the bill receive no recommendation but have a statement attached. Rep. Brown said this would be appropriate. He said have a statement attached that the committee does not want to prejudice, that we are not taking a position but saying vote it one way or the other as to the actual project it is. Rep. Jensen seconded the motion. He said the intent will be that it be forwarded to the same subcommittee that has the list of recommendations of projects.

Rep. McBride said we need to be careful about what statement we attach as usually we pass or do not pass. This will make the process a little less clear.

Rep. Curtiss spoke against this substitute motion. She said this project is conservation related and natural resources related and merits this money. She said she was opposed to sending it out without a recommendation.

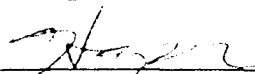
Rep. Bertelsen said there is merit in sending the bill out without approval as it will then get two hearings. He said he feel the project has merit to receive more than two years of funding.

Rep. Hand withdrew his motion as did Rep. Jensen his second.

The question was called and the motion carried with Reps. Hand, Brown, McBride, Jensen and Ream voting no and absent were Reps. Nordtvedt and Quilici.

Meeting adjourned at 2:10 p.m.

Respectfully submitted,



A handwritten signature, likely of the committee chair, is written over a horizontal line at the bottom of the page.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 676

DATE 2/11/83

SPONSOR REAM

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

The Montana Environmental Information Center

- P.O. Box 1184, Helena, Montana 59624
- Flathead Office 433 S. Main, Kalispell 59901

(406) 443-2520
(406) 755-7763

MEIC TESTIMONY IN FAVOR OF HB 646

HB 646 addresses a major problem in Montana land-use policy. It authorizes local governing bodies to adopt policies that address local problems and needs. The Subdivision and Platting Act is inadequate due to the 20 acre definition and the numerous exemptions including family conveyance, occasional sale and others. For a major part of Montana, subdivision activity is not a major problem. However, urban areas are unable to control and direct rampant urban sprawl. These areas need the ability to better review and control local growth.

In present legislation, 11 exemptions which were intended to provide relief in legitimate cases, have evolved into the primary means accomplishing land divisions without undergoing local review. The study disclosed frequent use of exemptions. Most commonly abused transactions are acreage exemptions - division creating one or more parcels of land 20 acres or larger not legally a subdivision, and therefore not subject to review; occasional sale - a landowner may sell one parcel per year; family conveyance - one parcel of land may be given or sold to a member of the landowners immediate family.

A study of Missoula, Ravalli, Gallatin and Flathead counties was completed in 1980 by MEIC entitled, Missoula County Subdivision Inventory Report. It revealed:

- more than 90% of all subdivided acreages in Missoula County sidestepped subdivision review;
- Ravalli County - 92.7% unreviewed;
- Gallatin County - 90.1% unreviewed.



Here is a typical pattern of development on rural unreviewed subdivisions. This example occurred in the southern portion of Big Flat.

1) Certificate of Survey (COS) applied for 7/76 - 670 acre parcel;

2) COS applied for 8/76 - split into 14-20 acre parcels and 21 larger parcels;

3) 11/76 COS to resplit one of the larger lots into 2-20 acre parcels.

After initial 20 acre parcels were created, 32 COS's were filed with 32 different owners. These acres were then divided into 91 lots. Exemptions used for these divisions: 39 Family Conveyance, 17 Occasional Sale and 26 Remainders (which is another type of exemption).

Many of the same names kept reappearing on the certificates for redividing parcels (realtors and land speculators). This pattern has been repeated numerous times.

From 1973 to 1980, COS lands in Missoula County were being divided most frequently by using the following exemptions:

	<u>Missoula</u>	<u>Ravalli</u>
20 acre definition	44%	40%
OS	23%	21%
FC	14%	8.5%
Other	19%	30%

Proper review can focus development in geographically appropriate areas, thus relieving development pressure on prime agricultural land, critical wildlife winter range and county road budgets.

Unreviewed subdivisions often result in poor roads, which lead to problems with access of public service vehicles; for example, fire suppression vehicles, ambulances and school buses. Problems arise most frequently in the winter. Another major problem that results is excessive cost to the county for poor roads. In FY 80 Missoula County spent \$436,000 - over 20% of the county road budget funds went to paving projects of four unreviewed subdivisions, Cole Land, Roman Creek Road, Houle Creek

Page 3

and Miller Creek.

