

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By VICE CHAIRMAN JACK HERRON, on February 9,  
1995, at 3:00 P.M.

**ROLL CALL**

**Members Present:**

Rep. William E. Boharski, Chairman (R)  
Rep. Jack R. Herron, Vice Chairman (Majority) (R)  
Rep. David Ewer, Vice Chairman (Minority) (D)  
Rep. Chris Ahner (R)  
Rep. Shiell Anderson (R)  
Rep. Ellen Bergman (R)  
Rep. John C. Bohlinger (R)  
Rep. Matt Brainard (R)  
Rep. Matt Denny (R)  
Rep. Rose Forbes (R)  
Rep. Antoinette R. Hagener (D)  
Rep. Bob Keenan (R)  
Rep. Linda McCulloch (D)  
Rep. Jeanette S. McKee (R)  
Rep. Norm Mills (R)  
Rep. Debbie Shea (D)  
Rep. Joe Tropila (D)  
Rep. Diana E. Wyatt (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Bart Campbell, Legislative Council  
Evelyn Burris, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB 397; HB 398; HB 358; HB 361  
Executive Action: None

**CHAIRMAN BILL BOHARSKI** attended the meeting via speaker phone.

HEARING ON HB 397Opening Statement by Sponsor:

REP. CAROLYN SQUIRES, HD 68, Missoula, presented HB 397 which is an act prohibiting an incorporated city or town or a county from requiring a landowner to hook up to a sewer line instead of replacing a septic system based on the distance of the land or residence from the sewer line. REP. SQUIRES clarified some of the misunderstandings on what the bill does and said it gives people the opportunity to reinstall their septic tank without being forced to be connected to the sewer. There is a 200 foot limitation in statute that indicates if there is failure in a septic system they automatically have to hook up to the nearest sewer system.

REP. SQUIRES felt this is inappropriate and is an issue where people should determine their own destiny. Her constituents are not interested in polluting the aquifer and if their system is found to be incompetent and it can be proven to them that they need to connect, that would be fine, but they need to be able to have that option.

Proponents' Testimony:

Pari LeCoure, President of the Missoula Neighborhood Network, and Rattlesnake Homeowners Association, Missoula, spoke in favor of the 200 foot rule and submitted a copy of the Rattlesnake sewer map that was in the Missoulian in 1991. EXHIBITS 1 and 2 The residents that are circled on the handout have a system failure and are within 200 feet of an existing line. The area that ended up being part of the SID process is highlighted. Ms. LeCoure said in this particular case, it would have benefited everyone involved to repair the system. They are looking for a way to resolve the entire sewer problem they are confronted with in Missoula. Rather than putting annexations or rulings on how and where they can sewer, they need to get together as a community in Missoula and address the water quality issue.

Most of the residents Ms. LeCoure had talked to were in favor of addressing water quality and were tired of paying the enormous costs of being sewered. There are no grant monies available as in the past decade. They would like to find a permanent way to resolve water quality issues leaving annexation, the 200 foot rulings and the other measures they currently have that force people to be on the sewer. The issue of affordability has the potential to force people out of their homes.

Jay Sage, Missoula Resident, submitted copies of a news magazine called Small Flows which is funded by the EPA. It shows there is more than one method of having a sewer system. It does not have to be a city sewer system. There are several options, many of which are much cleaner than a city sewer system. In 1992, they had a lift station failure in Missoula. He testified that he was

one of the unfortunate people that drank some water not realizing that the city sewer had leaked into the water supply. They had to go to private wells to get drinking water for three days. These issues are about community building and the way the annexation laws stand, it has torn the community apart. **EXHIBIT 3**

**Jack Fallon, Evergreen**, spoke in support of HB 397 saying people need to have a choice. As a member of the Evergreen water and sewer district board, they are faced with the decision of whether to mandate people hooking on. They have always made it optional and prefer that the state does not mandate this personal issue with private owners.

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**Paul Laisy, Missoula**, representing himself spoke in support of HB 397.

**John Rice, Missoula**, spoke in favor and urged the committee's support.

**John Brower, Reserve Street Homeowner, Missoula**, spoke in favor of HB 397.

**Charlene Miller, Target Range Homeowner, Missoula**, said the Target Range homeowners feel that in all fairness they want to have a choice.

**John Shontz, Montana Association of Realtors**, spoke in favor of HB 397.

**Silva Sage, Missoula**, said she has been a resident for forty-four years and has her own well and septic system. **Ms. Sage** said the forced hook-up to the sewer system will cause a real hardship on retired people that are trying to live on Social Security and a fixed income and this would be very unfair.

**Arlyce Bolich, Missoula**, said they have people in her area that tried to get into the city in 1964 and they applied because they wanted the sewer. They are now in the city but they never got to hook up to the sewer. They only want part of it and not all of it. An enticement to this degree puts a severe hardship on many people. It is time that the people are able to give their input.

**Arlene Harris, Reserve Street Homeowners Association**, spoke in favor of HB 397 and said the 200-foot restriction is a joke.

*{Tape: 1; Side: A; Approx. Counter: 23.8; Comments: Cannot hear tape .}*

**Wilma Sage, Missoula**, spoke in support of HB 397 and said the cost is prohibitive for many people and seems unfair and uncalled for when an acceptable, efficient, private system can be installed at a fraction of the cost. She asked for consideration

of the elderly, fixed income people and young homeowners and asked the committee to vote in favor of this bill. **EXHIBIT 4**

**Will Snodgrass, Missoula**, spoke in favor of HB 397.

**Jack Grover, Missoula**, said this is an annexation issue and urged support of HB 397.

**James Lofftus, President, Montana Fire District Association**, urged support of HB 397 agreeing with previous testimony.

Letters of support for HB 397 and HB 398 (hearing to follow) were received from:

**Rodney and Susan Shinn, Missoula. EXHIBIT 5**

**Doug and Karin Schwartz, Missoula. EXHIBIT 6**

**Mr. and Mrs. Beyer, Missoula. EXHIBIT 7**

**Opponents' Testimony:**

**Bill Verwolf, City Manager, City of Helena**, stated local issues need to be settled by a local process rather than coming to the legislature for a statewide answer to solve a community problem. This puts the situation for septic systems that are outside cities and towns and those inside cities and towns in the same category. He compared the differences and the need to distinguish between the two.

**Mona Jamison, Big Sky Water and Sewer District #363**, spoke in opposition to HB 397 stating the implication of this legislation for county sewer and water districts are significant for district #363 which is now promulgating an ordinance that requires connection to its system based on the distance of the property line from the sewer line. HB 397 would completely undermine the reasons for creating public sewer systems. Further, it is bad public policy because it would impede the ability of municipalities to prevent potential health problems before they arise. **EXHIBIT 8**

{Tape: 1; Side: A; Approx. Counter: 40.6;}

**Bruce Bender, City Engineer, Missoula**, testified in opposition to HB 397 saying this will prohibit the enforcement of the 200 foot rule that is currently, and has been, part of the National Code entitled the Uniform Plumbing Code which has been adopted by the State of Montana. He said for 12 years, as the City Engineer, he has been enforcing this national and state code. He explained the good fiscal sense of the 200 foot rule for an individual property owner. To reinstall another septic tank is an expensive short term solution. Its basically cleaning out the pipe so it will flow again. It is not dealing with the permanent solution of connecting the house to public sewer. **EXHIBIT 9**

**Mr. Bender** attested that in four separate cases of houses that have had failed septic systems within the 200 foot rule, the city responded and created Special Improvement Districts (SID) for those property owners to equitably finance long term, low interest loans to extend the mains. Currently, the city offers a \$750 cash rebate for houses that connect. It also offers deferred payment loans for low income and elderly. **Mr. Bender** submitted a thank you note from the **Watkins and Isome families, Missoula**, stating their appreciation for the sewer project completed in Missoula. **EXHIBIT 10** He also submitted written testimony from **Jim Nugent, City Attorney, Missoula**, expressing opposition to HB 397. **EXHIBIT 11**

**Alec Hanson, Montana League of Cities and Towns**, stated this is a public health stand, not an annexation law. This law will not work in densely populated areas. **Mr. Hanson** submitted testimony from **Brian Roat, Mayor, Red Lodge**, stating this bill will do what the legislature said it was not going to do and that is to further regulate and control local government. HB 397 will not allow the city to require a resident with a septic tank in town to connect to a sewer line that has been extended to or near his property for any reason. Red Lodge is in the middle of such a project right now. **EXHIBIT 12**

**Mark Watson, Billings**, reiterated previous testimony in opposition to HB 397. They have experienced well contamination, wells collapsing and have also created a program to defer costs.

**Peter Nielsen, Environmental Health Supervisor, Missoula City-County Health Department**, offered his written testimony and amendment opposing HB 397 in its current form and requested this bill be tabled or amended. **EXHIBIT 13**

**Don Spivey, Columbia Falls**, submitted his written opposition to HB 397. **EXHIBIT 14**

**Curtis Horton, Missoula**, spoke in opposition of HB 397,

**Anne Hedges**, stated her concerns about ground water protection and urged the committee to oppose HB 397.

**Richard Isle, Wolf Point**, reiterated his opposition to this bill.

**Earl Tufte, Great Falls**, noted his opposition to HB 397 for the record.

**Walter Sheldon** representing **Montana Rural Water Systems**, stated their opposition to HB 397.

**Shannon McNew, Missoula**, submitted written testimony. **EXHIBIT 15**

**James E. Wysocki, City Manager, City of Bozeman**, submitted written testimony. **EXHIBIT 16**

**Ted Kylander, R.S., Environmental Health Program Manager, Yellowstone County Health Department,** submitted written testimony. **EXHIBIT 17**

**Chet Hope, Columbia Falls Clinic, Columbia Falls,** submitted written testimony. **EXHIBIT 18**

**Kathy Macefield, City of Helena Planning Director,** submitted written testimony. **EXHIBIT 19**

**Informational Testimony:** None

*{Tape: 1; Side: B; Comments: Turned tape over, voices barely audible.}*

**Questions From Committee Members and Responses:**

**REP. SHIELL ANDERSON** questioned **Mr. Alec Hanson** regarding the planning uniform code on the 200 foot rule. **Mr. Hanson** referred this question to **Mr. Nielsen, Missoula City Health Department,** and he cited the state regulations. **Mr. Bender, City Engineer, Missoula** explained the ways of paying and what **FHA** requires for hook-up to the city sewer.

**REP. ANDERSON** said septic systems have their own stringent state regulation codes and rules.

**REP. BRAINARD** asked a series of questions on what characterizes pollutants and what contaminates sewers and causes bacteria and how effective is the treatment sewage plant.

**Mr. Nielsen** responded there are nitrates and chemicals to handle this. He discussed how drain fields spread wastes out and how septic systems are designed to keep waste from backing into an individual's home.

**REP. BRAINARD** questioned the possibility of heavy metals found in sewage. **Mr. Bruce Bender, City Engineer** responded this is regulated under state laws.

**REP. BOHLINGER** inquired as to costs to replace a septic system and financing and if there are incentives available for hooking to the sewage system.

**Mr. Bender** explained the special financing that is available with low interest and he discussed the costs of hooking up to the city sewage; the costs range between \$5,000 and \$7,000.

**Closing by Sponsor:**

**REP. SQUIRES** closed.

HEARING ON HB 398Opening Statement by Sponsor:

**REP. CAROLYN SQUIRES, HD 58, Missoula**, explained that this bill is an act prohibiting an incorporated city or town or a county from requiring a landowner to hook up to a sewer line instead of replacing a septic system based on the distance of the land or residence from the sewer line. **REP. SQUIRES** read the testimony of **Dale Virts, Missoula**, stating the problems he incurred trying to build a garage on his property. **EXHIBIT 9**

Proponents' Testimony:

**Jay Sage, Missoula**, spoke in favor of HB 398.

**Susan Mathewson, Missoula**, submitted her written testimony and stated in Missoula when a septic system fails, the homeowner must sign a waiver to get a permit to replace the drain field. This requirement does not take into account the amount of land the homeowner has or the suitability of soil structure. **EXHIBIT 20**

**Pari LeCoure, Rattlesnake Homeowners Association**, stated their support for HB 398. She told the committee that people were forced to go on a expensive sewer system and they feel that water and annexation need to be separated.

**John Zimorino, Missoula**, submitted testimony in favor of HB 398. The Linda Vista residents in Missoula County, have been ordered by the state to be sewered in order to correct a ground water problem. This problem was caused by county and state authorities allowing development in some areas that had high ground water levels. By allowing septic tanks with seepage pits or cesspools combined with shallow wells, approximately 10 homes have elevated nitrate levels in their wells. Now, 25 years later, they are paying the price for poor decisions made in the past. The city is forcing residents to sign a waiver of their statutory right to protest annexation. If a resident does not sign the waiver, that residence will not be hooked up and can be fined \$200 a day for being in violation of the state order. **Mr. Zimorino** said people should have the option of not being forced to join the city sewer system. **EXHIBIT 21**

**John Brower, Reserve Street Homeowners, Missoula**, said he feels his rights as a property owner should not be removed nor his right to protest.

**Jack Fallon, Evergreen**, stated this will not affect Evergreen because the city of Kalispell is a separate entity. He did not feel it is right for a person to not be able to expand their drain field after proper permits, surveying, etc., are appropriately taken care of.

**John Rich, Missoula**, spoke about the environmental concerns and the source of water supply. He endorsed HB 398.

**Wilma Sage, Missoula**, said the waiver system is a tool used by the city-county government in exchange for things such as electrical permits, and plumbing permits when building or remodeling and making repairs to a home, garage or other property. **Ms. Sage** said this is a violation of her rights as a citizen to petition or protest. She urged support of HB 398.  
**EXHIBIT 23**

**Jack Grover, Missoula**, stated his support of HB 398.

**Kathy Schindler, Missoula**, reiterated previous testimony and stated her support of HB 398.

**Joe Gasvoda, Missoula**, stated his support of HB 398.

**Paul Laisy, Missoula**, stated his support of HB 398.

**Dale Virts, Missoula**, submitted written testimony. **EXHIBIT 23**

**Rodney and Susan Shinn, Missoula**. (See written testimony submitted during hearing for HB 397 - **Exhibit 5**)

**Doug and Karin Schwartz, Missoula**. (See written testimony submitted during hearing for HB 397 - **Exhibit 6**)

**Mr. and Mrs. Beyer, Missoula**. (See written testimony submitted during hearing for HB 397 - **Exhibit 7**)

**Opponents' Testimony:**

**Don Spivez, Whitefish**, spoke in opposition to HB 398 and said it is the policy in his city to annex into the city. Most of the streets are gravel in Whitefish and a waiver is used as a way of helping.

**Larry Gallagher, City of Kalispell**, spoke in opposition to HB 398 and explained that waivers are a help, not a hindrance. The signing of waivers has been an important and mutually beneficial tool for cities and citizens directly outside the city limits to work out agreements for badly needed services, while setting parameters for orderly growth. Frequently, a health-threatening situation may cause a contiguous landowner to ask the city or town for water and sewer services. A common instance is where septic system are polluting wells.

**Erl Tufte, Great Falls**, spoke in opposition to HB 398.

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HOUSE LOCAL GOVERNMENT COMMITTEE

February 9, 1995

Page 9 of 20

**Alec Hanson, League of Cities and Towns**, stated their opposition to HB 398 and reiterated testimony about the waivers and feels people should have the ability to use their own judgment.

**Curtis Warden, Missoula City Council**, stated opposition to HB 398.

**Chris Imhoff, Legislative Chair, League of Women Voters of Montana**, urged the committee not to take away this compromise option for citizens and cities and towns to work toward mutually acceptable goals. The League opposes HB 398 and asks the committee to give a do not pass recommendation.

**EXHIBIT 24**

**Bruce Bender, City of Missoula**, stood in opposition to HB 398 and submitted testimony from **Jim Nugent, City Attorney, Missoula**. They felt HB 398 discourages and places a chilling effect on community common sense public efforts aimed at encouraging potential water aquifer polluters to connect to a public wastewater collection and treatment system readily available to their property. There are public purpose reasons pursuant to which individuals living and using urban areas should act responsibly for the public good. HB 398 adversely affects urban inhabitants of an urban community for the financial benefit of some individual urban dwellers who do not want to assume any public financial responsibility for the public municipal services they use in the urban community they reside in. **EXHIBIT 25**

**Peter Nielsen, Missoula Health Department**, reiterated opposition to HB 398 discussing waivers, plumbing codes, annexation problems and water shortages.

