

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, on January 30, 1995, at 3:00 PM.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: HB 292
Executive Action: HB 263 Postponed
HB 274 Postponed
SJR 2 Be Concurred In

Tape 1, Side A

HEARING ON HB 292

Opening Statement by Sponsor: REP. DANIEL FUCHS, House District 15, Billings, said HB 292 is designed to require more responsibility and accountability in the subdivision area. The subdivision reviewing authority will be required to prepare a written statement as to the conditions surrounding a subdivision approval, or certification denial or condition imposition related to sanitary restrictions.

Proponents' Testimony: Andy Skinner, Self, said currently Lewis and Clark County is arbitrarily making sand filtered systems a prerequisite for houses built in the Helena valley. The state law says if the distance to ground water is six feet the standard system can be used. Lewis and Clark County requires ten feet before the standard system can be used. During hearings the county was asked why its standards were higher than the state's. The answer was that they liked the ten feet figure. Data for the university in Bozeman shows that there is no benefit from using sand filter systems in the Helena valley under normal conditions. The County Health Department has violated all rules in effect to date. The law states that once a subdivision plat is approved the rules will not be changed. The County Health Department changed the rules three times. Mr. Skinner said according to his records his business is the largest home provider in Helena. Helena needs affordable housing. When the purchaser has to pay \$5,500 for a system that is not needed, it will cost \$17,200 over the life of the loan. HB 292 is a step toward solving some of the subdivision discrepancies.

John Shontz, Montana Association of Realtors, said HB 292 doesn't substantially change the law but it requires accountability from the people who are making decisions in local and state government about permit applications. Some arbitrary and capricious decisions have been made by local governments officials who haven't fully explained their actions nor have they provided new applicants the proper appeal process for their decisions. Mr. Shontz urged the committee to give HB 292 a Do Pass.

Opponents' Testimony: Steve Pilcher, Administrator, Water Quality Division, Department of Health and Environmental Sciences. Written testimony. Exhibit 1

Informational Testimony: None

Questions From Committee Members and Responses: REP. ROBERT STORY asked REP. FUCHS if there was a reason why he didn't sign the fiscal note to HB 292. REP. FUCHS said he didn't agree with some of the contents of the fiscal note.

REP. CLIFF TREXLER asked Mr. Pilcher if state laws are different than county laws on subdivisions. Mr. Pilcher said the state establishes the minimum standards that must be met. Counties

must meet state requirements but that does not preclude them from requiring stricter standards.

Tape 1, Side B

REP. JAY STOVALL asked **Mr. Pilcher** if the state or the county is the final authority in an appeal case. **Mr. Pilcher** said the state is the final authority.

REP. DOUG WAGNER asked **Mr. Pilcher** if the department changes its guidelines regularly. **Mr. Pilcher** said the regulations do change from time to time to keep up with changing trends and needs.

Closing by Sponsor: **REP. FUCHS** said if HB 292 saves one developer from having to litigate against the state it will be worth it.

EXECUTIVE ACTION ON HB 263

Tape 2, Side A (Tape malfunction)

Motion: **REP. AUBYN CURTISS** MOVED HB 263 DO PASS.

Motion: **REP. ROBERT STORY** MOVED AMENDMENTS TO HB 263.

Discussion: **CHAIRMAN KNOX** postponed further action on HB 263 until Wednesday, February 1, 1995 so work could be done on the amendments.

EXECUTIVE ACTION ON HB 274

Motion: **REP. DOUG WAGNER** MOVED HB 274 DO PASS.

Tape 2, Side B

Discussion: **REP. BILL TASH** said if the Department of State Lands (DSL) doesn't have the authority to harvest the timber in a timely manner sometimes the opportunity to harvest will be lost if they it has to go through the review process. It will put added pressure on the department and there will be budget constraints if there has to be a full review process for every large or small timber sale opportunity.

Motion: **REP. DOUG WAGNER** MOVED AMENDMENTS TO HB 274.

Discussion: **REP. WAGNER** explained the amendments.