Improper review leads to loss of prime agricultural land and critical wildlife winter range.

-48% of 7,603 acres - prime agricultural land in Missoula County is currently subdivided.

-33% of 4,684 acres - secondary agricultural land is currently subdivided.

Urban areas in Montana are unable to properly regulate quick spreading urban growth resulting from inadequate land use policy. HB 646 targets areas that need further land use regulation in an effective way, while leaving the option of no action to rural areas with little subdivision activity.

NATURAL RESOURCES

COMMITTEE

DATE 2/11/83

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WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802
(406) 721-5700

BCC-83-79

TO: HAL HARPER, NATURAL RESOURCES COMMITTEE
FROM: MISSOULA COUNTY COMMISSIONERS
DATE: FEBRUARY 11, 1983
RE: H. B. 646

Amendment to the Subdivision and Platting Act

Members of the Committee:

The Missoula County Commissioners support H.B. 646 and urge your favorable recommendation.

In every session of the legislature since the enactment of the original Subdivision and Platting Act in 1971, there have been amendments offered to strengthen as well as relax the controls over the subdivision of land. This experience leads to one inescapable conclusion: the problems with land subdivisions in rural agricultural counties are different than those in the urbanized, developing counties. Urban counties faced with the pressures of rapid development and the sudden demand on police, fire, schools, and road maintenance services need the means to ensure that development occurs in an orderly fashion. Rural counties whose predominant land use is farming and ranching support the exemptions from subdivision plat requirements to ensure that the farmers and ranchers can divide land for collateral and estate planning. Different types of problems require different solutions.

H.B. 646 would allow each county government to seek the best solutions to its unique problems.

Why is the current Subdivision Act inadequate to meet the needs of urbanized and rapidly developing counties? The exemptions allowing certain divisions of land to be filed without complying with subdivision standards result in subdivision-like developments with all the impacts of large new developments and none of the needed public improvements like sewer, fire, water and roads.

The problem is best illustrated by an example:

There were two ranches northwest of Missoula which were sold to a Gene Anderson in 1977 and 1978.

In 1978, Mr. Anderson filed two surveys dividing the ranches into 25 twenty-acre tracts (using the exemption in M.C.A. 76-3-104) and named them The Goodan-Keil Estates.

Mr. Anderson subsequently sold most of the twenty-acre tracts to people with the assurance that they could further divide the property by using the family gift and occasional sale exemptions. He filed restrictive covenants in 1978 allowing each tract to be divided into lots at least 4 acres in size. As he sold the twenty-acre tracts he promised to build the road system, the central water system and the central sewer system.

Today there are approximately 84 separate lots. The road is unfinished and sometimes impassable because of its clay content. The water system is in place but constructed of substandard material and has been repaired twice (during which time half a dozen homes were without water). The sewer system has not been constructed, even though there are two houses dumping raw sewage onto the ground. Recently the State Department of Health revoked the sanitary approval for eastern lots. The revocation proceedings were at public expense.

Private roadway easements were marked out on the survey for access to the interior lots, but there is no legal access to a public road. The existing access trespasses across State Highway Department right-of-way and private property. This year, the State Highway Department, using public tax dollars, had to relocate the access to accomodate lot buyers who would have been otherwise land locked. The access road onto the county road is still in an extremely dangerous location on a blind corner.

Why couldn't Mr. Anderson be held responsible?

Mr. Anderson filed for bankruptcy in July, 1982. The lot owners relied in good faith on his promises to install the facilities and chose not to pursue any legal remedies. Now there is no hope that the "developer" will carry out his promises. The cost of installing the improvements falls directly on the lot owners and the taxpayers. The underlying contract between Anderson and the ranchers is also in default. If there are insufficient assets in the bankruptcy, the lot purchasers may lose everything.

How could the subdivision law have helped?

Mr. Anderson would have had to provide a financial guarantee that the public improvements would be installed according to minimum specifications.

Who has evaded the Subdivision Act?

Each person used exemptions that they were legally entitled to use.