**Fern Hart, Missoula County Commissioner**, submitted testimony in opposition stating they cannot support removing the authority to require a waiver of a right to protest. This is a tool for county government to improve road systems. It is also used to upgrade a seepage pit to a proper septic system. Waiving the right to protest is almost serviced by individual vote or government by initiative. **EXHIBIT 26**

**Kathy Macefield, City of Helena Planning Director**, submitted testimony stating HB 398 stifles a city's opportunity for growth and economic development, and effectively limits a property owner's ability to continue to use an existing residence by connecting to a city sewer system. It also limits property owners options and limits local governments' ability to work with property owners to seek creative solutions to solve problems. **EXHIBIT 27**

**James Wysocki, City Manager Bozeman** submitted testimony stating he has tried to think of the circumstances under which the City of Bozeman would accept a waiver of protest for annexation. The most common situation being the result of a failed septic system, failure of soils on a site to allow for a septic system, the

costs for a septic system being higher than a hook up to a city service, and the higher density allowances when on a sewer system. In most of these situations the landowner would not desire, and in the failed septic system, be able to wait until the public process for ordinances, etc., are completed, which is usually in excess of 60 days. This bill abdicates the authority of the district or entity to place conditions on the provision of a product or service. **EXHIBIT 28**

Informational Testimony: None

Questions From Committee Members and Responses:

**REP. BOHLINGER** asked **John Shontz, Montana Association of Realtors**, why they support this bill. **Mr. Shontz** explained the requests of developers regarding this issue and said many times, they have no choice.

**REP. BOHARSKI** questioned being 175 feet outside of a service area and being required to hook onto a system. **Bruce Bender** responded this is not extended service unless requested.

**Alec Hanson** also responded saying the cities are not going to build twenty miles out and the builders can waive this right.

**REP. BRAINARD** questioned **Pari LeCoure** regarding annexation of the Rattlesnake area and if they received any savings after annexation. **Ms. LeCoure** explained the frustration of losing their fire station after annexation leaving 760 homes insecure.

Closing by Sponsor:

**REP. SQUIRES** made her closing remarks and stressed this is not just a Missoula issue.

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HEARING ON HB 358

Opening Statement by Sponsor:

**REP. CLIFF TREXLER, HD 59**, presented HB 358 which is an act changing the protest requirements for zoning adoption and amending Section 76-2-205. **REP. TREXLER** explained the bill and said this is a housekeeping bill and not a zoning bill. It adds to the methods of protest for a proposed zone district.

**Proponents' Testimony:**

**Mike Meuli, Meuli Ranch, Dayton,** representing himself and the **Western Montana Stockman's**, with 500 members in six Western counties, said HB 358 provides for a balance that is currently absent in Montana's zoning statute. Under current law, the scales weigh heavily in favor of the smaller landowner. In the typical zoning proposal there are usually two groups of landowners involved. One is the small acreage owners and the other consists of larger property owners. The small landowners outnumber the large landowners by a wide margin. The small landowners come to the negotiating table knowing that if they don't like the final plan that they can raise the necessary 40% of the landowners to protest and stop the zoning proposal. They also know the larger landowners have no power to back up their positions. **EXHIBIT 29**

**Mr. Meuli** said he has no plans to subdivide his ranch and would like to continue to provide access for hunting, hiking and other recreation for Montana sportsmen. He is concerned that the current law is pushing him in the other direction and it is apparent that the only way to assure that his property rights and land values are not zoned away is to be the first one in his area to subdivide. The current zoning law is unfair to the people most affected by it and needs the balance provided in HB 358. With this legislation both parties would come to the table to bargain in good faith and the decision would be left in the hands of the people where it needs to be.

**Don Allen**, representing **Montana Wood Products Association**, spoke in support of HB 358. People moving into rural areas have the desire to maintain the "rural character." This leads to an effort to plan and zone the local areas. Planning and zoning can be beneficial. It is detrimental if all property owners are not treated equitably, especially those who own large tracts of land. The current law is biased to favor the number of landowners with no regard with the amount of land they own. **Mr. Allen** reiterated previous testimony in favor of HB 358 and said this bill will encourage small landowners to work with large landowners in good faith whenever they initiate the zoning plan. This would not remove the protest provision for smaller landowners. He urged the committee to give a do pass.

**Candace Torgeson**, representing the **Montana Cattle Women's Association** and the **Montana Stock Growers Association**, said both groups support HB 358 and feel it will encourage zoning plans to address the concerns of the popular vote and also the major landowners. This will benefit the entire community.

**John Shontz**, **Montana Association of Realtors**, said they also support HB 358 and asked for a do pass.

**REP. PAUL SLITER, HD 76, Kalispell**, stated for the record he is a proponent of HB 358.

**Opponents' Testimony:**

**Paul Johnson, Montana City, state agent, Montanans For A Healthy Future,** spoke in opposition of HB 358 stating that for 200 years it has been a bedrock principle of American democracy that the power resides in the majority of the citizens. This bill violates that principle. The existing statute works and protects the principle of rule by the majority of the people. The decision to regulate is made by the elected representatives of the people at the local level and the county commissioners after input by the public at public hearings. This bill would destroy the careful balance that has been reached in the existing laws and would create a tyranny of the minority.

**Mr. Johnson** said the freeholders are the people who own land in the district and if 40% object to a zoning proposal, since zoning is going to affect them and their property, it makes sense for them to overturn a decision as a representative of democracy. If the power is transferred to signing representative of democracy to 50% of the title property ownership, this would transfer the power of people to property. This would preserve the power of the small minority. Under this bill, a single freeholder as opposed to 40% of the freeholders, can end the zoning proposal which is supported by an entire community including the elected representatives of the community. This bill is undemocratic in the extreme. The existing law contains a careful balance that has worked well.

**Ted Lange, Northern Plains Resource Council (NPRC),** spoke in opposition to HB 358 stating they believe it could create a serious barrier to citizens' ability to protect their property values through zoning, and also because they believe this bill is fundamentally undemocratic. Zoning is an important mechanism for people to protect their property values. This bill would create an insurmountable barrier by giving large landowners veto power over zoning plans supported by the majority of their neighbors.

**EXHIBIT 30**

**Mr. Lange** stated many members in the Gardiner area have been deeply concerned for years about the ill-conceived development activity of the Church Universal and Triumphant. The Paradise Valley was not given its name because it looked like a transplanted Los Angeles suburb. As the church has brought more and more new people into the area, its development activities have been steadily taking the valley in that direction. The church has been notorious for exploiting every weakness in Montana's land use laws. Not only have they built, and proposed to build, extensive subdivisions, their subdivisions come with bomb shelters and underground storage tanks. In 1990, one of the tanks ruptured, spilling 30,000 gallons of gasoline and diesel.

**Ms. Lange** said the bottom line is that the church has bought up a lot of land and as a result, HB 358 could make it impossible for local citizens to pass any kind of zoning to protect their

property values, their tourist-based economy and their environment.

NPRC believes that if local citizens find it necessary to pass zoning regulations requiring the church to act responsibly in the development of its property, they should have that right. They urged the committee to vote no on HB 358.

**Glenna Obie, Member, Board of County Commissioners, Jefferson County**, said she has lived in Montana all her life and her family owns a ranch in the Bear Paw Mountains, in northcentral Montana. **Ms. Obie** reiterated previous testimony in opposition to HB 358 and told about the steps Jefferson County has been through the past two years in the process of considering two different land use proposals. **EXHIBIT 31**

**Melissa Case, Montanans Against Toxic Burning**, opposed HB 358 and reiterated previous testimony.

*{Tape: 2; Side: A; Approx. Counter: 50.4;.}*

**Gordon Morris, Director, Montana Association of Counties (MACO)**, agreed with previous testimony in opposition and urged a do not pass consideration.

**Anne Hedges, Montana Environment Information Center (MEIC)**, agreed with **Ms. Obie's** testimony and urged a do not pass consideration.

**Informational Testimony:** None

**Questions From Committee Members and Responses:**

**REP. SHIELL ANDERSON** questioned **Mr. Johnson** about what the Montanans for a Healthy Future Organization is. **Mr. Johnson** responded they are a small non-profit citizens' organization that advocates on public health issues. **REP. ANDERSON** asked if there was a proposed zoning in Jefferson County that would take into the mill and change what it does. **Mr. Johnson** responded yes, the zoning plan they have been working with is a local vicinity plan with the Jefferson County Comprehensive Plan. He explained what the area encompasses and the issues for the local vicinity plan. This plan limits the ability of hazardous waste facilities to be located near schools and residences.

**REP. ANDERSON** asked what is equitable about a few people being able to encompass a large ranch and dictate what will go on. Even if this bill were to pass, they would still be able to control the size of the area inhabited by people that want to control the rest of the area. **Mr. Johnson** explained that their problem with the bill is it removes persons within the regulated area to protest the zoning regulation enacted or passed by the county commissioners. It allows a significant minority in the community to say no to local land use provisions. Under this

bill, opportunity is going to go to acreage rather than people. Fifty percent of the acreage represented within the zoning district can stand up even if it represents a single landowner.

**REP. ANDERSON** discussed the problem of private property rights happening in Bozeman and said the people want to control open space and still control the amount of land they currently occupy. He asked about the fairness of this. **Mr. Johnson** responded he believed this bill attacks private property rights by denying smaller land holders their property rights. The ultimate result being a very undemocratic situation where a single person can stymie the efforts of an entire community as far as their property is concerned.

Closing by Sponsor:

**REP. TREXLER** closed by saying he believed all land owners should be protected and have some guarantees. The process is not impinging on anyone's right to do with their land what they want. All the landowners can get together and zone their land.

HEARING ON HB 361

Opening Statement by Sponsor:

**REP. MIKE KADAS, HD 66, Missoula**, said this bill is an act prohibiting municipalities from enacting zoning provisions that regulate the number of persons who may reside in a dwelling based solely on the relationship of the persons, and amending Section 76-2-304. **REP. KADAS** attested that this is a problem particularly in university towns. The problem is the students ban together and try to reduce costs by living together. Legislators also do this for the same reasons. The problem is some of the neighborhoods have had problems. This bill attempts to prohibit prejudging all students and discriminating against all students, not just the problem students. This type of ordinance creates problems with other laws. Property managers run into the great difficulty of having to abide by one law that says they cannot discriminate and a city ordinance that says they must.

**Vicki Amundson, Missoula County Association of Realtors (MCAR)**, said any attempt to control housing intensity by a family definition does not accomplish this objective. It puts real estate brokers and property owners in violation of the federal fair housing laws. **Mr. Amundson** reiterated testimony by **REP. KADAS**. Discriminating against unrelated people who wish to rent a three bedroom home may result in the federal government imposing fines. MCAR receives calls from the office of community development about people complaining of non-compliance with zoning and for these reasons they support HB 361.

**John Shontz, Montana Association of Realtors,** said the two issues at stake are 1) does this bill use local zoning authority and 2) does the bill prevent local government from making rational zoning decisions. He questioned if this bill prohibits local government from securing the streets and making sure fire safety is met and if it prevents the county from implementing its police powers. He believes the answer is no.

*{Tape: 2; Side: B; Comments: Turned tape over.}*

**Mr. Shontz** described problems that a city in the state of Washington had when attempting to propose a zoning ordinance similar to this one. The state of Montana does not have the power to zone on any basis other than those powers of health, wealth and safety. He believed it would be helpful for the legislature to clearly articulate through legislation rather than go through litigation on this issue.

**Bruce Barrett, Attorney, Missoula,** stated that for the last seventeen years he has worked with the Associated Students at the University of Montana and in addition to being their lawyer, he appeared as a lifelong Montana resident. Every city in the state has certain zoning needs. The university has been in Montana for 100 years and students could always room and board and rent homes. Fifteen years ago that changed and no more than two unrelated adults can live together. This ordinance in the city of Missoula is bad policy.

**Mr. Barrett** cited some of the laws a city has at its disposal to handle difficult problems that arise and problems that may arise in neighborhoods. The three newspapers in Missoula have editorialized against this ordinance and the city council ignored its own subcommittee, which voted to eliminate this ordinance. He believed this involved the issue of how much people are going to allow the city to tell the property owners what to do with their property. He urged the committee to support this bill.

**EXHIBIT 32**

**Melissa Case, Montana People Action,** said the concept of restricting people from renting based on a relationship is ridiculous. She urged the committee's support.

**Alan Miller, Student and Resident, Missoula,** said last spring his two roommates and he were turned down repeatedly for housing based solely on the fact they were not related to each other. He urged a do pass recommendation for HB 361 so people like him are not subject to the whims of discriminatory housing ordinances.

**REP. BILL CAREY, HD 67, Missoula,** spoke in favor of HB 361. He is the **Director of the Missoula Food Bank** and in that capacity during the last six years they have served over 450 families a month with food and they know from their statistics that many of them are forced to live together. The vacancy rate in Missoula is not an operative vacancy rate and they have no choice. **REP.**

**CAREY** said this type of current legislation tends to make criminals of people. He urged the adoption of this bill and a do pass because it will give people the option to live within the law.

**Holly Fuller, Associated Student, University of Montana**, said HB 361 is a necessity. The university has 11,067 students and there is limited housing so they have no choice but to live with multiple roommates.

**J.V. Bennett, Missoula**, spoke in favor of HB 361 on his own behalf as one of the many students living illegally under Missoula's discriminatory housing ordinance. He reiterated the housing problem in Missoula and said he rents a four bedroom house with three other people. **Mr. Bennett** attested to the incident that illustrated people in his living situation are put at a considerable disadvantage in dealing with neighbors who are inconsiderate. Concerns such as noise and overcrowding can be addressed with existing laws which do not discriminate on the basis of relation between residents. He urged a do pass on HB 361. **EXHIBIT 33**

**Mary Galuee, Associated Students, Montana State University-Billings**, said they are affected by a similar zoning ordinance. This bill does not only affect students but a number of people that share their space for economic reasons such as elderly people and young professional people. This results in most of them and the landlords living in violation of zoning ordinances. This bill provides the option for landlords to rent to any number of persons, related or not as to what their space will allow.

**Linda Lee, Executive Director, Montana Public Interest Research Group (MontPIRG)**, representing 4,000 members in the state including 2,200 students, spoke in favor of HB 361 stating the fairness and logical nature of the bill. MontPIRG runs a hotline which helps tenants and landlords with problems dealing with the tenant/landlord law. The Missoula ordinance unfairly presumes that one class of renters is universally worse than another, that unrelated people are worse neighbors than related people, that three roommates create more noise and do more to harm neighboring property values than a family with four teenagers renting the same dwelling, and that only young students need or want multiple roommates to help pay sometimes outrageous rents. The issue of scarce housing is very common. **EXHIBIT 34**

**Ms. Lee** submitted testimony from **Ann Cook, Director, Missoula Aging Services, (EXHIBIT 35)** stating the problems of discriminating restrictions against those who potentially shoulder the greatest risks, e.g., senior citizens prevented from living together or elderly individuals allowing two unrelated persons to share their home. Even though the structure is substantial, more than two unrelated persons cannot share the space. **Ms. Lee** also submitted a Missoulian editorial regarding



unfair housing rules whereby the city council candidly confessed the ordinance is designed to be selectively enforced. **EXHIBIT 36**

**Pari LeCoure, Missoula**, stated she was a participant on both the affordable housing committee and the committee that addressed this issue in Missoula. This issue was decided after months of committee meetings and the recommendations by the city council to leave the ordinance as it is. She pointed out that in the affordable housing concerns one of the comments this bill would do is allow some of the recently released prisoners the ability to room together because of affordability.

**Ms. LeCoure** explained she is a crime victim and feels they should not room together after they have been released. On the subject of affordability for students, her son is sharing a space with seven other students and they each pay \$360 to share a five bedroom home. **Ms. LeCoure** said she would like to see laws put in for control, but they do not have the money to hire an enforcement staff to regulate how people live so this is the leverage they have. She submitted written testimony from **John Zimorino, Missoula**, stating his opposition to HB 361.