REP. HAL HARPER said REP. WAGNER'S amendment would authorize the department to negotiate permanent access. REP. HARPER asked REP. WAGNER if that would allow lumber companies that have landlocked sections to cut the timber at their price with no bids and all the department would have to do is to negotiate access. REP. WAGNER said that isn't the intent of the amendment. The intent is to allow the department to negotiate permanent access to the land so it can be opened to other bidders.

REP. TASH said he was against the amendment because it defeats the purpose of the bill. The bill is intended to expedite timber harvest. The bidding process will slow it down. Bud Clinch, Commissioner, Department of State Lands, said the amendment was drafted specifically to try to alleviate the instance where large timber corporations surround and control access to a tract of land and could hold the department hostage by preventing normal timber sale proceedings. The amendment is an attempt to direct the department to negotiate reciprocal access so there can be a public bidding process in those areas.

REP. ROBERT STORY asked Mr. Clinch to define the term "reciprocal access." Mr. Clinch said in most of the instances where the department is dealing with potential problems when there are multiple ownerships that are crossed with the road access. One way to get around that is to exchange easements so the private landowner the department is trying to negotiate an easement with will also get an easement across the adjacent state land to further access their property.

REP. HARPER asked Mr. Kakuk if he could come up with a possible alternative to REP. WAGNER'S amendment because it was difficult to understand. Mr. Kakuk said an option would be to change subsection 3 b to subsection 3 b(i) and would read the same as it now does. Subsection 3 b (ii) would read "the provisions of subsection 3 b (i) do not apply to situations where the only legal access, etc." This change might clarify the intent.

REP. WAGNER said he agreed with the changes in the amendment.

Motion/Vote: REP. HARPER MOVED TO AMEND REP. WAGNER'S PROPOSED AMENDMENT. Voice vote was taken. Motion carried unanimously.

Discussion: REP. HARPER explained the amendment.

Motion/Vote: REP. WAGNER MOVED THE AMENDED AMENDMENT. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. WAGNER MOVED TO AMEND LINE 15 OF THE BILL TO CHANGE THE WORD "SUCH" THAT WAS STRICKEN TO THE WORD "ANY." Voice vote was taken. Motion carried unanimously.

Motion: REP. WAGNER MOVED HB 263 DO PASS AS AMENDED.

Discussion: REP. HARPER said he thought there should be another amendment to subsection section C, line 30, which says in part "in the situations described in this subsection the department is not required to comply with the Montana Environmental Policy Act." An environmental assessment should be required.

REP. SCOTT ORR asked REP. HARPER if he was offering an amendment. REP. HARPER replied no. REP. ORR said he understood the concern over weakening MEPA rules. The reason MEPA rules were implemented was to change the way of harvesting timber. This has been accomplished. The bill simply asks for a release from those rules not only to make revenue for the school trust but to make use of the timber resource so it won't go to waste.

REP. JON ELLINGSON proposed an amendment to subsection c, line 30 to read "in the situations described in this subsection 3 the department is relieved from the requirements of MCA 75-1-201, subsection 1 to the extent that compliance is precluded by the limited time available to take advantage of the sales opportunities that bind by this subsection."

REP. WAGNER said there is concern where it doesn't need to be, although the amendment may address some of the gray areas.

CHAIRMAN KNOX said he wasn't comfortable with preceding with the amendment without giving Mr. Kakuk time to draft it and present it to the committee. There is a degree of consensus from the committee that REP. ELLINGSON'S proposed amendment is worthy of consideration. CHAIRMAN KNOX deferred further action HB 274 until the amendment has been drafted.

Tape 3, Side B

EXECUTIVE ACTION ON SJR 2

Motion: REP. ORR MOVED SJR 2 BE CONCURRED IN.

Motion: REP. ORR MOVED THE AMENDMENT TO SJR 2.

Discussion: REP. ORR explained the amendment. The amendment ensures the bill is never construed to mean that the state is going to give money to the museum. REP. ORR said SJR 2 passed on second reading and died on third reading on the House floor and he made a move to have it re-referred back to committee.

Vote: Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. ORR MOVED SJR 2 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 17 to 1. REP. DOUG WAGNER voted no.