We cannot penalize the innocent purchaser for redividing his land based on advice and promises of seller.

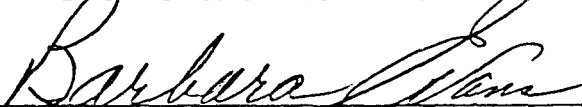
Furthermore, prosecution of Mr. Anderson is questionable because of the length of time which has passed. By the time the problem becomes noticeable, it's too late to stop it.


The Goodan-Keil Estates is an example of one of many "subdivisions" created in Missoula County in the past five years.

When these "subdivisions" are fully developed, there will be an inevitable demand for public services. Why should the local taxpayers have to pay for these "cheap lots" when developers and lot owners of properly platted subdivisions have contributed their share to the cost of public services? The use of exemptions in urbanized developing counties is unfair to developers who comply with the law as well as the taxpayers who live in those counties.

We ask you to consider the inequities in the current subdivision law and to grant local governments the authority to solve the problem with the help of the citizens and participants at the local level.

BOARD OF COUNTY COMMISSIONERS


Commissioner, Chairman


Commissioner

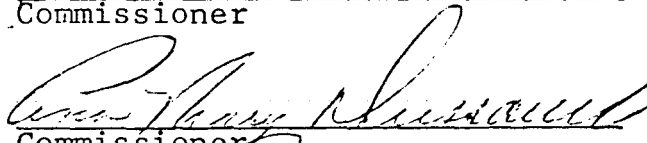
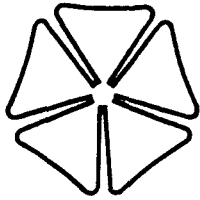

Commissioner

Exhibit 3



THE GARDEN CITY
HUB OF FIVE VALLEYS

Missoula, Montana 59801

CITY ZONING ADMINISTRATION
201 W. Spruce St.
Phone 721-4700

MEMO

TO: Hal Harper, Natural Resources Committee

FROM: Kristina Ford, Director of Planning

DATE: February 10, 1983

RE: H.B. 646

As Planning Director of Missoula County, I support H.B. 646 and urge your favorable recommendation.

Missoula County is a relatively urbanized county, and is often confronted with the pressure of rapid development and the ensuing demand for services such as police and fire protection, schools, and road maintenance. This means that the County needs the means to ensure that development occurs in an orderly fashion. Under the current Subdivision Act, exemptions allow certain divisions of land to be filed without regard to the effects such divisions will have on the demands for services in the County. These exemptions are appropriate in rural counties. They are not appropriate in urbanized and rapidly developing counties.

H.B. 646 recognizes the unique nature of the counties in Montana and allows each county government to seek the best solutions to its problems. I hope you will recommend this bill favorably.

KF:rt

PROPOSED AMENDMENTS TO HOUSE BILL 646

1. Amend title, line 6
After: "AND"
Strike: "RESTRICT"
Insert: "VARY"
2. Amend section 2, page 4, line 19.
After: line 18
Strike: "not"
After: "be"
Insert: "more or"
3. Amend section 3, page 5, line 19.
After: "(1)"
Insert: "; or (c) providing for exemptions in addition
to those described in subsection (1)"
4. Amend section 4, page 7, line 11.
After: "(1)"
Insert: "; or (c) providing for exemptions in addition
to those described in subsection (1)"

Montana Association of Churches

Exhibit 4

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601

February 11, 1983

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls

Roman Catholic Diocese
of Helena

United Church
of Christ
Montana Conference

United Presbyterian Church
Glacier Presbytery

United Methodist Church
Yellowstone Conference

United Presbyterian Church
Yellowstone Presbytery

MR. CHAIRMAN AND MEMBERS OF THE HOUSE NATURAL RESOURCES
COMMITTEE:

I am writing on behalf of the Montana Association
of Churches in support of House Bill 646 which would
authorize local governing bodies to adopt regulations
that further define "subdivisions."

The Montana Association of Churches has adopted
a position paper on Energy and Environment in which
we encourage local initiative and support strong local
efforts to protect the environment.

Our interest in this kind of legislation stems
from our belief that the earth belongs to God and that
all parts of it are involved with all others. The
Christian faith sees the role of human beings in the
world as that of a steward. We are called upon to use
our land resources wisely.