**Opponents' Testimony:**

**Kerwin Jensen, Senior Planner, Yellowstone County/City of Billings Planning Department**, said this is clearly a Missoula problem and local issue. None of the other university towns have presented testimony to this being a problem. The Billings city council addressed this issue when students from Eastern Montana College approached their representatives and said they needed a change. This change was granted to the benefit of the students and exists today under the zoning laws in the city of Billings. The language in HB 361 will create problems in the city of Billings and Montana. **Mr. Jensen** said there are different definitions in the country defining family. He encouraged the committee to vote against HB 361 and let it be heard in the city and county local jurisdiction where it needs to be heard and not come to the legislature to hold a city council meeting. **EXHIBIT 37**

**Jack Doty, University Area Homeowners Association, Inc., Missoula**, retired University instructor, said this is a university problem. The figures at the university are 2,048 students live on campus and there are 12,000 students. He feels this would be a mandate from the state if this bill is passed to force everyone to open up their homes which would be an infringement on property rights. **EXHIBIT 38**

**VICE CHAIRMAN HERRON** relinquished the chair to **VICE CHAIRMAN EWER**.

**Curtis Horton, Missoula City Council, Chairman, Family Definition and Building**, and also representing **City of Missoula**, read a letter from **Douglas Harrison, President, Missoula City Council**,

pertaining to the definition of family. Two years ago the Council requested similar legislation be tabled. Their concern was that passage of a bill such as this severely influences local zoning regulations and these issues are best dealt with on the local level. This bill would destroy single family neighborhoods. **Mr. Horton** reiterated previous testimony and urged that this issue be left at the local level to resolve.

**EXHIBIT 39**

**Betty Haddon**, Missoula resident for twenty-five years, spoke in opposition of HB 361 and in response to the comments **REP. KADAS** said about legislators sharing housing, she reminded the committee that there are not 12,000 of them, and they are only in Helena every other year. They don't have loud parties and strew garbage and destroy tranquility. **Ms. Haddon** said on the issue about the elderly, if there are older citizens that need to live together, there is already a provision for those people to establish a group home and they are available in every neighborhood in the state. **EXHIBIT 40**

**Ms. Haddon** distributed pictures of deteriorating properties that at times had fifteen occupants per house. These properties have now been cleaned up thanks to the ordinances. The university does not permit unrelated people to house together and only allow dependents of a full-time student. She believes the University of Montana is irresponsible and needs to build more housing and allow unlimited numbers of people to live in their housing and not permit unlimited people from living in her neighborhood.

**Dorothy Angwin**, property owner, and member of the **University Homeowners Association**, Missoula, which has over 400 paid members, told about the Annual Membership meeting in April, 1994 where they voted overwhelmingly to support the current residential zoning ordinance which defines "family" as defined and approved by the United States Supreme Court. She then reviewed the twelve-point "Lowe" test for zoning and rezoning and the relationship of zoning to private land use restrictions. and the adverse effects of passage of HB 361. **EXHIBIT 41**

**Keith Baer**, Missoula, reiterated previous testimony in opposition to HB 361.

**Arlette Randash/Eagle Forum**, **EXHIBIT 42**

**Marlen Tweten**, Missoula, **EXHIBIT 43**

**Dr. Richard & Stephanie Ammon**, Missoula, **EXHIBIT 44**

**Jack Doty**, Missoula, submitted written testimony. **EXHIBIT 45**

**John Zimorino**, Missoula, submitted written testimony. **EXHIBIT 46**

**Informational Testimony:**

**Will Snodgrass, Missoula**, drew attention to the children's art work on the wall in the committee room and reminded those present that they all started out as children and if there is something wrong with the children and young people today, they have only to look at themselves for a reason. There's no transformation which occurs from childhood to young adulthood which causes one to become a better person or worse person. He spoke about the perceptions children face today.

**Questions From Committee Members and Responses:**

**REP. JOHN BOHLINGER** said he owns twenty-five rental units in Billings and his ability to manage his properties with concerns to health, safety and welfare and being a good citizen and neighbor are not infringed upon because he knows several of his tenants share property with unrelated people for reasons of economy. He asked **Mr. Kerwin Jensen** to explain his concerns that if this bill were to pass that things would turn upside-down and property owners would lose the ability to control and manage the property they own. **Mr. Jensen** denied saying the property owners would not be able to control their property but said this is a local issue and in Billings they have reviewed it locally and adapted the local zoning laws to suit this situation.


**REP. JOE TROPILA** asked **REP. HAGENER** if she would be willing to accept the University of Montana in Havre. She responded yes.


**Closing by Sponsor:**

**REP. KADAS** closed saying this is not to prejudge people on whether they are related or not. A person should have to do something wrong before punished.

ADJOURNMENT

Adjournment: 8:00 P.M.

  
\_\_\_\_\_  
JACK HERRON, Vice Chairman

  
\_\_\_\_\_  
for EVY BURRIS, Secretary

JH/ev

# HOUSE OF REPRESENTATIVES

## Local Government

ROLL CALL

DATE 2-9-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Boharski, Chairman	✓		
Rep. Jack Herron, Vice Chairman, Majority	✓		
Rep. David Ewer, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Shiell Anderson	✓		
Rep. Ellen Bergman			
Rep. John Bohlinger	✓		
Rep. Matt Brainard	✓		
Rep. Matt Denny	✓		
Rep. Rose Forbes	✓		
Rep. Toni Hagener	✓		
Rep. Bob Keenan	✓		
Rep. Linda McCulloch	✓		
Rep. Jeanette McKee			
Rep. Norm Mills	✓		
Rep. Debbie Shea			
Rep. Joe Tropila	✓		
Rep. Diana Wyatt	✓		

# City has answers for sewer concerns

11-25-91

DON BATY

The Missoulian

The start of city planning for a sewer system in the recently annexed portion of the Rattlesnake Valley has provoked a spate of questions.

Here are some of those questions, with responses from City Engineer Bruce Bender:

## Is public sewer necessary in the Rattlesnake area?

The Rattlesnake valley lies on a portion of Missoula's underground water supply and studies by the City-County Health Department show that the type of septic systems used in the Rattlesnake are contributors to pollution of that underground water.

## How many properties are we talking about?

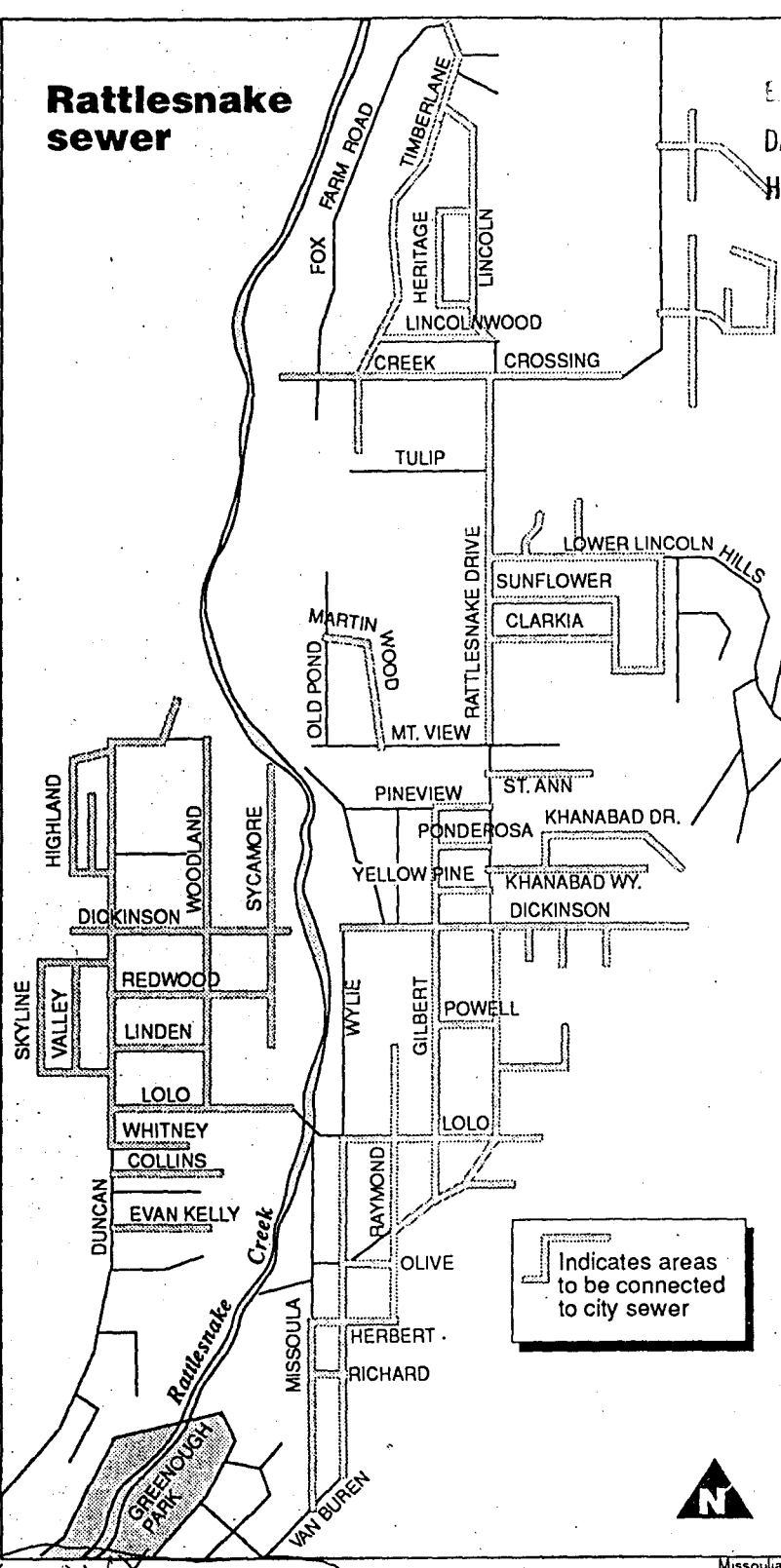
The current effort targets 823 properties in the recently annexed area of the Rattlesnake Valley.

## How much will it cost?

A minimum of \$8,100 a house for a full connection up to a maximum of \$12,300, based on 1991 figures. The difference depends on the type of sewer system. However, residents will have an option to pay just for sewer mains in their street with a stub to their property and, under current law, wouldn't have to connect their properties to the system until their septic system failed. The cost for just mains and stub per house range from \$4,600 to \$10,000.

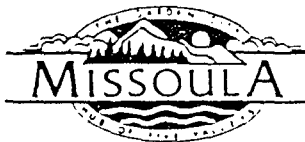
## What are the types of

## Rattlesnake sewer



DATE 2-9-95  
HB 397.

PARY JACOB - nls  
PARI LEBLANC



MISSOULA

DEPARTMENT OF PUBLIC WORKS/ENGINEERING DIVISION

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4620

EXHIBIT 8

DATE 2-9-95

HB 397

E-93-1246

September 23, 1993

*Perry Lacour - Mbl  
PAAI to LAURE*

*1902 Missoula*  
*Jackie Eisen*  
*Steel tank collapsed -*  
RE: Proposed Special Improvement District  
Sanitary Sewer Main Extension

Dear Property Owner:

The City Department of Public Works is in the preliminary planning stages for construction of sanitary sewer mains in your neighborhood. The City will be holding an informational meeting to discuss the formation of a Special Improvement District (SID) to fund the sewer construction. The meeting will be held at 3:00 p.m. on Friday, October 1, 1993 in the Council Conference Room located on the first floor of City Hall at 435 Ryman.

At the meeting we will discuss the proposed sewer construction, the SID process, and preliminary cost estimates as well as potential benefits of the project.

Enclosed is an exhibit showing the proposed SID boundary. The preliminary estimates for your costs of the sewer main construction are approximately \$9,200.00 per property. The costs of the proposed SID may be assessed with estimated interest of 4.50% over a period of 20 years.

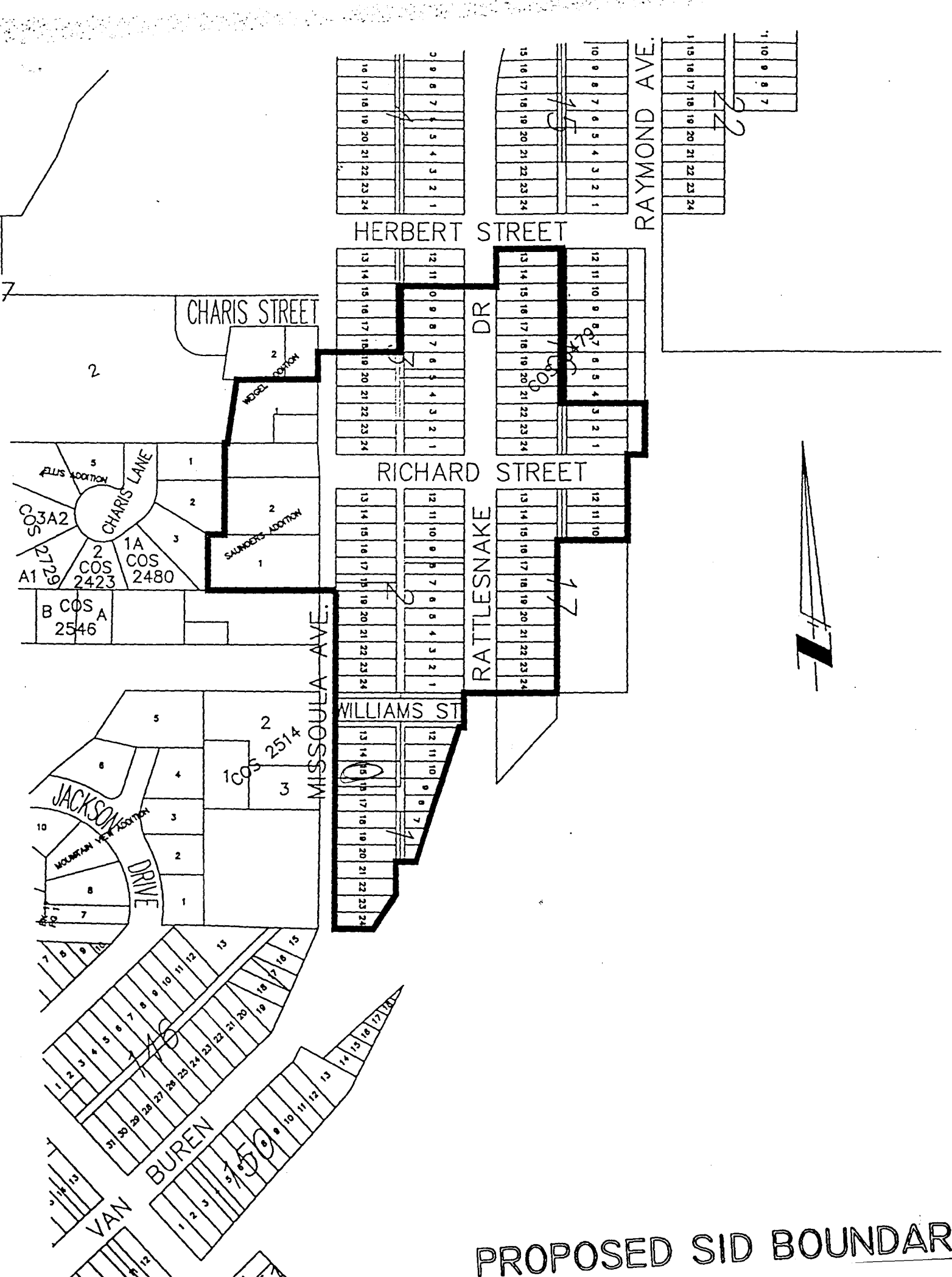
Current City regulations require that upon a septic system failure, connection to the City sewer is required if the property is within 200 feet of an existing sewer line. Fourteen of the thirty-six properties in this proposed SID are within 200 feet of existing or scheduled sewer mains. All properties adjacent to sewer mains are assessed a semi-annual sewer service fee for maintenance of the municipal sewer system. The current semi-annual rate for a single family house on a gravity sewer system is \$40.00.

Please bring your questions and comments to next Friday's meeting and feel free to call me at 523-4624.