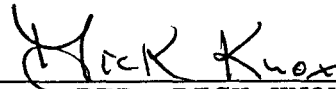
HOUSE NATURAL RESOURCES COMMITTEE

January 30, 1995

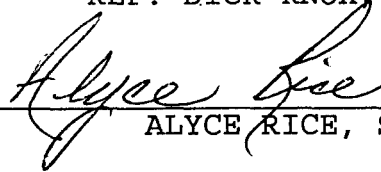
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ADJOURNMENT

Adjournment: 5:10 pm



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 1-30-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

. January 31, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Joint Resolution SJR2 (first reading copy -- white) be concurred in as amended.

Signed: 
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Ellingson

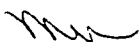
1. Page 3, line 5.

Following: "advice"

Strike: "and" through "assistance"

-END-

1/31



Committee Vote:

Yes 7, No 1.

260857SC.Hdh

EXHIBIT 1
DATE 1-30-95
HB 292

HOUSE BILL 292

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences (DHES) has reviewed House Bill 292 and have prepared a fiscal note on the same. We certainly cannot argue with the need to hold agencies accountable for their decisions and with the need to communicate that information to the regulated community. We do, however, find ourselves questioning the necessity of this bill in light of the process of review currently utilized in carrying our responsibilities under the Sanitation in Subdivision Act. I would like to quickly explain the current process and share with you examples of the documents that we feel address the sponsor's concern.

Persons wishing to subdivide their property are required to complete an application form and submit the same along with supporting technical data to DHES for review and approval. Each application is subjected to a thorough review and if that review identifies deficiencies or technical problems, a denial letter is sent to the applicant or their representative. Attached to that denial letter will be a list of additional information that is required. Considerable communication then normally takes place between DHES staff and the applicant or their representative until all issues are addressed and a Certificate of Plat Approval issued.

That document carefully and clearly states the conditions of that approval. The approval is valid only as long as those conditions are adhered to.

If an application is denied, the applicant is entitled to a hearing before the board of Health and Environmental Sciences or the agency Director as provided in Sec. 76-4-126, MCA. If informing applicants of this provision was of serious concern, appropriate language could be added to our denial statement.

Our review process seems to be working well, given the fact that we have seen subdivision activity increase from approximately 1900 lots in 1990 to nearly 5000 lots in each of the past two years. We are always willing to consider modifications to our program that will allow the program to function more effectively for the applicants and for the agency.



Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A. C. Knight, M.D.

~~XXXXXXXXXXXX~~
DIRECTOR

November 8, 1977

Mr. Clinton E. Fuchs
2723 Miles Avenue
Billings, MT 59101

Re: Oxbow Subdivision, 2nd Filing
Yellowstone County

Dear Mr. Fuchs:

We are required by Section 69-5003, R.C.M. 1947 to take final action on a subdivision proposal within 60 days of receipt of plans. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiencies are noted on the attached sheet.

Because of the inadequate information, we herewith decline to approve the proposed division. Unless the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction.

You may obtain the necessary information and re-submit the application for our review; but if you do so, please use the Submittal title noted above to assure that the information is placed with you particular proposal.

If you have any questions on the above, please feel free to call on us at 449-3946.

Sincerely,

James Melstad
Subdivision Bureau
Environmental Sciences Division

JM:cmg
Enclosures

cc: L. Stow, R.S., Courthouse Rooms 310-311, Billings

EXHIBIT 1
DATE 1-30-95
I HB 292

ADDITIONAL INFORMATION REQUIRED

1. The enclosed copy of a letter from the Montana Bureau of Mines and Geology points out that the water supply situation in this area is an unknown in terms of further subdivision development. Because of the questionable supply, we will require that Sections (7)(a)(ii) and (7)(e) of our regulation (enclosed) be complied with. The Kaufman well could perhaps be used for some of the testing, but I feel that a hydrogeologist's or qualified professional engineer's report will also be necessary to adequately address the water supply question. Please submit the results of the testing and the report when they are complete.
2. The soils descriptions provided in the Environmental Assessment indicate that bedrock may be a problem. Section (3)(e)(vi) of the regulations stipulates that test holes or hammer seismic tests shall be provided where bedrock may exist. Please provide at least ten test holes or hammer seismic tests at well scattered locations throughout the subdivision. The tests should be conducted by someone competent in the field of soils science. Particular attention should be directed toward the presence of any bedrock, in addition to descriptions of at least the top six feet of the soil profile.
3. The drainage for Plateau Place and portions of Pioneer Road and Timber Trail appear to drain to the northeast corner of the subdivision. Please clarify where this runoff water will drain when it leaves the subdivision. If the adjacent landowner does not want this drainage over his property, a French drain or similar facility should be considered and may be required.
4. We are required to have a copy of the final plat for our final review. Please submit a copy when completed.