We support legislation that promotes planning
processes which confront openly the issues of future
growth and development, and therefore support HB 646.

Thank you.

Sincerely,



Cathy Campbell
Legislative Liaison

NATURAL RESOURCES

COMMITTEE

DATE 2/11/83

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CX. 86

CHRONOLOGY OF
SECURING APPROVAL
FOR AN OCCASIONAL SALE

A tract of five acres in the
SW 1/4, Sec. 12, T9N, R5W,
Colorado Gulch, Lewis and Clark
County, Helena, Montana

Owned by Vera L. Dreher
1962 Colorado Gulch
Helena, MT 59601

- 30 Septemebr 1981 Test holes dug to depth of seven feet at each of two sites of proposed drain fields.
- 25-26 October 1981 Percolation test performed on site.
- 27 October 1981 Application filed with Lewis and Clark County Health Department; \$25 fee paid.
- 11 Novemeber 1981 Site checked by Will Selser, L & C County Sanitarian, okayed, application forwarded to subdivision Bureau, DHES.
- 1 December 1981 Letter dated 27 November 1981 received from Joseph Strasko, Subdivision Bureau, DHES, requiring additional information:
1. Topo map indicates slope at site is greater than 2%. Explain.
 2. Lot layout does not indicate distance of proposed drain field from proposed well.
 3. Provide detailed soils information.
 4. Provide \$30 review fee.
 5. Provide copy of COS.
 6. Provide hydrogeological study of entire quarter section. Proposed parcel, plus others on nearby properties, creates six parcels. When six or more parcels are created tests shall be conducted to determine yield and maximum drawdown of well, etc, etc.
- 1 December 1981 Phone call from Chet Dreher, husband of Vera, to Strasko asking if drilling an acceptable well would suffice instead of hydrogeological study. Strasko said "No."
- 1-4 December 1981 Calls made by Dreher to Lowell Hanson, engineer and Max Blotz, Hydrometrics, to get estimates for

chronology of
securing approval
for an occasional sale

hydrogeological study. Guesstimates ran from \$200 - \$2,000. Hanson, surveyor of Dreher tract, doubted need for study but doubted DHES would back down. Max Blotz agreed to do study but stated he could not begin until February 1982.

5 December 1982

Letter from Dreher to Strasko asking that he drop hydrogeological requirement because:

1. Financial hardship.
2. First subdivision of land.
3. Two of parcels Strasko cited as subdivided on other nearby ownerships are in fact remainders and are only parcels by virtue of being remainders of less than 20 acres, a statutory description.
4. The hydrogeological study would require permission of owners of land not belonging to Dreher.
5. While Dreher would be required to fund the study, benefits would accrue to others.

Dreher asked that if request to drop hydrogeological study was not granted, Strasko furnish information on administrative appeal process.

15 January 1982

After 41 days Strasko replies to Dreher refusing to drop hydrogeological requirement. Enclosed was copy of Jim Sparing well log from parcel nearest tract under consideration. Well was drilled to depth of 268 feet. Static level was 20 feet below surface. The drill tool was raised to the 250 foot level and air was blown into the bottom of the hole for one hour producing 6 gpm. Strasko interpreted this to mean the well had been pumped down from the 20 foot static level to the 250 foot level after one hour and therefore the well was marginal by DHES standards. He notified Dreher she should contact Ms. Paulette Duncan to implement appeal. Dreher learned that next Board meeting would take place at the end of January.

18 January 1982

Letter from Dreher to Duncan, DHES, requesting appeal be scheduled for her at "earliest possible date."

4 February 1982

Letter bearing that date but postmarked 8 February, well past Board meeting, sent from DHES Counsel Frank C. Crowley, to Dreher outlining appeal procedure. Crowley, in response to query from Dreher said, "The Department cannot advise you whether you

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should retain...an attorney. I would only say that parties contesting Department action are normally represented by attorney's familiar with the State Administrative Procedures Act."