Sincerely,

R. Steven King, P.E.  
Assistant City Engineer

cc: Bruce Bender, City Engineer  
Carla Krause, Development Coordinator  
Norman Laughlin, Ward 1 Council Member  
Elaine Shea, Ward 1 Council Member  
Pari Lecoure, Rattlesnake Homeowners Association





# Small Flows

National Small Flows Clearinghouse  
West Virginia University  
P.O. Box 6064  
Morgantown, WV 26506-6064

**Vol. 6**  
**Number 4**  
**Oct. 1992**

3  
EXHIBIT  
DATE 2/9/95  
HB 397

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For more information about the services provided by the National Small Flows Clearinghouse, please call 1-800-624-8301

Fifty-Fourth Legislature of Montana  
House Committee - Local Government  
Room 104 Capitol Bld, Helena, MT.

Mr. Chairman; & members of the Committee  
Re: HB 397 introduced by Carolyn Squires

My name is Wilma Sage. I reside at  
2135 W Sussex, Missoula MT. 59801. I am  
in support of HB 397 for the reason  
stated. In Missoula if a person lives  
within two hundred feet or less of an  
existing city sewer line and your septic  
system fails you are required to extend the  
city's main line to your property at your  
own expense. Cost for this work is pro-  
hibitive for many people and seems unfair  
and uncalled for when an acceptable, efficient,  
private system can be installed at a fraction

EXHIBIT 5  
DATE 2/9/95  
HB 397 & 398

Feb. 7, 1995

Capitol Station  
Helena, MT 59601

Dear Representative Ahner,

This letter is a statement of my strong support of HB 397 and HB 398. These bills will restore the people's right of free choice. As the law stands now, the government forces decisions on us with no right to protest or appeal. It uses the issue of water pollution, which has yet to be proven by objective scientists, to take away our rights. Please put an end to this type of government coercion.

Sincerely,

*Rodney D. Skinner*

*Susan L. Skinner*

*1225 Vicki Dr.*

*Missoula, MT.*

*59801*

EXHIBIT

6

DATE

2/9/95

HB

397 &amp; 398

Dear Representative Ahner,

Please support HB 397 & HB 398. Elected officials are voted in to represent the voters, not force their ideas on us. We feel these bills support the voters rights. We should not be forced to be on a city sewer that can't even accommodate the accounts it services now. To force people to sign away their rights in order to obtain a permit is nothing short of blackmail.

Sincerely,

Doug Schwartz

Larin Schwartz

3506 Norman Dr.

Missoula, MT 59801

EXHIBIT 7  
DATE 2/9/95  
HB 397 & 398

February 8, 1995

Montana House of Representatives  
Local Government Committee  
Capitol Station  
Helena, Montana 59601

Greetings:

Let it be known to all parties that we strongly support House Bill No. 397 and House Bill No. 398. We feel an incorporated city, town or county does not have the power to take away citizens rights to choose. We feel the individual citizens must maintain their rights to vote on issues that directly affect their lives. We feel the incorporated city, town or county can not force landowners to hook up to a sewer line instead of replacing a septic system. We also feel citizens have the right to protest annexation.

Thank you for your consideration to support these two House Bills.

Sincerely,

*Mrs. Beyer*

Mr. and Mrs. Beyer  
3610 S. 7th St. W.  
Missoula, Montana 59801

EXHIBIT 8

DATE 2-9-95

HB 397

JAMISON LAW FIRM  
ATTORNEYS AT LAW

POWER BLOCK BUILDING, SUITE 4G  
HELENA, MONTANA 59601

MONA JAMISON  
STAN BRADSHAW

PHONE: (406) 442-5581  
FAX: (406) 449-3668

TO: Members of the House Local Government Committee  
FROM: Mona Jamison  
RE: HB 397  
DATE: February 29, 1995

I appear before you today on behalf of Sewer and Water District #363 of Big Sky, Montana, in opposition to HB 397.

HB 397 is short and very simple. It will prohibit county sewer and water districts, among others, from requiring a landowner to hook up to a sewer line instead of replacing a septic system based on the distance of land or residence from the sewer line.

The implications of this legislation for county sewer and water districts are significant. They are especially significant for Sewer and Water District #363, which is now promulgating an ordinance that requires connection to its system based on the distance of the property line from the sewer line.

First, it would undermine the ability of a sewer district to effectively operate. In many instances, county water and sewer districts come into being because the proliferation of individual systems may be detrimental to water quality and public health in the area. That is certainly true in a developemnt such as Big Sky. As a practical matter, it is often desirable to reduce the reliance on individual septic systems over time in a given area. The one tool that county sewer districts have to do this is the authority to compel hook-up as old systems fail. This legislation completely undermines that authority.

Second, it seriously impairs the ability of sewer districts or small municipalities to finance a public system. In fact, the Montana Supreme Court, in Town of Ennis v. Stewart, a case involving a public water system, gave a concise statement of the problem that this legislation would create:

"... In small communities, a water system may not be affordable unless a sufficient number of citizens connect to the system and pay the corresponding fee. Allowing some citizens to forgo connection to such a system indefinitely or until a health threat is imminent may make such a system unaffordable to the community and thereby defeat the purpose of preventing potential health problems before they arise...."

The rationale of the court is compelling in this instance, given the obvious public health considerations that adhere to the construction of a public sewer system. In fact, the court noted in its decision that it could see no meaningful distinction between a public sewer and public water system.

Given the considerations stated above, HB 397 would completely undermine the reasons for creating public sewer systems. Further, it is bad public policy because it would impede the ability of municipalities to prevent potential health problems before they arise.

I urge you to defeat HB 397.



DEPARTMENT OF PUBLIC WORKS / ENGINEERING DIVISION

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4620

February 9, 1995

EXHIBIT 9  
DATE 2/9/95  
HB 397

RE: Opposition to HB-397

House Local Government Committee Members:

I am testifying in Opposition to House Bill 397. This bill will prohibit the enforcement of the 200foot rule that is currently and has been of a part of the National Code entitled the Uniform Plumbing Code which has been adopted by the State of Montana. For 12 years as the City Engineer I have been enforcing this national and state code. I testify today that this is sound public policy with an established national experience.

The 200 foot rule has good fiscal sense for an individual property owner. If your house is within 200 feet of a public sewer and your septic system quits working, then this national regulation says you are to connect your house to this main. In other words, you have a house in the middle of the block or closer and the sewer main is at the end of the block, then you connect. This policy recognizes that it is waste for property owners money to replace a failed septic with another substandard septic system when public sewer is so close. It is inevitable that sometime the property owner will have to pay his fair share of extending this public main and also connect his house to the main.. It will occur, it is only a 1/2 block away. So isn't it good policy to invest in the permanent solution.

If you take away this 200 foot rule, the property has to still replace his septic system and it will cost the property owner about \$2000. This same \$2000 would connect the house to the sewer main once it is extended. To reinstall another septic tank is an expensive short term solution. Its basically cleaning out the pipe so it will flow again. Its not dealing with the permanent solution of connecting the house to public sewer.

I want to share the cases of enforcing this regulation in Missoula over the last three years. There have been four houses at four different locations that have had failed septic systems that have been within the 200 foot rule. The City responded in these cases and created Special Improvement Districts for these property owners to equitably finance long term low interest loans to extend the mains. At these locations of Pattee Canyon, Rattlesnake, and the Northside, main extensions were completed for over 80 properties. Only 4 of these properties had to connect their houses under this regulation, yet as a result of extending these mains, over 40 property owners have chosen to connect their houses to have a permanent solution. They recognized that their existing septic tanks are substandard and not functioning properly. They chose the permanent solution. Without the 200 foot rule, this sewer main construction would not have occurred for these 80 properties, the four or more properties with failed systems would have spent \$2000 to install another septic system, and none of these properties would have the permanent solution of being connected to public sewer.



To: Steve King  
Bruce Bender  
Jolene  
City Engineering

Submitted by Bruce Bender, City  
EXHIBIT 10 Engineer, Missoula  
DATE 2-9-95  
HB 397

It's a year later and the sewer  
project is DONE!!!

Thank you!!

From 1902 and 1908  
Missoula Avenue  
(Watkins & Isome)



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 728-6690

EXHIBIT 11

DATE \_\_\_\_\_

HB \_\_\_\_\_

*Submitted by: Bruce Bender, City*

*Engraver: M. Smith*

95-054

February 9, 1995

Re: Opposition to HB-397 Prohibiting Requiring a Landowner to Hook up to a Sewer Line Instead of Replacing a Septic System

House Local Government Committee Members:

The purpose of this letter is to express opposition to House Bill-397 entitled "An Act Prohibiting an Incorporated City or Town or a County from Requiring a Landowner to Hook up to a Sewer Line Instead of Replacing a Septic System Based on the Distance of the Land or Residence from the Sewer Line."

It is the purpose of state and local governments to secure and promote the general public health and welfare. HB-397 is adverse to promoting public health, safety and general welfare. Further, HB-397 is contrary to the state adopted plumbing code as well as State Health and Environmental Sciences Administrative Rules. See § 1101(d) of the state adopted Uniform Plumbing Code as well as § 16.17.102(2) Administrative Rules of Montana. Pursuant to the Uniform Plumbing Code, a property must be within two hundred feet (200') of a readily available public wastewater collection system in order to be required to connect.

All public drinking water in Missoula is drawn from its sole source water aquifer beneath the Missoula community. Community common sense and common conscience in furtherance of public health, safety and general welfare sensibly encourages a public policy to connect sanitary sewage disposal to any readily available public wastewater collection and treatment system. The Missoula community and City of Missoula have always acted within state rules and regulations adopted by the State of Montana when striving to protect its water aquifer from sanitary sewage pollution.

HB-397 is contrary to public health, safety and general welfare. HB-397 defies common sense. HB-397 is movement toward nineteenth century water quality rather than safe, healthful water quality for the twenty-first century. Please kill HB-397. Thank you.

Sincerely,

*Jim Nugent*  
Jim Nugent  
City Attorney

JN:kmr

cc: Missoula County Representatives; Mayor; City Council; Alec Hansen; Bruce Bender; Ellen Leahy; Tim Hunter



# City of Red Lodge

P.O. Box 9  
Red Lodge, Montana 59068  
(406) 446-1606

EXHIBIT 12  
DATE 2/9/95  
HB 397

February 9, 1995

The Honorable Marc Racicot  
Governor, State of Montana  
Capitol Building  
Helena, MT 59620

ALSO HANSON

COPY

Dear Governor Racicot,

SB 262, HB 397, and HB 398 are to be heard in committee today.

These bills do just what the legislature said it was not going to do, and that is to further regulate and control local government.

These bills however are detrimental to our ability to take care of problems in our communities and should be scuttled post haste. They smack of bending to the will of developers at the expense of the rest of the citizenry.

SB 262 does away with the requirement for review of subdivisions inside and outside city limits. HB 397 will not allow us to require a resident with a septic tank in town to connect to a sewer line that has been extended to or near his property--for any reason. Red Lodge is in the middle of just such a project right now. HB 398 takes away the negotiation privilege of a city to extend service to a person outside the city limits in exchange for his agreement to be annexed when the city is ready to do so.

These things are business of the communities and not the legislature.

Please lend your support to the defeat in committee of these bills.

Thank you.

Respectfully,

Brian Roat, Mayor

SENATOR BURNETT  
REPRESENTATIVE ELLIS  
LEAGUE OF CITIES/TOWNS

COPY

EXHIBIT 13  
DATE 2/9/95  
HB 397

**Testimony of Peter Nielsen  
Environmental Health Supervisor  
Missoula City-County Health Department**

**To: House Local Government Committee  
Montana House of Representatives**

**Regarding: HB 397**

The Missoula City-County Health Department opposes the proposed HB 397 in its current form, and requests that the bill be tabled or amended as follows:

NEW SECTION. Section 1. Sewer main extension by individual landowner limited hook up based on distance from sewer line prohibited. An incorporated city or town or a county may not prohibit a landowner from replacing a septic system and instead require the landowner to pay the cost to extend a sewer main for a distance of more than 50 feet. based on the distance of the landowners's land or residence from the sewer line.

Our intent in proposing this amendment is to limit the cost of sewer main extension by an individual to a reasonable cost. We perceive this to be one of the prime motivations of those sponsoring this bill.

Our principle concern with the proposed legislation is that it would prevent local government from requiring hookup to public sewer when a septic system fails, even if the property in question abuts an existing sewer main and is already within city limits. For example, the bill would prevent us from requiring sewer hookup for a property located within the University District in Missoula which may be currently served by an outdated, failing cesspool. I don't believe that this would serve anyone's interests. It would not serve the interests of those who wish to be protected against annexation into a City. But it would perpetuate the use of primitive forms of sewage disposal which are not currently allowed by state or local laws or regulations because of their threat to public health.

We understand the concerns that people have about annexation. Our Department does not take a position on annexation - we simply don't care whether people are in a City or a County form of government. But we do care when people are drinking water which is contaminated with sewage, and all of the potential disease causing bacteria, viruses and intestinal parasites that may cause such diseases as typhoid fever, cholera, dysentery, cryptosporidiosis, gastroenteritis and other serious water-borne diseases. We ask that you attempt to separate the issue of annexation and public health, and that you do not, in your efforts to protect citizens from the specter of annexation adopt legislation which poses a public health threat.

EXHIBIT 14

DATE 2-9-95

HB 397

*Don Spivey*

February 9, 1995

Montana House of Representatives  
Local Government Committee  
Representative William Boharski, Chairman

Subject: House Bills 397 & 398

Dear Committee members,

I'm here representing myself, the Citizens For A Better Flathead and on HB 398, the Whitefish City Council as well. I am also here because I believe these bills both represent bad public policy and should not be passed.

These two bills, though seemingly unrelated, are both tied to the same question--the need to treat waste water through a sewage treatment facility versus a septic system. Both relate to the need to protect water quality.

Septic systems are unquestionable the single biggest contributor to contamination of ground water (aquifers). Water, both surface waters (lakes and streams) and ground water (aquifers) are fundamental to our health, our economy and our 'quality of life' in Montana. In three recent surveys in the Flathead Valley WATER QUALITY was the single most important concern expressed by the survey respondents.

Flathead County and in particular, the Flathead Valley is an excellent testing ground for evaluation of these bills as it is an area of rapid growth and development and currently serviced by five isolated public water and sewage treatment systems. In addition, the entire area is dependent on aquifers or surface water for domestic water needs.

How does HB 397 fit in? When a Septic system fails there is a reason, and it may not be possible for the failing system to be replaced with another septic system--e.g., high ground water, too close to wells, etc. Whenever there is a sewer line close by, common sense dictates requiring hookup. In fact, this is GOOD public policy. It is also important that the system owner provides reasonable hookup costs and a manageable payment program. This regulatory process thus provides a responsible step toward protecting water quality for all of us.

Continuing septic systems installations whenever the alternative of public sewage treatment exists is BAD public policy and therefore we think HB 397 should not pass.

EXHIBIT 15  
DATE 2/9/95  
HB 397  
February 9, 1995

Dear Chairperson Boharski and members of the House Local Government committee;

**I urge you to oppose House Bill 397.**

Like thousands of homes in the county, my wastewater disposal system consists of a tank and a drainfield. When the system fails, my home, as well as the twelve other homes connected to the system, will hook up to city sewer. After all, we are within 200 feet of a main. Perhaps our homeowner's association should get together now, think about how our waste may be affecting Missoula's drinking water, and connect to city sewer immediately. But it seems much more palatable to wait until there is a problem. Then instead of spending money to put in a new drainfield, we will spend money to connect to city sewer. This seems like a fair solution.

I don't believe anyone could argue that the city sewer treatment plant is far more capable of treating the quantities of sewage a city creates. This is especially true in Missoula's case where the soil is basically gravel and our sole source of drinking water lies close to the surface of the ground.

I certainly understand why many Missoulians do not want to connect to city sewer. It's hard to look beyond one's personal pocketbook. But when folks decided not to connect to the sewer and replace poorly designed systems in the valley floor, I too am affected. Since I am connected to Mountain Water system with wells on the valley floor, I run the risk of drinking sewage.

Will these same homeowners who choose not to connect to the sewer when their systems fail want to pay for a new water treatment system when the groundwater can no longer serve us? I have a feeling they would once again choose to have others pay for the damages they, through their selfish actions, inadvertently created.

Living in community requires cooperation and a realization that what works on the ranch does not work in the city. The sheer quantities of wastewater and garbage that city dwellers collectively create rendered cities of the past filthy and unhealthy. I hope those days are far behind us. Please don't tie the hands of the local officials we elect to look at the big picture and to protect us from our waste.