MONTANA BUREAU OF MINES AND GEOLOGY
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY

BUTTE, MONTANA 59701

(406) 792-8321

May 19, 1977



Mr. Richard Gee, Director of Current Planning
Billings-Yellowstone City-County Planning Board
Room 303, Courthouse
Billings, Montana 59101

Dear Mr. Gee:

Regarding the Oxbow Subdivision, Second Filing, in sec. 1, T. 1 N., R. 26 E., Yellowstone County, the following comments are submitted for your consideration. The application was reviewed for ground- and surface-water potential, sewage-disposal plans, and geologic hazards. Our comments are made without the benefit of field examination, using existing reference materials and the information provided by the applicant. Should the applicant disagree with our interpretation of the available data, we will reconsider comments for which additional technical data and narrative are provided by a qualified professional geologist, hydrogeologist, or engineer.

The proposed subdivision does not lie within a 100-year floodplain.

Septic systems will generally be adequate except on Wr Class soils, where slopes of 15 percent or steeper may preclude their use.

The ground-water supply does not seem adequate to support such a great number of wells in this area. The Judith River Formation normally yields only 5 to 15 gallons per minute except where it has excellent porosity or where fractures enhance water movement. The lowered water levels in wells adjacent to the proposed subdivision are almost certainly the result of overdrafts on the aquifer. The normal rate of ground-water percolation through the Judith River Formation is sufficiently slow that last year's lowered precipitation amounts should not affect wells for several years, so therefore it is probably not the cause for lower well-water levels.

Well spacings of 250 feet apart or less will almost certainly create severe well interference and accelerate the lowering of water levels in the aquifer. If the water in the Judith River Formation becomes depleted, wells will have to be deepened at least 750 feet to encounter water of the Eagle Formation.

Water quality in much of the Judith River Formation is marginal for domestic use. Water samples should be taken from adjacent wells or from test wells within the proposed subdivision and analyzed for their suitability for human use. If water from the Judith River Formation here is of acceptable quality, we would recommend that the subdivider drill several wells in the area and use them as part of a centralized water supply system for the proposed subdivision. Even the use of a centralized water supply system, however, may not be adequate to prevent excessive lowering of water levels in the Judith River aquifer.

EXHIBIT 1
DATE 1-30-95
HB 292

Mr. Richard Gee

- 2 -

May 19, 1977

There is little ground-water recharge to the Judith River Formation in this area. Most of the recharge derives from the west. Recharge from the north or northwest is uncertain because of the northeast-trending fault north of this area.

Because of potential geologic problems with the Cushman Bainville loam and Worland loam, as pointed out in the Environmental Assessment (page 3 and 5), we urge caution and perhaps an on-site inspection by a professional geologist or soils engineer. At the time of this inspection, attention should also be given to the slope west of the proposed subdivision for potential landslides or rockfalls.

Sincerely,

Robert N. Bergantino
Hydrogeologist

H. G. McClernan
Economic Geologist

RNB:HGM:ech

Copy to DCA/Division of Planning



Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A. C. Knight, M.D.

~~XXXXXXXXXXXX~~
DIRECTOR

December 23, 1977

Mr. Clinton Fuchs
2723 Miles Avenue
Billings, MT 59101

Re: Cidlow Subdivision, 2nd Filing
Yellowstone County

Dear Mr. Fuchs:

We are required by Section 69-5003, R.C.M. 1947 to take final action on a subdivision proposal within 60 days of receipt of plans. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiencies are noted on the attached sheet.

Because of the inadequate information, we herewith decline to approve the proposed division. Unless the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction.

You may obtain the necessary information and re-submit the application for our review; but if you do so, please use the Submittal title noted above to assure that the information is placed with your particular proposal.

If you have any questions on the above, please feel free to call on us at 449-3946.