- 19 February 1982 Dreher phones Max Blotz, Hydrometrics. Blotz to be at Dreher property on 26 February 82.
- 19 February 1982 Chet Dreher talked by phone with Wes Lindsay, owner of firm that drilled Sparing well. Dreher read Strasko's interpretation of well-log to Lindsay. Lindsay stated interpretation was incorrect. Well was not pumped with casing full. The 6 gpm represented the recovery rate and the well would easily meet 8 gpm over a two-hour period, the DHES minimum. Lindsay stated that they are drilling to meet the requirements of lending institutions, not DHES.
- 23 February 1982 Attorney Bill Romine contacted by Dreher to seek advice on appeal. Should hydrogeological study be cancelled and appeal process be pursued? Advised she write Dr. Drynan, DHES Director, in last-ditch effort.
- 24 February 1982 Letter from Dreher to DHES director reviewing all of above but stressing the faulty interpretation of well-log and time-lag involved in dealing with DHES. Dreher asked for his intervention but no response was ever recieved.
- 26 February 1982 Max Blotz, Hydrometrics visits property and reviews file. Secures permission from Herb Buckley to test his well which lies within 1/4 section to be studied. Confused by Strasko's claim re number of subdivisions and asks Dreher to request clarification. There are eight seperate ownerships and as many as 11 parcels within area. Blots to return next week to conduct study.
- 26 February 1982 Dreher writes Strasko requesting clarification on ownerships he's interested in having studied.
- 3 March 1982 Strasko writes Dreher describing lots. Also requests he be called and meeting be set up for him to make on-site evaluation.
- 4 March 1982 Above letter recieved, call made to Strasko and meeting set up for next day for Strasko to view site.
- 4 March 1982 Romine advises against appeal. May lose appeal and have to do study in addition to paying his fee.

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5 March 1982 Strasko meets Dreher, goes to site, approves slope, soils and drain-field locus.

11 March 1982 Blotz and Joseph V. Baglio, Jr. conduct drawdown test on well owned by Bob and Leslie Kellogg. Blotz also gets permission to test Sparing well. Blizzard halts operations after Kellogg test.

12 March 1982 Baglio returns and conducts test on Sparing well, which produces 10 1/2 gpm (not the 6 gpm that Strasko read into the log) and then conducts test on well owned by Herb and Carlee Buckley. After reconnoitering land Baglio borrowed aerial photography of area from Dreher and departs.

24 March 1982 Baglio delivers study to Dreher. Water okay.

25 March 1982 Dreher sends report to Strako.

1 April 1982 Dreher receives permission from DHES to sell tract.

ELAPSED TIME:
FIVE MONTHS

CONCLUSIONS: The system works too slowly. Time to DHES is a commodity that only counts toward retirement.

 The appeal process is so cumbersome and costly it can only be of use to corporate giants or wealthy individuals.

 Drawdown tests are dubious since pump-size is not taken into account, line-size, etc.

 Work done by the county is duplicated by the state.

 Statute and rules beyond the ken of those without LLD.

 The Administrative Procedures Act stinks.

 DHES employees not fully conversant with well-drilling techniques.

 The Subdivision and Platting Act stinks.

 The \$615 I have to pay to Hydrometrics has bought nothing. We still don't know if there's water under the parcel.

 Subdivision employees of DHES are intransigent and arrogant.



The Montana Environmental Information Center

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TESTIMONY IN OPPOSITION TO HJR 20

HJR 20 is an attempt to undermine both the provisions of the Administrative Procedures Act (APA) and the protections now afforded under the law.

The resolution directs the department to review their rules in accordance with APA but makes it virtually impossible to do so. The department would first have to wait to make sure of the laws they were operating under to make rules consistent to those laws, or in other words, after the adjournment of the legislature. Problems with present rules have first to be identified—a process now underway—draft rules proposed, notice of intent to initiate the rulemaking procedure filed, public testimony solicited and considered...In short it is a long process intended to protect the public. But moving the unreasonable July 1 deadline back is not good enough.

The memmo mentioned in the resolution was clearly not intended to make substantive changes to the present rules nor does it intend to make hasty decisions. Comments received thus far address relatively minor procedural problems.

HJR 20 also intends to undermine the act itself. (We assume the act mentioned is not the Subdivision and Platting act as stated but the Sanitation in Subdivisions Act.) It seeks to limit consideration to those rules that address only health and safety. It ignores consumer protection and environmental quality now afforded under the act. A simple example is water availability. The act says rules shall provide for evidence that a water supply is "sufficient in terms of quality, quantity, and dependability.."