Sincerely,

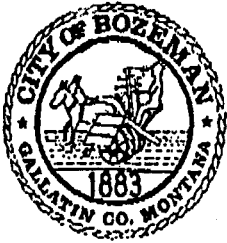


Shannon McNew  
2908 Highwood Drive  
Missoula, MT 59803

TO :  
FROM : City of Bozeman

PHONE NO. : 919002251600

FEB. 9, 1995 12:36PM P 1  
PHONE NO. : 406 582 2323



THE CITY OF BOZEMAN

411 E. MAIN ST. P.O. BOX 640 PHONE (406) 586-3321  
BOZEMAN, MONTANA 59711-0840

EXHIBIT 16  
DATE 2/9/95  
HB 397

February 9, 1995

*Pg. 1 - HB 397*

*Pg. 2 - HB 398*

Mt. House Local Government Committee  
State Capitol Building, Room 104  
Capitol Station  
Helena, Montana 59601

Dear Representative Boharski, Chairman

In the planning process for the provision of utilities the entity must consider topographical and distances in providing these lines. Also, in that planning process an area is determined which may be served by a central utility. The viability of that business or enterprise fund is gauged by its ability to draw an assumption for a certain number of customers or hook ups, and in given periods of time.

I don't know what precipitated this legislative proposal, but could presume it was because of a more remote location within a service area being in need of a replacement of a septic system where it would be impractical to extend a line or, more likely, a site immediately adjacent, or almost so, to an existing line. If my latter example is the case, I would submit it is very practical to expect the landowner to hook up to the line. I would think the alternative of fouling the area and groundwater once again with another septic system wouldn't be very logical, and would be more costly. To prohibit the landowner from being required to hook up to a central sewer line significantly contributes to the degradation of Montana's groundwater, when a reasonable alternative to protect that groundwater is so readily available.

Please look at this from the city's perspective and from the aspect of keeping, in a small way, Montana the clean place we know, vote against H.B.397.

Sincerely,

James E. Wysocki  
City Manager

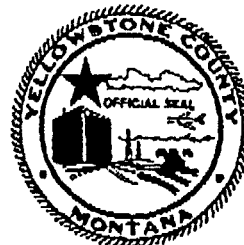
Post-It™ brand fax transmittal memo 7671		# of pages >
TO: REP. BOHARSKI	From: Jim Wysocki	
Co. LOCAL GOVT	Co. CITY OF BOZEMAN	
Dept. HOUSE RM. 104	Phone # 406 582-2306	
Fax # 1-400-225-1600	Fax # 406 582-2323	



# County of Yellowstone

CITY-COUNTY HEALTH DEPARTMENT  
COUNTY COURTHOUSE ROOM 308  
(406) 256-2757 FAX (406) 256-2968

PO BOX 35033  
BILLINGS MT  
59107-5033



STATE REPRESENTATIVE ~~BILL BOHARSKI~~  
CHAIRMAN, HOUSE LOCAL GOVERNMENT COMMITTEE

RE: HOUSE BILL 397

DEAR REPRESENTATIVE BOHARSKI:

ON FEBRUARY 9, 1995 AT 3:00 P.M. THE HOUSE LOCAL GOVERNMENT COMMITTEE WILL CONDUCT A HEARING ON HOUSE BILL 397. THIS BILL INTENDS TO PROHIBIT THE REQUIREMENT FOR HOOKING TO PUBLIC SEWER BASED ON THE DISTANCE TO THE SEWER LINE FROM THE PROPERTY LINE AND WILL ALLOW FOR THE REPAIR OF AN ON-SITE SEWAGE SYSTEM.

THE YELLOWSTONE CITY-COUNTY HEALTH DEPARTMENT IS STRONGLY OPPOSED TO THIS BILL. WHEN EVER POSSIBLE, ON-SITE SEWAGE SYSTEMS SHOULD BE ELIMINATED AND THE DWELLING(S) BE CONNECTED TO A PUBLIC UTILITY. ANY THING ELSE WOULD BE A STEP BACKWARD FOR GROUNDWATER PROTECTION AND OTHER PUBLIC HEALTH AND ENVIRONMENTAL CONCERNS.

WE URGE THAT YOU OPPOSE THIS BILL AND REQUEST THAT THIS BILL BE DEFEATED.

SINCERELY,

TED KYLANDER, R.S.  
ENVIRONMENTAL HEALTH PROGRAM  
MANAGER



# Columbia Falls Clinic

FAMILY PRACTICE

CHET HOPE, M.D.

DOUG PITMAN, M.D.

EXHIBIT 18

DATE 2/9/95

HB 397 & 398

BOX 100

COLUMBIA FALLS, MONTANA 59912

406-892-3206

February 8, 1995

Dear Legislator

As both a medical doctor and city council person, I appreciate the obvious benefits to the public health that municipal sewer systems afford over failed septic systems.

I resent the self-serving motives present in HB 397 and HB 398 that would in effect gut our attempts to protect our ground water aquifers and our public drinking supplies.

Please oppose HB 397 and HB 398.

Cordially,



Chet Hope MD  
Columbia Falls Clinic  
Whitefish City Council



## City of Helena

EXHIBIT 19  
DATE 2-9-95  
HB 397

February 9, 1995

Dear House Local Government Committee:

This testimony is prepared to state opposition to HB 397. The results of HB 397 is similar to the negative aspects of HB 398.

Helena has houses that were built in the early and mid 1900's on the west side of the city that are outside of the city limits. Many times these houses do not have enough land to install a replacement field for their failing septic system. As a result, they need to connect to the city's sanitary sewer system for health reasons. If they no longer will have the ability to connect to a city or county sanitary system, they will be forced to abandon their residence.

HB 397 effectively limits a property owner's ability to continue to use the existing residence by connecting to a city or county sewer system. This bill is contrary to preserving the existing housing stock, and discourages creative solutions to public health problems when septic systems fail.

Please do not pass HB 397.

Sincerely,

*Kathy Macefield*

Kathy Macefield  
City of Helena Planning Director

To Members of House Local Government Committee,

I am somewhat perplexed that my testimony in regard to HB398 today was interrupted. All opponents admitted the link between waivers of protest and sewerage. In Missoula, when a septic system fails, the homeowner must sign a waiver to get a permit to replace the drainfield. This requirement does not take into account the amount of land the homeowner has nor the suitability of soil structure, etc.

If there have been scientific, reproducible tests and ~~and~~ no pollution is found, what possible benefit to the public is gained when a government agency has taken away our rights? This has happened & is happening in Missoula. Please stop it now. Don't allow this devious practice to occur in any other place.

Thanks -

Susan Mathewson  
1812 Tower  
Missoula, MT

728-0249

Please note that the last page of info. I have brought, mainly letters from neighbors of HB397 & 398, there is a federal EPA-funded article on legal action to take against local authorities as individuals. I had hoped Missoula County & other Montana residents would not have to be subjected to the financial drain of court

EXHIBIT 21  
DATE 2-9-95  
HB 398  
*SUPPORT*

Matt Denny  
House of Representatives  
Helena, Mt.

2/9/95

Matt,

This letter is to inform you of my support for HB 398. I must first inform you that I am not an "anti annexation" proponent. I am vehemently opposed to what I consider an extortion process that may be imposed by local governments. As a Linda Vista resident in Missoula County, we have been ordered by the state to be sewered in order to correct a ground water problem in our area. This problem was caused by county and state authorities allowing development in some areas with high ground water levels. By allowing septic tanks with seepage pits or cesspools combined with shallow wells, approximately 10 homes have elevated nitrate levels in their wells. Now, 25 years later, we are paying the price for poor decisions made in the past. The city of Missoula has taken advantage of this situation by forcing residents to sign a waiver of their statutory right to protest annexation. If a resident does not sign the waiver, that residence will not be hooked up and can be fined \$ 200.00 a day for being in violation of the state order.

This extortion process has left myself and my neighbors with a great mistrust of local governing officials. This country was founded on the premise of free speech, an individual right to protest, and a right to vote on issues that affect an individual. At the very least, residents should have the right to vote for or against annexation and not have it forced upon them.

I urge to look at HB 398 as a way of guaranteeing an individual's statutory right to protest and a way of restoring some faith in our elected officials. Thank you for your time and consideration.

Sincerely,


  
John A. Zimorino

EXHIBIT 2A  
DATE 2-9-95  
HB 398  
SUBJECT

Fifty-Fourth Legislature of Montana  
House Committee - Local Government  
Room 104, Capitol Stn, Helena MT

Mr Chairman & members of the Committee  
Re HB 398 introduced by Carolyn Squires

My name is Wilma Sage, I reside at  
2135 W. Sussex, Missoula MT 59801. I am in  
support of HB 398 Squires, "Prohibit city  
obtaining waiver of a person's right to  
protest annexation." The waiver system  
is a tool used by our City-County Govt,  
in exchange for such things as electrical  
permits, plumbing permits, etc. when building,  
or remodeling, or making repairs to ones  
home, garage or other property. I believe

February 9, 1995

Carolyn Squires  
House District Representative  
Helena, MT

To whom it may concern:

In March of 1993, I decided to build a garage on my property where another garage existed. I went to the planning board for the proper permits, two and one half months later; after drawing site plans, survey location, zoning and set backs, I was issued a building permit. The only condition was I had to have the Health Department sign it off.

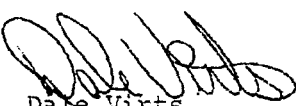
They informed me that since my concrete rings i.e drain field were located under my proposed garage, I would have to hook up to sewer. When I inquired if I could relocate my drain field, they retorted that if my septic system failed or needed to be altered, and if I was within a certain amount of feet from a sewer main, I had to hook up to sewer. Even though my septic tank was not in the effective area!!

So I went to the City Engineering Office, and was told I must pay the sewer development fee, make the GOB pay off, and sign a waiver that I could not protest annexation to the city limits, in order to hook up to a sewer.

Well, in my particular case I would have had to spend the money allotted for the garage, in order to hook up to sewer--thus no garage--but fortunately I was able to talk two of my neighbors into granting me easement through thier property and joining me in the sewer hook up, so we could split the construction costs among the three of us.

They also told me at the City Engineering Office that I would be forced into the city for reason of being surrounded by December of 1995. The general consensus was if you want a garage, you might as well waive your right to protest annexation to the city limits because in 16 months you'll have no choice anyway.

I finally got to start my garage, six months later and seven thousand dollars over budget! I'm sure glad these people are " public servants" because I could not afford them otherwise!!



Dale Virts  
Missoula, MT

# League of Women Voters of Montana



EXHIBIT 24

DATE 2-9-95

HB 398

## WRITTEN TESTIMONY PRESENTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

House Local Government Committee  
3:00 p.m., Thursday, February 9, 1995  
H.B. 398 by Squires

Twenty-four years ago, in 1971, the League of Women Voters of Montana was very involved in passing a bill authorizing cities and towns to furnish sewage services outside of the city limits, with the amended stipulation, at League suggestion, that "Any person, firm or corporation receiving water and/or sewer service waive all rights to protest annexation."

Over the years, the signing of waivers has been an important and mutually beneficial tool for cities and citizens directly outside of city limits to work out agreements for often badly needed services, while setting parameters for orderly growth. Frequently, a health-threatening situation may cause a contiguous landowner to ask the city or town for water and sewer services. A common instance is where septic systems are polluting wells. It simply is not cost effective to require such an individual to pave the section of road in front of his/her property to the midline of the road, to put in a small section of curbing and to fulfill the other conditions of annexation in isolation from other land holders in the area. Not only would such a requirement be costly, but the end result would be a patched together network of neighborhood infrastructure.

Given this scenario, it has often been the practice of municipalities to extend water and sewer service to the individual property owner upon the signing of a waiver to protest annexation. Later, when a number of neighbors eventually face the same situation, it does become prudent and cost effective to annex the neighborhood and pave the street as one unit putting in curbing, gutters, and sidewalks at the same time. Without the signed waivers of protest, the municipality would have no bargaining chip to enforce reciprocity for the good will it has extended and the expense and obligation it has assumed.

The League of Women Voters of Montana urges the committee not to take away this compromise option for citizens and cities and towns to work toward mutually acceptable goals. The League opposes H.B. 398 and asks the committee to give a do not pass recommendation to this bill. Thankyou.

Chris Imhoff  
Legislative Chair, LWVM



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 728-6690

EXHIBIT 25  
DATE 2-9-95  
HB 398  
OPPOSE

95-055

February 9, 1995

Re: Opposition to HB-398 Prohibiting City from Requiring or Obtaining a Waiver of the Right to Protest Annexation

House Local Government Committee Members:

Please kill House Bill-398 entitled "An Act Prohibiting an Incorporated City or Town from Requiring or Obtaining a Waiver of the Right to Protest Annexation from any Person Entitled to Protest Annexation."

HB-398 is contrary to sound public policy in that it would not allow a property owner to contractually delay municipal annexation in exchange for receiving municipal services.

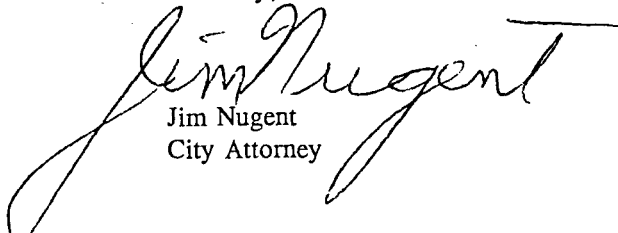
Further, HB-398 would obstruct both sound urban development as well as obstruct protection of health, safety and welfare in urban areas being intensively used for residential, commercial, industrial, institutional, etc., purposes by discouraging municipal extension of municipal services.

Municipal contract sanitary sewer service agreements are used in urban areas as a mechanism for voluntarily delaying a municipal annexation while furthering public drinking water aquifer protection as well as securing and promoting protection of public health, safety and general welfare by encouraging connection of sanitary sewage septic systems to a public wastewater collection and treatment system readily available to the property.

HB-398 discourages and places a chilling effect on community common sense public efforts aimed at encouraging potential water aquifer polluters to connect to a public wastewater collection and treatment system readily available to their property. There are public purpose reasons pursuant to which individuals living and using urban areas should act responsibly for the public good. HB-398 adversely affects urban inhabitants of an urban community for the financial benefit of some individual urban dwellers who do not want to assume any public financial responsibility for the public municipal services they use in the urban community they reside in.

Please kill HB-398. Thank you.

Sincerely,



Jim Nugent  
City Attorney

JN:kmr

cc: Missoula County Representatives; Mayor; City Council; Alec Hansen; Bruce Bender; Ellen Leahy





EXHIBIT 26  
DATE 2/9/95  
HB 398

BOARD OF COUNTY COMMISSIONERS  
200 W BROADWAY ST  
MISSOULA MT 59802-429

(406) 721-5700

BCC 95-57  
February 9, 1995

Representative Bill Boharski, Chairman  
House Local Government Committee  
Montana State Legislature  
Helena, MT 59620

Dear Representative Boharski and Committee Members,

We are writing in opposition to HB 398, which would prohibit an incorporated City or town from requiring or obtaining a waiver of the right to protest annexation from any person entitled to protest annexation.

As an elected administrator, we have two commitments: To serve our Missoula County citizens and to take actions that protect human health and provide a livable environment for our children's children. If we don't face hard issues now, we face impossible issues later.

We can't support removing the authority to require a waiver of a right to protest. This is a tool for County Government to improve our road system. It is also used to upgrade a seepage pit to a proper septic system. Waiving the right to protest is almost service by individual vote or government by initiative. We urge you to vote in opposition to HB 398.

Sincerely,

Fern Hart, Missoula County Commissioner

Michael Kennedy, Missoula County Commissioner

FH:ss

CC: Missoula County Legislative Delegation  
Mayor Dan Kemmis  
MACo



EXHIBIT 27  
DATE 2-7-85  
HB 398  
*oppose*

## City of Helena

February 9, 1995

Dear House Local Government Committee:

This testimony is prepared to state opposition to HB 398. The results of HB 398 is similar to the negative aspects of HB 397.