Sincerely,

James Melstad
Subdivision Bureau
Environmental Sciences Division

JMK
Enc.

cc: Ed L. Stow, Courthouse, Rms. 310-311, Billings 59101

ADDITIONAL INFORMATION REQUIRED --

Oxbow Subdivision 2nd Filing
Yellowstone County

EXHIBIT 1

DATE 1-30-95

1 HB 292

1. A hydrogeologists' assessment of the groundwater supply is necessary because of the question raised by the Montana Bureau of Mines and Geology on the depletion of the Judith River Formation. Also, our regulations have no provision for waiving the requirement, especially where the adequacy of the supply has been questioned.

The services of a hydrogeologist(s) are available in Bozeman, although this is not meant as a recommendation for the services of a particular professional. Please keep in mind that cisterns may be proposed as a water supply if a hauler will certify that he can provide service to the subdivision. If wells are to be utilized even for an auxiliary source, the hydrogeologists' assessment is still necessary.

2. The soils test will still be required. Soils holes dug on Pleasant View Subdivision revealed fragmented sandstone at depths as shallow as 10 inches. The large area encompassed by Oxbow Subdivision - 2nd leaves much unknown in terms of soils. Seven well scattered holes would be adequate to determine if bedrock conditions may be present. If it appears that bedrock conditions are present, more holes may be required.

3. A copy of the final plat is still required.

JM:mk

See following letter.
JM

STATE OF MONTANA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
CERTIFICATE OF SUBDIVISION PLAT APPROVAL
(Section 69-5001 through 69-5010, R.C.M. 1917)

To: County Clerk and Recorder
Yellowstone County
Billings, Montana

No. 56-78-111-16
D.S. S 78/04

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Ordow Subdivision, Second Filing, in Section 1, T1N, R26E consisting of eight-two (82) lots have been reviewed by personnel of the Subdivision Bureau, and,

THAT the documents and data required by Section 69-5001 through 69-5010, R.C.M. 1917 and the rules of the Department of Health and Environmental Sciences made and promulgated pursuant thereto have been submitted and found to be in compliance therewith, and,

THAT approval of the plat of said subdivision is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT the lots shall be used for single-family dwellings, and,

THAT the individual water system will consist of cisterns constructed in accordance with the criteria established in ARM 16-2.14(10)-S14340 and the most current standards of the Department of Health and Environmental Sciences, and,

THAT water for cisterns shall be obtained from the City of Billings and shall be hauled by a licensed water hauler, and,

THAT the individual sewage treatment system will consist of a septic tank and subsurface drainfield of such size and description as will comply with Yellowstone County Septic System Regulations and ARM 16-2.14(10)-S14340, and,

THAT the subsurface drainfields for lots in Blocks 2 and 4 shall have absorption areas of sufficient size to provide 205 square feet per bedroom and the subsurface drainfields for lots in Blocks 1, 3 & 5 shall have absorption areas of sufficient size to provide 190 square feet per bedroom and the subsurface drainfields for lots in Block 6 shall have absorption areas of sufficient size to provide 175 square feet per bedroom, and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply and sewage treatment systems will be located as shown on the approved plans, and,

THAT plans for the proposed water and individual sewage treatment systems will be reviewed and approved by the Yellowstone County Health Department before construction is started, and,

THAT the developer shall provide each purchaser of property with a copy of the plat, approved location of water supply and sewage treatment system and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT departure from any criteria set forth in the approved plans and specifications and ARM 16-2.14(10)-S14340 when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Health and Environmental Sciences.

EXHIBIT 1
DATE 1-30-95
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YOU ARE REQUESTED to record this certificate by attaching it to the plat of said subdivision filed in your office as required by law.

DATED this 23rd day of January, 1978.

A.C. KNIGHT, H.D., F.C.C.P.
DIRECTOR

By: [Signature]
Edward W. Casne, Chief
Subdivision Bureau
Environmental Sciences Division

Owners Name:

Clinton Fuchs

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

COMMITTEE

BILL NO.

DATE

SPONSOR(S)

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
J. Shontz	MT ASSOC RIAOR	292		X
Steve Pitcher	DHE	292	X	
ANDY SKINNER	SELF	292		X

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