If considering only health and safety, it is conceivable to have a subdivision with no water supply. Could the department under the present law be forced to avoid the law if this resolution passes?

The resolution is also vague. The fifth WHEREAS is a good example. What rules are "believed to be duplicative and burdensome?" What does the expertise of personnel of local governing bodies have to do with the intent of this bill?

HJR 20 is seriously flawed. We recommend a "do not pass".

STANDING COMMITTEE REPORT

February 16,

19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **646**

First reading copy (**white**)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNING BODIES TO ADOPT REGULATIONS THAT FURTHER DEFINE "SUBDIVISIONS" AND RESTRICT THE USE OF EXEMPTIONS; AMENDING SECTIONS 76-3-103, 76-3-104, 76-3-201, 76-3-207, AND 76-3-504, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **646**

DO PASS

STANDING COMMITTEE REPORT

February 11, 1963

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **676**

First reading copy (**white**
Color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE DEPOSIT IN THE EARMARKED REVENUE FUND OF MONEY PAID TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION BECAUSE OF CONDITIONS IMPOSED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION UNDER PROVISIONS OF THE MONTANA MAJOR FACILITY SITING ACT; TO PROVIDE FOR THE EXPENDITURE OF SUCH MONEY; TO PROVIDE FOR THE USE OF THE INTEREST AND INCOME FROM INVESTMENT OF THE MONEY; TO TRANSFER MONEY ALREADY PAID TO THE DEPARTMENT TO THE EARMARKED REVENUE FUND FOR USE AS PROVIDED IN THE ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **HOUSE** Bill No. **676**

DO NOT PASS

XXXXXX
DO PASS

STANDING COMMITTEE REPORT

Page 1 of 2

February 18, 1983

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE JOINT RESOLUTION Bill No. 20

First reading copy (white)
Clerk

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW THE RULES ADOPTED UNDER THE MONTANA SUBDIVISION AND PLATTING ACT; REQUIRING THE DEPARTMENT TO AMEND OR REPEAL THOSE RULES WHICH ARE NOT CONSISTENT WITH THE PURPOSES OF THAT ACT; REQUIRING THE DEPARTMENT TO ADOPT RULES TO MINIMIZE THE COST OF REVIEW OF SUBDIVISION PROPOSALS; AND REQUIRING THE REVIEW OF RULES TO BE COMPLETED BY JULY 1, 1983.

Respectfully report as follows: That HOUSE JOINT RESOLUTION Bill No. 20
be amended as follows:

1. Title, line 5.

Strike: "DIRECTING"

Insert: "REQUESTING"

2. Title, line 7.

Strike: "SUBDIVISION AND PLATTING"

Insert: "SANITATION IN SUBDIVISIONS"

3. Title, line 8.

Strike: "REQUIRING"

Insert: "REQUESTING"

4. Title, line 16.

Strike: "REQUIRING"

Insert: "REQUESTING"

DO PASS

February 18, 1983

5. Title, line 11.
Strike: "REQUIRING"
Insert: "REQUESTING"
6. Title, line 12.
Strike: "1983"
Insert: "1984"
7. Page 1, line 24.
Strike: "Subdivision and Platting"
Insert: "Sanitation in Subdivisions"
8. Page 2, line 13.
Strike: "Subdivision and Platting"
Insert: "Sanitation in Subdivisions"
9. Page 2, line 18.
Strike: "directed"
Insert: "requested"
10. Page 2, line 20.
Strike: "Subdivision and Platting"
Insert: "Sanitation in Subdivisions"
11. Page 3, line 1.
Following: "rules"
Insert: "should"
12. Page 1, line 4.
Strike: "must"
Insert: "should"
13. Page 3, line 7.
Strike: "must"
Insert: "should"
14. Page 3, line 11.
Following: "rules"
Strike: "must"
Insert: "should"
Following: "and"
Strike: "must"
Insert: "should"
15. Page 3, line 12.
Strike: "1983"
Insert: "1984"

AND AS AMENDED
DO PASS