Helena has houses that were built in the early and mid 1900's on the west side of the city that are outside of the city limits. Over time, some of the septic systems have failed for these residences and the property owners do not have enough land area to install a replacement field. In order to provide a mechanism to address public health concerns and sanitary sewer needs, a city may establish a rural improvement district as a temporary measure to assist homeowners.

Typically, annexation is required before city services (sewer, water, fire protection, etc.) are extended to areas located outside the city limits. However, if full city services are not presently needed, a city may require the property owners to waive their right to protest annexation in the future when more city services are requested.

Cities respond to public health issues with the desire to responsibly extend the needed services in a cost-effective manner to benefit property owners. This bill is contrary to preserving the existing housing stock, and discourages creative solutions to public health problems.

HB 398 stifles a city's opportunity for growth and economic development, and effectively limits a property owner's ability to continue to use an existing residence by connecting to a city sewer system. HB 398 also limits property owners' options, and limits local governments' ability to work with property owners to seek creative solutions to solve problems. Please do not pass HB 398.

Sincerely,

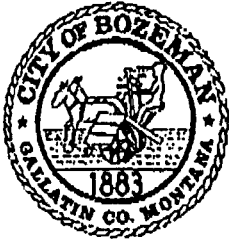
*Kathy Macefield*

Kathy Macefield  
City of Helena Planning Director

TO :  
FROM : City of Bozeman

PHONE NO. : 919002251600

FEB. 9.1995 12:37PM P 2  
PHONE NO. : 406 582 2323



THE CITY OF BOZEMAN  
411 E. MAIN ST. P.O. BOX 640 PHONE (406) 586-3321  
BOZEMAN, MONTANA 59711-0640

EXHIBIT 28  
DATE 2-9-95  
HB 398  
*OPPOSE*

February 9, 1995

To: House Local Government Committee  
Fr: James E. Wysocki, City Manager, Bozeman  
Re: H.B. 398

*J.E.W.*

I have tried to think of the circumstances under which the City of Bozeman would accept a waiver of protest for annexation. I come up with the most common situations being as the result of a failed septic system, failure of soils on a site to allow for a septic system, the costs for a septic system being higher than a hook up to a city service, and of course, the higher density allowances when on a sewer system. In most of these situations the landowner would not desire, and in the failed septic system, be able to wait till the public process for ordinances, etc. are completed, which is usually in excess of 60 days.

Another situation which would be not able to be dealt with judiciously is when a septic system fails in the back yard and the sewer line exists in the front of a parcel, but is not contiguous to the district or city, therefore, could not readily be annexed until the parcel was eligible for and is annexed.

This bill abdicates the authority of the district or entity to place conditions on the provision of a product or service. This could be equated to a fire district providing its service without being able to say under what conditions this service would be provided. Part of the cost of being a shareholder, or a buy-in to the service is to agree to annex or be a shareholder, at the time when it is logical, determined by the owner of the service or product.

Please kill H.B.398.



EXHIBIT 29  
DATE 2-9-95  
HB 358

February 9, 1995

Re: HB 358

"Good" zoning is a balance between the negative effects of private property rights restrictions and the benefits of wise land use planning. I stand before you as a supporter of "good" zoning. Zoning that is balanced.

House Bill 358 provides for a balance, that is currently absent, in Montana's zoning statute. Under current law the scales weigh very heavily in favor of the smaller landowner. And this when the smaller landowner has little or nothing to lose in the zoning process while the larger landowners can and have been drastically effected by severe zoning restrictions.

It is inherent in the process that any zoning takes away some private property rights. However done in a fair and reasonable manner good zoning can actually enhance property values therefore mitigating the loss of control.

When looking at the typical zoning proposal there are usually two groups of landowners involved. One is the small acreage owners and the other consists of owners of the larger properties. Typically the small landowners outnumber the large landowners by a wide margin. Here is where the current law is out of balance. The small landowners come to the negotiating table knowing that if they don't like the final plan that they can raise the necessary 40% of the landowners to protest and stop the zoning proposal. They also come knowing the larger landowners have no power to back up their positions.

The Lake Mary Ronan zoning district in Lake County is an example of the zoning process working as it should and then being derailed. A cross section of landowners worked hard to come up with a fair proposal and did. Without getting into specifics there were several zones moving out from the lake with housing densities ranging from two acre lots to 40 acre lots with cluster development allowed. The Lake County General Plan allowed one acre density over the whole area. As you can see this zoning proposal increased the land restrictions greatly over the county general plan but was accepted as a reasonable compromise by most of the larger landowners. This proposal went through the hearing process and passed the Lake County Planning Board. However before the county commissioners took action a number of smaller

**Mike and Nancy Meuli**  
Post Office Box 2  
Dayton, Montana 59914-0002  
(406) 849-5085

**Jack and Lois Meuli**  
Post Office Box 111  
Dayton, Montana 59914-0111  
(406) 849-5232

landowners were convinced that they should protest in order to stop this proposal and put more severe restrictions on in a future zoning plan. The protest was successful and the zoning has been stopped. It is obvious that the next proposal is not going to be balanced and the larger landowners are going to suffer significant loss of property values because of it.

There are other examples that are even more extreme. In at least two cases all land that was not already divided into lots was zoned to a 40 acre density with no allowances for clustering. Zoning of this nature is very detrimental to land quality. If you travel western Montana and look at land that has been divided into 20 plus acre lots you will find nearly all of it either overgrazed or totally infested with noxious weeds. The very land that is supposed be protected by zoning will ultimately lie useless and unproductive. Instead of allowing new resident to purchase a reasonable size lot of say two acres or less, most zoning plans ultimately force people to own a larger acreage than they are able to properly manage. This leads to less agricultural base which with every ag dollar turning over seven times in the local communities and across the state amounts to a significant loss to Montana.

Current zoning trends amount to an end run around the subdivision law passed in the last session. Despite subdivision regulations the 20+ acre tracts are forced to continue with the resulting waste of land, damage to surrounding agricultural producers from increased weed invasion, and significant loss of revenue to our state's economy due to lack of agricultural base.

As a rancher in western Montana who has no plans to subdivide, and would like to continue to ranch and provide access for hunting, hiking and other recreation for Montana sportsman, I am concerned that the current law is pushing me the other direction. It is apparent that the only way to assure that my property rights and land values are not zoned away is to be the first one in my area to subdivide.

We need zoning as it allows people to get together and plan for the future of their area. However the current zoning law is unfair to the people most effected by it and needs the balance provided in House Bill 358. With this legislation both parties would come to the table to bargain in good faith and the decision would be left in the hands of the people where it needs to be. Ultimately good land use planning will prevail with all parties being treated fairly.

I thank you for you time and your consideration of this bill.

Sincerely,

Mike J. Meuli

Mike J. Meuli

# Northern Plains Resource Council

EXHIBIT 30  
DATE 2-9-95  
HB 358

## Testimony on HB358 House Local Government Committee 2/9/95

Mr. Chairman and members of the committee, my name is Ted Lange and I'm speaking on behalf of the Northern Plains Resource Council. NPRC is opposed to HB358 because we believe it could create a serious barrier to citizens' ability to protect their property values through zoning, and because we believe this bill is fundamentally undemocratic.

We believe zoning is an important mechanism for people to protect their property values. This bill would make it virtually impossible, in many instances, for citizens to do this. It would create an insurmountable barrier by giving large landowners veto power over zoning plans supported by the majority of their neighbors.

Specifically, we have many members in the Gardiner area who have for years been deeply concerned about the ill-conceived development activity of the Church Universal and Triumphant. The Paradise Valley was not given its name because it looked like a transplanted Los Angeles suburb. But as the church has brought more and more new people into the area, its development activities have been steadily taking the valley in that direction. The church has been notorious for exploiting every weakness in Montana's land use laws. And not only have they built, and proposed to build, extensive subdivisions; their subdivisions come with bomb shelters and underground storage tanks. In 1990, one of these tanks ruptured, spilling 30,000 gallons of gasoline and diesel.

The Paradise Valley is seriously threatened by the church's wanton development activity, and many of the citizens in the Gardiner area do not want their quality of life degraded. Moreover, they strongly believe that it's not just their quality of life that's threatened. Over-development of the Paradise Valley will threaten their property values as surely as it will threaten their air, land and water.

## TESTIMONY BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE

My name is Glenna Obie. I am a member of the Board of County Commissioners of Jefferson County. And just so there is no mis-understanding, let me further note that I have been a Montanan all of my life and my family owns a ranch in the Bear Paw Mountains of north central Montana. I rise in opposition to House Bill 358.

I believe this legislation amounts to a theft of the democratic principles of majority rules and one person, one vote. In Montana, we have historically and purposely and for good reason, made zoning a difficult process. That's as it should be. Because zoning means that someone's ability to do whatever they want on and to their property is over-ruled in favor of the good of the community at large. So, specifying that 40% of the freeholders constitutes a large enough minority to prevent intended zoning is a logical correlary to majority rules. However, the new language allows that acres will vote, not people. One, two or a small handfull of land owners who own the majority of the land in an area, will be able to completely control land use and planning, regardless of the needs of the community at large, what the majority of land owners have decided upon and in spite of the involved process that zoning and planning requires.

Let me just describe, briefly, some of the process underway in Jefferson County where two different local vicinity plans are under consideration. First, as the two year process of developing the County Comprehensive Plan. A process that by itself involved numerous public meetings and comment periods. Then the local citizens met and began working on a local vicinity plan. They held public meetings, worked to identify needs, held more public meetings, met in small groups, met with the planning board. The county planning board has held public meetings and made a recommendation. Finally, the county commission holds a public meeting, passes a resolution of intent and holds open a period of 30 days for additional public comment. One of the local vicinity plans finding its way through that process now was brought forward by a group of farmers and ranchers seeking to preotect the rural and agricultural aspects of their area. Bill 358 would make the efforts of these local citizens worthless since anyone with a lot of money who buys up large chunks of property could basically veto the process at any point. The process, by its very nature protects all freeholders, and residents, not only the rich and powerful.

Would this legislation halt planning and zoning in Jefferson County? I believe it would. I would remind the committee that there are large landowners out there besides farmers and ranchers--some of them don't even live in Montana. I wonder if the proponents of this bill would be as enthusiastic about the bill if they were faced with the prospect that THEY would not be the biggest landowner in the area.

Once at a meeting held by the Helena Chamber of Commerce, I heard Ted Turner, the owner of CNN and thousands of acres of Montana land, comment that we should be careful in Montana, lest his wife's rich friends from California should buy our state and have their way with it. This opens that door a bit wider.

I'm reminded of the proverb about the dog who, carrying a bone accross a

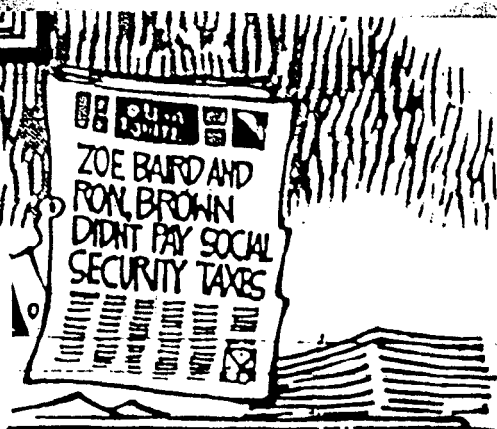
bridge, notices his own reflection in the water. His greed overcomes him and he drops his bone in a futile attempt to take the bone away from the dog he sees reflected up at him. Of course, he ends up with only a wet muzzle.

We have a process now that protects the rights of all citizens. Trying to tinker with it for the advantage of the rich and the largest property owners is a dangerous game which will, in the end, backfire. Kill HB 358 before it blows up in your hands.



IF MY FRIENDS  
WOULD JUST PAY  
THEIR TAXES, I'D  
BE ABLE TO BALANCE  
THE BUDGET...

EXHIBIT 32  
DATE 2/9/95  
HB 36



February 16, 1993

## MISSOULIAN EDITORIAL

# 'Family' isn't city's affair

City's out of bounds trying to dictate the 'who' in housing

It's more than a little ironic that one moment officials in City Hall wring their hands over Missoula's housing shortage, and the next moment work to throw people out of their homes simply because they don't meet an intrusive and outmoded law limiting the occupation of single-family houses to Ozzie-and-Harriet-style families.

A news account in Sunday's Missoulian told of city officials contemplating enforcement of a zoning provision that would result in the eviction of four University of Montana law students from the private home they rent. The city's zoning ordinance restricts occupation of single-family homes to "families."

According to the ordinance: "'Family' means one or more persons related by blood, adoption or marriage, exclusive of household servants, living and cooking together as a single housekeeping unit, or not more than two persons, though not related by blood, adoption or marriage, living and cooking together as a single housekeeping unit...."

Strict enforcement of that definition might force all sorts of non-traditional families and partnerships, and, arguably, anyone with active teen-age children (who have little time or interest in "cooking together as a single

housekeeping unit") to take up residence under the Orange Street Bridge. The city's family restrictions open up too many opportunities for discrimination based on age and marital status. As a matter of fact, the state Human Rights Commission last year heard a case in which a landlord refused to rent housing to a woman with foster children, based on an interpretation of the current zoning ordinance.

The issue is timely because the city is in the process of rewriting its zoning ordinance, and Mayor Dan Kemmis, among others, has proposed to retain a definition of family. The University Area Homeowners Association is fighting to maintain restrictions limiting who may live in single-family dwellings. Perhaps the restrictions' proponents believe traditional families mow their lawns more often, paint their houses better colors or don't work on old cars at all hours as much as "other" people. Perhaps they believe that it is certain types of people who give a neighborhood desirable characteristics. Whatever their beliefs, proponents of restrictive housing rules are wrong.

A zoning ordinance is intended to regulate how land is used, not who gets to use it, so there's no good reason to restrict occupancy of a home to families, however a family might be defined. If there are activities and uses that justifiably should be excluded from certain types of property, then let's have an ordinance that restricts those activities, instead of an inflexible definition of "family" that may have little if anything to do with land use.

## STEREOTYPES

# Dual standard defeats women

By MARY JANE BURT  
BETSY HENLEY-COHN  
and BARBARA PEARCE  
for The Hartford Courant

Most people will never perceive Zoe Baird as a victim, but we do. More people will perceive Kimba Wood as Zoe Baird's victim.

Women's groups should have joined the debate following the furor



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## **Testimony For House Bill 361, February 9, 1995**

Chairman Boharski and members of the House Local Government Committee:

For the record, my name is J.V. Bennett, residing at 613 North Third West in Missoula. Today, I am testifying in favor of House Bill 361 on my own behalf as one of the many students living illegally under Missoula's discriminatory housing ordinance. Housing isn't easy to find in Missoula and I rent a four bedroom house with three other people.

Opponents of this bill will claim that Missoula's ordinance, prohibiting more than two unrelated people from living in the same dwelling, is necessary to protect neighborhoods from disruptive behavior, protect property values, etc. Because this ordinance is such a handy way of just getting someone evicted, other laws which could address the specific complaint are not used. This creates a situation in which people can be evicted from their homes because of a complaint from a neighbor, without being able to address the validity of the complaint. Recently one of my roommates had an experience which illustrates this point.

The four of us have all signed the lease and our landlord is aware and accepting of living arrangement. Given the way Missoula's relation based residency law is enforced, we figured there wouldn't be a problem as long as we got along with our neighbors. We have been polite neighbors and haven't had any problems, until recently. For the last two months only one of my roommates have actually been present, the rest are travelling and I'm here in Helena during the session.

Recently, the lone roommate noticed that our neighbors had developed a habit of throwing their cigarette butts over the fence into our yard. Her boyfriend asked the neighbors if they could desist. They didn't take it well and an argument started. The argument culminating with the neighbor telling them to shut up because we have more than two unrelated people living in our house.

We were being threatened with eviction because we asked our neighbors not to throw their cigarette butts in our yard. If our neighbors had followed through on their threat, we would have been evicted without being able to defend ourselves on the merits of our case. The question would not have been is it unreasonable to ask our neighbors to not litter our yard. Nor would the question of whether we were good neighbors be entertained, or even whether our dwelling was overcrowded. It would simply be a question of whether or not we are related. We are not, so we would be out on the street looking for scarce housing.

While Missoula's housing ordinance is an easy way for the city to handle problems that could be addressed with other laws, it does so in an unjust manner. The accused can not defend themselves against the real charge because it has been hidden under the question of relation between residents. Moreover, as my story shows, it puts people in my living situation at considerable disadvantage in dealing with neighbors who have no intention of being considerate.

Concerns such as noise and overcrowding can be addressed with other sorts of laws which do not discriminate on the basis of relation between residents. However, Missoula doesn't use those laws, because its easier this way. We are not asking this Legislature to usurp legitimate zoning for legitimate reasons. We are asking you to disallow this particular practice by cities, so they can enforce laws which address these problems without creating injustice.

For this reason, I urge this committee to give a do pass recommendation to House Bill 361.

EXHIBIT 3 ~~4~~  
DATE 5-9-95  
HB 361  
Linda Lee

# MontPIRG

Montana Public Interest Research Group  
360 Corbin Hall • Missoula, MT 59812 • (406)243-2908

## MontPIRG's Testimony Supporting House Bill 361

Chairman Boharski and Members of the House  
Local Government Committee:

The Montana Public Interest Research Group (MontPIRG) is a non-profit, non-partisan consumer, good government and environmental organization. We have 4000 members across Montana, including 2200 students.

We support House Bill 361 because of the fair and logical nature of the bill. For the last 10 years, MontPIRG has run a hotline doing problem solving for renters and landlords. Recently, the issue of scarce housing has become more common. For Missoula, this problem is a symptom of growth. Towns such as Helena, which also restricts the number of unrelated people allowed to live together, will probably begin to experience the same types growing pains if that isn't already happening. It is unfair and unreasonable to prevent citizens from renting a house based on their relationships to one another. HB 361 resolves this issue.

Zoning laws are not meant to control the genetic or personal relationships between people. We urge you to support House Bill 361 to disallow discrimination based on this criteria. Montana does not need this discriminatory policy continuing to deprive Montanans of possible housing. Zoning laws address problems such as noise, parking, and take into consideration services such as fire, ambulance and evacuation procedures. We do not need to regulate housing based on the relationships between people.

In Missoula, there are property management companies and other landlords who want to rent to more than two unrelated people, but have concerns about breaking Missoula's housing ordinance. One woman we met in Missoula told of her disabled father who depended upon the income of his four bedroom house to pay for care in a rest home. Not being able to legally rent to more than two unrelated people creates a hardship for this man to keep the house rented. In Missoula, it is easier to find four unrelated roommates to pay \$700 to \$1000 per month for a house than it is to find a family.

House bill 361 simply creates a guide for cities in Montana not to discriminate against people who for economic, companionship or other reasons choose to live as house mates. MontPIRG urges you to support this bill.



# MISSOULA AGING SERVICES

227 West Front Street  
Missoula, Montana 59802  
(406) 728-7682  
Fax (406) 728-7687

EXHIBIT 4

DATE 2-9-95

HB 361

*from Linda Lee*

February 8, 1995

Montana State Legislature  
Helena, MT  
Bill addressed: HB 361

Affordable housing is an issue which stretches across the generations and touches the lives of young and old alike. Requests for housing assistance, fielded by Missoula Aging Services, validate the difficulties of finding affordable space and the complexities of spending more than 50% of total income on housing. When those problems are compounded by familial definitions which restrict occupancy, problems are exacerbated.

Restrictions based on family relationships discriminate against those who potentially shoulder the greatest risks. Three low income, unrelated senior citizens are prevented from living together. A disabled elderly individual cannot allow two unrelated persons to share her home and her care. Even if the structure is substantial, more than 2 unrelated persons cannot share the space.

If housing were plentiful and affordable, these issues might be less compelling. But the waiting list for subsidized housing in this community exceeds two years. In Missoula, 75% of the population needs to secure housing at less than \$675 month. The buying power of the median income household in Missoula is \$365/month. A brief glance through the local newspaper will show the futility of that search. To compound that issue, 66% of the housing stock in Montana has 2-3 bedrooms. People need to share housing because sharing presents the only viable economic alternative. If housing and utility costs are not contained, access to food, medicine, clothing and other basic human needs is jeopardized.

Arbitrary restrictions which deprive people of housing options do not meet very real and pressing community needs. Without attention to this issue, housing needs will increase and the crisis will deepen.

Submitted by:

*Ann Cook*  
Ann Cook

Director, Special Services

*ElderPhone • Foster Grandparents • Meals on Wheels • Senior Van • Senior Dining Rooms*

EXHIBIT 36  
DATE 2/9/95  
HB 361

WEDNESDAY

Missoulian  
August 17, 1994 **A4**

### MISSOULIAN EDITORIAL

# City upholds discrimination

## Missoula's unfair housing rule helps raise rents for everyone

**T**he Missoula City Council on Monday struck yet another blow against renters. Council members voted 8-4 to uphold an obsolete, discriminatory ordinance that virtually guarantees higher rents.

The ordinance is one we've railed against in this space. Our view hasn't mellowed with time. The 1974 ordinance outlaws more than two unrelated people from living in a single-family dwelling. It's an extraordinarily rotten ordinance to keep on the books in a university town with a chronic shortage of housing.

It's important to understand that the victims of this discriminatory ordinance aren't all 19-year-old sophomore party animals. All renters and home buyers pay more for housing, thanks to an ordinance that excessively restricts housing density. By requiring three people to live in two dwellings instead of one, the ordinance artificially increases the demand for housing. Higher demand translates into higher prices for everyone — it's basic capitalism in action.

City officials candidly confess the ordinance is designed to be selectively enforced. Neighbors who complain about more than two roommates in a single-family house get the city on their side; otherwise, the city looks the other way. The city has a don't-ask/don't-tell

policy that treats renters with intolerant neighbors more harshly than others.

The ordinance unfairly presumes that one class of renters is universally worse than another; that unrelated people always are worse neighbors than related people; that three roommates create more noise and do more to harm neighboring property values than, say, a family with four teen-agers renting the same dwelling; that only young students need or want multiple roommates to help pay Missoula's sometimes outrageous rents.

Proponents of the citywide ordinance say it's necessary to protect the character of the University Area. That's ironic, since easily more than 20 percent of the homes in the university area rent to tenants in violation of the ordinance. Some, including Council Member Marilyn Cregg — who voted to retain the ordinance Monday — do so openly, claiming a "grandfather" or pre-existing-use exclusion to the law; other landlords violate the ordinance on the sly. Somehow, the neighborhood endures. The logic of a citywide ordinance to address an issue of concern for a single neighborhood also escapes us.

Missoulians should demand fairer and more honest housing policies from their City Council. All of public nuisances the family-restriction housing ordinance is supposed to address can be effectively solved on a case-by-case basis with other existing laws.



# CITY OF BILLINGS

## ZONING COMMISSION BOARD OF ADJUSTMENT

4TH FLOOR, LIBRARY BUILDING  
510 N. 28TH  
BILLINGS, MONTANA 59101  
(406) 657-8247

EXHIBIT 37

DATE 2-9-95

HB 361

February 9, 1995

Representative Evie Burris  
House Local Government Committee  
Capitol Station  
Helena, MT 59620-1706

RE: House Bill #361

Dear Representative Burris:

Once again the state legislature is faced with a local government issue that it has no business considering. House Bill #361 would deny local governments the ability to restrict the number of unrelated individuals residing in a single house.

This is a bill that originates due to a situation in Missoula over a dispute between college students and residents of a single family neighborhood near the University of Montana. Local zoning codes in Missoula allow only a certain number of unrelated people to live in the same house (this type of local zoning law is very typical across the United States). When these laws were violated, students and landlords were notified to comply with local law. Petitions were sent to members of the Missoula City Council to change the law but the issue was never resolved to the satisfaction of the university students.

In an attempt to bypass local government in Missoula, the issue was heard by the 1993 Legislature. That bill was narrowly defeated on third reading two years ago. Now the 1995 Legislature has once again been asked to consider a local issue.

If approved, House Bill #361 could be detrimental to single family neighborhoods across Montana. The language in House Bill #361 would prohibit local governments from limiting the number of unrelated people living in a single family residence. This language was specifically targeted toward student housing in many of our college and university towns across the state but as you can imagine, this type of legislation wouldn't stop there.

Representative Evie Burris

February 9, 1995

Page Two

I point out that upon passage of this bill, local zoning authority will be taken away and that this type of legislation not only provides no restriction on the number of college students living in one dwelling unit, but also provides no restriction on the number of migrant workers, transients, vagrants, or cult members, etc. living in a single family residence. In other words, this legislation promotes communal living in any neighborhood throughout the state of Montana.

More importantly is the issue that the legislature convenes for the purpose of considering state business and not business that should be considered at the local level. House Bill #361 is a local issue and there is no justification to have the state legislature consider this bill just because the city of Missoula cannot work out their own differences.

The city of Billings has already resolved this issue on a local level by addressing fraternity/sorority housing within the Billings, Montana City Code. In Billings, this type of legislation was considered at the local level where it should be reviewed. By allowing local governments to review this issue will in turn provide due process in the form of local public hearings and allowing local governing bodies the capability of reviewing local issues at a local level.

The entire state of Montana should not be subject to a local problem that has been created in Missoula or a small handful of other local jurisdictions. **I would like to take this opportunity and urge you to vote against House Bill #361.**

I personally invite you to give me a phone call at 657-8289 concerning this issue if you have any questions. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Kerwin Jensen".

Kerwin Jensen, Senior Planner  
Yellowstone County/City of Billings





UNIVERSITY AREA  
HOMEOWNERS  
ASSOCIATION

315 KEITH, MISSOULA, MONTANA 59801

EXHIBIT 38  
DATE 2-9-95  
HB 361

Board Members:

Jack Doty, 315 Keith  
John Fulton, M.D., 730 Woodworth  
Charles Gibson, 805 East Beckwith  
Betty Haddon, 1434 Gerald  
Helen Orendain, 530 Connell  
Phillip Perszyk, 620 Evans  
Ty Robinson, 545 East Central  
W. R. Bud Schultz, 240 University  
Carol Walters, 430 Evans

TO: House Local Government Committee

From: University Area Homeowners Association, Inc.  
Missoula, Montana  
Membership: Over 400 individuals  
President: Helen Orendain, 406-728-8501

WE OPPOSE HOUSE BILL 361.

HB 361 WOULD PREVENT MUNICIPALITIES FROM REGULATING THE NUMBER OF PERSONS WHO RESIDE IN A DWELLING BASED UPON RELATIONSHIPS OF THE PERSONS.

PASSAGE OF HB 361 WOULD HAVE THE FOLLOWING ADVERSE EFFECTS:

1. Usurp zoning power from local government;
2. Prevent local government from zoning based upon rational, local and unique concerns;
3. Threaten the very purpose of residential zoning which is to lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health and the general welfare; prevent overcrowding of land and avoid undue concentration of population;
4. Would promote proliferation of **unsupervised** rooming houses which create deterioration in neighborhoods;
5. Destroy value of residential properties;
6. Erode tax base for municipal services due to residential deterioration;
7. Overburden municipal services, i.e. police, fire and health departments;
8. Directly conflict with The Constitution of the State of Montana, Article 11, Section 3. the Inalienable Right to protect property.

The City of Missoula's residential zoning ordinance is based upon the United States Supreme Court decision, **Village of Belle Terre v. Borass, 1974**, which has not been overturned. In short, it is still good law!

EXHIBIT 39  
DATE 2/9/95  
HB 361

*Submitted by Contributor  
Missoula City Council*

February 8, 1995

Local Government Committee  
State Capitol  
Helena, MT 59601

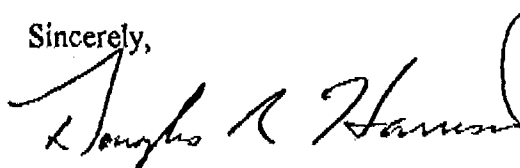
Dear Committee Members:

I am writing in regard to HB 361, pertaining to the definition of family.

Two years ago most of the Missoula City Council signed a letter to the Legislature requesting similar legislation be tabled. The reason for this was that changing this definition has broad ramifications for zoning in single family residential districts. Our concern is that the state legislature passes a bill that severely influences local zoning regulations. The feeling of many people is that issues such as zoning are best dealt with on the local level.

In light of these issues, I would request that you table this bill.

Sincerely,



Douglas R. Harrison  
President, Missoula City Council

EXHIBIT 40  
DATE 2/9/95  
HB 361

M E M O R A N D U M

To: Members, Local Government Committee  
Montana House of Representatives  
State Capitol Building  
Helena, Montana 59620

From: Betty L. Haddon  
1434 Gerald Avenue  
Missoula, Montana 59801

Re: HB 361

Date: February 9, 1995

Historically, the state has recognized municipalities' right to enact zoning ordinances at the local level to meet local needs. HB 361 would remove that option as it relates to the number of non-related persons occupying a single house in a single-family residence zone.

Neighborhoods located near large state or private institutions will be severely and adversely impacted by the Bill. I know about such impacts from personal experience.

Those of us who live near the University of Montana have worked very hard for many years to keep the University area from slipping into complete urban decay. The task has not been an easy one. In the late 1970's, we were able to persuade the Missoula City Council to pass an ordinance limiting the number of unrelated persons who could occupy a single house within a single-family residence zone. This ordinance was necessary to reverse what was at that time severe and ongoing deterioration of many of the older homes in the area.

Because there were no restrictions on the number of occupants, unscrupulous landlords, many of them absentee, purchased older homes and crammed as many as 15 to 20 persons into a single dwelling. While the landlords, of course, realized a very high rate of return on their investment, they did so at the expense of the neighborhood.

The interior of many homes were altered to make it possible to fit ever more people into the structure. Rooms were partitioned into closet size spaces barely large enough to hold a roll-a-way bed. It was a common sight to see junk cars, broken furniture and other debris in the yards and on the porches. Grass and trees died due to lack of care by the occupants or the owners.

Local ordinances similar to those in Missoula, Bozeman and Billings have been upheld as constitutional. Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536 (1974). The

Memorandum  
February 8, 1995  
Page 2

single-family residence ordinance in Missoula specifically does not discriminate on the basis of sex, sexual orientation, religion, race, handicap or against any other protected group. As recently as last fall, the Missoula City Council voted to uphold Missoula's family definition ordinance.

Local municipalities are best suited to determine zoning regulations according to the particular problems and needs of the community. It is difficult for a legislator from Sidney, Miles City or Kalispell to know what the needs of another municipality might be. By passing HB 361 the legislature will make an unwarranted move to deny municipalities the capacity to deal with local issues in a manner that best serves the needs of all the community, not just special interest groups.

From: DOROTHY ANGUIN  
MISSOULA

EXHIBIT 41  
DATE 2-9-95

February 3, 1995

To The Local Government  
Montana State Legislature

1995 Montana State Legislature Family Residential Zoning Under Attack!

A bill to kill the Family Zoning Ordinance was introduced January 30th in the 1995 Montana State Legislature: House Bill 361.

House Bill 361 is entitled: "An act prohibiting municipalities from enacting zoning provisions that regulate the number of persons who may reside in a dwelling based solely on the relationship of the persons; and amending the Twelve-Point "Lowe" test of reasonable municipal zoning (section 76-2-304 MCA) by adding a thirteenth point:

A municipality may not regulate the number of residents of a dwelling if the regulation is, in any manner, based upon the relationship of the residents.

The University Area Homeowners, Inc., at the April 1994 Annual Membership Meeting voted overwhelmingly to support the current residential zoning ordinance in Missoula which defines "Family" as defined and approved by the United States Supreme Court (Village of Belle Terre v Boraas, (1974)). The definition affects the entire city and was voted into law along with single family zoning, by referendum in a general city election November 1978.

Use of the "Family" definition by Montana Municipalities was upheld in the 1993 Montana State Legislature with the defeat of Senate Bill 364.

University Area Homeowners Position: KEEP THE PRESENT FAMILY DEFINITION;  
DEFEAT HOUSE BILL 361

Eliminating the family definition would mean unmanaged growth in the city and higher population densities in all residential neighborhoods.

Higher population densities would mean more vehicles with associated traffic, parking and safety problems.

Additional vehicles and traffic also take away open space, now highly valued in all neighborhoods.

The current Missoula family definition:

19.04.110 Family. Family means one or more persons related by blood, adoption, marriage or foster children or foster adults, exclusive of household servants, living and cooking together as a single housekeeping unit, or not more than two persons, though not related by blood, adoption, marriage or foster children or foster adults, living and cooking together as a single housekeeping unit. (Prior code 532-2(part)).

Please contact your representatives in the Montana House and Senate urging them to vote down House Bill 361.

TO LEAVE A MESSAGE FOR A LEGISLATOR, CALL: 1-406-444-4800.

From: Weddle, R. M., Montana Zoning Law Digest: a comprehensive summary of judicial decisions and attorneys' general opinions relating to the law of zoning in Montana, Helena, MT: Montana Department of Commerce, February 1989, p. 16.

## **X. Twelve-Point "Lowe" Test for Zoning and Rezoning**

Section 76-2-304, MCA, establishes a 12-point test under which municipal governing bodies must consider whether a proposed zoning or rezoning of land:

- a. is designed in accordance with the comprehensive plan;
- b. is designed to lessen congestion in the streets;
- c. will secure safety from fire, panic and other dangers;
- d. will promote health and the general welfare;
- e. will provide adequate light and air;
- f. will prevent the overcrowding of land;
- g. will avoid undue concentration of population;
- h. will facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- i. gives reasonable consideration to the character of the district;
- j. gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k. will conserve the value of buildings; and
- l. will encourage the most appropriate use of land throughout the municipality.

*Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974). [Note: Section 76-2-203, MCA, establishes the same criteria for county-initiated zoning.]

A zoning or rezoning is invalid unless it is enacted in accordance with the 12 criteria contained in section 76-2-304, MCA, (Lowe test). *Schanz v. City of Billings*, 182 Mont. 328, 597 P.2d 67 (1979).

The 12-point test for zoning and rezoning first described in *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974), does not apply to zoning and rezoning actions taken under sections 76-2-101 through 76-2-112, MCA, by county planning and zoning commissions. *Montana Wildlife Federation v. Sager*, 37 St. Rptr. 1897, 620 P.2d 1189 (Mont. 1980).

## **XI. Relationship of Zoning to Private Land Use Restrictions**

Zoning regulations cannot negate lawful private restrictions on the use of land. *Kosel v. Stone*, 146 Mont. 218, 404 P.2d 894 (1965).

EXHIBIT 42  
DATE 2/9/95  
HB 361

February 9, 1995

Arlette Randash / Eagle Forum  
HB 361

I rise in opposition to HB 361 because by adopting lines 25 and 26 the state would prohibit cities and towns in Montana a low-priced easily enforced method to quickly reduce crime. The families I represent in the state may never need to urge their town or city to pass such an ordinance to stop crime but if they did we would have removed that avenue at their disposal. If a crack house, gang headquarters, or a beer drinking fraternity moved in next door, neighbors could come together and pass just such an ordinance to take back control of their neighborhoods and ensure the safety of their children once again on the sidewalks or while playing in their front yards.

For college town neighborhoods this isn't an academic problem.....this is reality. The fastest growing segment of the criminal population is in our nation's youth. According to the FBI the nearly quadrupling in juvenile arrests has involved not only the "disadvantaged minority youth in urban areas, but "all races, all social classes and life styles." One of the problems in juvenile justice is that only 5 percent of all young violent offenders are tried as adults. Because the juvenile offender so rarely pays for his crime he doesn't get the message. In a time of tight fiscal budgets and a growing population why would we want to prohibit our cities from a tool as simple as limiting the number of unrelated people in a dwelling?

Believe me as an employer I quickly learned that 3 18 year olds together doing a job was chaos. Separate them and the job might have a chance at being accomplished. And having been at home when my Senior son had several house parties last year I can assure you that the neighborhood would not have tolerated the noise and ruckus day after day. Simply controlling the numbers is a low cost solution.

I believe HB 361 is an attempt at honoring diversity at the expense of crime control, those in the penal system know growing old does much to deter crime.....so does permitting municipalities to regulate the number of unrelated people living together in a dwelling. This bill defies common sense, please vote 'no' on HB 361.

EXHIBIT 43  
DATE 2/9/95  
HB 361

610 East Sussex Avenue  
Missoula, MT 59801  
February 8, 1995

Bill Boharski, Chairman  
Local Government Committee  
State Capitol  
Helena, MT 59620

Dear Mr. Boharski:

I am writing to voice my opposition to House Bill 361. In addition to the reasons listed on the attached list there is another possibility that has to be considered.

The last time the University of Montana has built any significant housing for students was in 1967 yet since that time enrollment has roughly doubled. Consequently Missoula in general and the university area neighborhoods have had to accomodate the additional students.

The city taxpayer has had to pay for the additional services for these students with little help from the state. Individual homeowners who do not rent to students have had to shoulder a disproportionate share of the burden. By eliminating the main control over density (the single family definition) the state would be more vulnerable to a suit based on the taking of private property without compensation. Even now there is a good basis for such a suit. Eliminating the present definition could well precipitate such a suit.

I hope you take these factors into consideration and I urge the Committee to reject the Bill.

Sincerely,



Marlen Tweten



EXHIBIT 44  
DATE 2/9/95  
HB 361

House Local Government Committee  
State Capitol  
Helena, MT 59620

Dear Committee Member:

We were not able to testify in person, and so are sending this letter to you *via* members of the University Area Homeowners Association.

We both have lived in Missoula about 30 years, and so have seen many changes and experienced the character of many a neighbor. We have three children now and one more on the way; the character of our neighborhood is extremely important to us in terms of safety and cohesiveness. One aspect that has become painfully clear to us is that it is *very important* that the current city zoning law which restricts the number of unrelated individuals living in one residence remain intact and enforceable. It would take up too much time and space to list all of our particular experiences in regard to this issue — we simply will summarize as follows.

We have seen groups of men and women collectively rent single residences and turn them into a garbage collection, a drug dealer's business place, or a party house where obnoxious noise and alcohol are always flowing freely. It is a rule that such groups have an extremely low degree of responsibility, and contribute greatly to neighborhood decay. Other laws pertaining to "disturbing the peace" are not enough — we need to stop a surely bad enterprise *before* it is begun, and *before* it creates decay. Even decent, responsible common folk get tired of fighting a continuous onslaught of filth and corruption.

This city has already voted on and upheld this zoning ordinance that now seemingly hangs in the balance at the state level. We do not think it is the state's place to regulate such matters. It is our city's constitutional right — found to be constitutional at the *federal* level — to maintain such ordinances.

We take House Bill 361 to be a very grave threat to our neighborhood, and take your action on it very personally.

Sincerely,



Dr. Richard & Stephanie Ann  
402 E. Beckwith Ave.  
Missoula MT 59801

EXHIBIT 45

DATE 2-9-95

HB 361

*JACK DOTY Testimony*

*2/9/95*

MEMORANDUM TO STATE LEGISLATORS

*Local Government Committee*

FROM:

*The University Homeowners Association  
Missoula, MT 59801  
315 Keith Avenue*

WE OPPOSE HOUSE BILL 361.

HB 361 WOULD PREVENT MUNICIPALITIES FROM REGULATING THE NUMBER OF PERSONS WHO RESIDE IN A DWELLING BASED UPON RELATIONSHIPS OF THE PERSONS.

PASSAGE OF HB 361 WOULD HAVE THE FOLLOWING ADVERSE EFFECTS:

1. Usurp zoning power from local government;
2. Prevent local government from zoning based upon rational, local and unique concerns;
3. Threaten the very purpose of residential zoning which is to lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health and the general welfare; prevent overcrowding of land and avoid undue concentration of population;
4. Would promote proliferation of **unsupervised** rooming houses which create deterioration in neighborhoods;
5. Destroy value of residential properties;
6. Erode tax base for municipal services due to residential deterioration;
7. Overburden municipal services, i.e. police, fire and health departments;
8. Directly conflict with The Constitution of the State of Montana, Article 11, Section 3. the Inalienable Right to protect property.

The City of Missoula's residential zoning ordinance is based upon the United States Supreme Court decision, **Village of Belle Terre v. Borass, 1974**, which has not been overturned. In short, it is still good law!

EXHIBIT 46  
DATE 2-9-95  
HB 361

Matt Denny  
House of Representatives  
Helena, Mt.

2/9/95

Matt,


This letter is to inform you of my opposition to HB 361. My reasons for opposing this legislation are as follows:

1. Municipalities should have the power to deal with this on a local level. Local government would not be able to deal with local and unique situations as they arise.
2. This legislation would lead to a proliferation of unsupervised and unregulated rooming houses throughout Missoula and other cities and towns in Montana. This would lead to congestion, safety, health and welfare, and overcrowding problems.
3. HB 361 may lead to deterioration of property, put a strain on police, fire, and health departments, and lessen the value of neighboring residential properties. This would lessen the tax base upon which municipal services are reliant.

For the above stated reasons, I urge you to NOT support HB 361. Please leave the power to zone rationally with local government.

Thank you for your time and consideration.

Sincerely,

  
John A. Zimorino

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Local Government

COMMITTEE

DATE 2-9-95

BILL NO. 398

SPONSOR(S) Squirrels

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Susan Mathewson	self	✓	
AIEC Hansen	MLCT		✓
Cartis Horton	City of Missoula		✓
Jari LeCure	RATTLESNAKE HOMEOWNERS ASSOC.		
Alyssa Balich	E-W-Bennett	✓	
John Rice	Mont Fox Batten 6000, United We Stand Redmond	✓	
<del>Jay Sage</del>	<del>Resident</del>	<del>X</del>	
Paul Cairy	SELF Taxpayer	X	
Dale Haessly	2nd Amend. / self	✓	
Jack Grover 1318 Schilling Missoula	Self	X	
2395 S. 8th St. W.			
Verna Lange Missoula, MT	self	X	
C. Charlene Miller	target Range Homeowners assoc.	✓	
Joe Gasvoda	Self	✓	
John Brauer	Reserve St. Homeowners	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

W James Kembel  
L. FASBENDER  
D Spivey W. Fish  
T. C. Miller

City of Billings  
City of Mt. Falls

Self/Evergreen/CH

X  
X  
✓

✓

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

State Government COMMITTEE DATE 2-7-95  
BILL NO. 358 SPONSOR(S) \_\_\_\_\_

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NAME AND ADDRESS	REPRESENTING	Support	Oppos
Curtis Horten 6103 Longview Dr. Msls.	City of Missoula		✓
Paul Johnson 18 Big Dipper Clancy, MT 59634	Montanans For A Healthy Future LF Inc		✓
Pamela P. Collins 59601 2000 South Hills Rd. Helena	self		✓
JUDY BECK 10 Saddle Mtn Dr. Clancy MT	self		✓
Glennice O'Neil	Jeff. County		✓
Anne Hedges	MEIC		✓
Gordon Morris	MACo		✓
Ted Lange	NPRC		✓
Linda Lee	MontPIRG		L
Dan Allen	MT Wood Products Assoc	✓	
J. Shontz	MT ASSN BLDG DRS	x	
L. JASBENDER	City of St. Falls		L

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CS-14

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Local Government

COMMITTEE

DATE 2-9-95

BILL NO. HB 361 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
WACK H. DOTY 315 KEITH AVENUE MISSOULA, MT 59801	UNIVERSITY AREA HOMEOWNERS ASSOC- IATION, INC		X
Betty L. HADDON 1434 Gerald Ave Missoula MT	Property owner		X
Keith Baer 84 Lacota Msla MT 59803	Property owner		X
DOROTHY ANGWIN 600 EVANS AVE. MISSOULA, MT. 59801	PROPERTY OWNER		X
Curtis Horton 6103 Longview Dr.	City of Missoula		✓
PARI KECORE	MYSELF		✓
<del>Arlette</del> Mary G. Gilluly	ASMSU - Billings <del>FAIR</del>	✓	
Arlette Kandash	Eagle Forum		✓
W. James Kembel	City of Billings		✓
MARK WATSON	City of Billings		✓
VICKIE AMUNSON	MISSOULA CO ASSO OF REALTORS	X	
J. Shontz	MT ASSOC REALTORS	X	
B. Barnett	Legal Svcs ASUM MSIA	X	

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wp:visssbcom.man  
CS:1A  
Kerwin Jensen - Billing Planning Dept.  
Laurie Kowmik  
Christian Coalition of MT  
Self  
Self  
J.V. Bennett  
613 W. 3rd W.  
To: TUIRE  
C. M. & G. F. Finner

X  
X  
X  
X  
X

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Local GOVERNMENT

COMMITTEE

DATE 2-2-85

BILL NO. HB # 397 SPONSOR(S) \_\_\_\_\_

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
<i>Susan Mathewson</i>	<i>Self - Hard Labor Missoula</i>	✓	
<i>John Rice</i>	<i>Mont. Forest &amp; Game Comm. United We Stand Indiv.</i>	✓	
<i>Pari Schure</i>	<i>MISSOULA HOMEOWNERS ASSOC. RATTLESNAKE HOMEOWNERS ASSOC.</i>	✓	
<i>Curtis Horton 6103 Longview Dr., Msl</i>	<i>City of Missoula</i>		✓
<i>Delene HARRIS</i>	<i>Reserve st residents</i>	✓	
<i>Jay Sage</i>	<i>Reserve St</i>	X	
<i>Paul Laissy</i>	<i>SELF TAXPAYER</i>	X	
<i>Alexis Bolich</i>	<i>Reserve St.</i>	X	
<i>Jack Grover</i> <i>1310 Subilling</i> <i>Missoula</i>	<i>Self</i>	X	
<i>Debi Harsby</i>	<i>2nd Amend. / Self</i>	✓	
<i>C. Barbara Miller</i> <i>2395 S. 8th St. W.</i>	<i>Target Range Home Owners</i>	✓	
<i>Verna Lange</i> <i>Missoula, MT</i>	<i>Self</i>	✓	
<i>Walter M. Sheldon</i> <i>1241 Bighorn Rd Helena</i>	<i>Truman State Acres Montana Rural Water Systems</i>		✓

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CS-14

*Mcna Jamison*

*Big Sky Water +  
Sinner Dist. #363*

✓

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Local Govt COMMITTEE DATE 2-9-95  
BILL NO. 397 SPONSOR(S) Aguirre

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
John Bruner 2535 Shook Moh pt.	Reserve St. Homeowner	X	
Joe Gervede	Self	X	
Don Stinger	Orchard Homes Area	X	
Azara Stinger	Self	X	
<del>XXXXXXXXXXXXXXXXXXXX</del>	<del>XXXXXXXXXXXXXXXXXXXX</del>	<del>X</del>	
Alec Hansen Peter Nelsen	MLCT Missoula Health Dept		X <sup>v</sup>
Bruce Bender	City of Missoula		X
W James Kembel	City of Billings		X
MARK WATSON	City of Billings		X
Will SNODGRASS	SELF	X	
Janet Ellis	MT Audubon		X
Richard F. Del	Wally Payer Mt		X
<del>Don Sp...</del>	<del>White...</del>		X
Eric Turner	CITY OF GT FALLS		X

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JAMES A. LOFFTUS MD FIRE DIST  
ASSN  
Jack Fallon Evergreen

MT IL  
city Helena  
MONTPELIER

Anne Hedges  
Bill Verwolf  
Kenda Lee

✓  
✓  
X  
X  
X  
X



HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Local Government

COMMITTEE

DATE 2-9-95

BILL NO. 398

SPONSOR(S)

Squires

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Don Stinger	Orchard Homes Area	X	
Azara Stinger	Self	X	
<del>XXXXXXXXXXXXXXXXXXXX</del>	<del>XXXXXXXXXXXXXXXXXXXX</del>	<del>XXXXXXXXXXXX</del>	
Peter Nielsen	Missoula Health Dept		X
Bruce Bender	City of Missoula		X
W James Kembel	City of Billings		X
MARK WATSON	City of Billings		X
<del>Mark Jamison</del>	<del>Big Sky Water</del>		<del>X</del>
Chris Imhoff	League of women voters of Montana		X
Janet Ellis	MT Audubon		X
Will SNODGRASS	SELF	X	
ERL TUTT	CITY OF GTF		X
J. Shontz	MT Assoc REALTORS	207/398 X	

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HR:1993 Bill Verwal f  
wp:vissbcom.man  
CS-14

*Phila Lee*  
Charles Brook  
JAMES A LOFFTUS

City of Helena  
Mont PIRG  
Yellowstone Co  
MT FIRE DIST  
ASSAI

✓  
/  
/  
X