

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 339, 2nd Meeting

Call to Order: By CHAIRMAN TOM BECK, on April 17, 1997, at 2:00 p.m., in Room 402

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck (R)
Sen. Dorothy Eck (D)
Sen. Lorents Grosfield (R)
Rep. Emily Swanson (D)
Rep. Cliff Trexler (R)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Serena Andrew, Committee Secretary
Martha Colhoun, Legislative Services Division

{Tape: 1; Side: A; Approx. Time Count: 2:06 p.m.}

HEARING ON SB 339

CHAIRMAN TOM BECK recapped the previous meeting as deleting Amendments 1 and 2. This meeting was called to discuss Amendment 3.

CHAIRMAN BECK said SENATOR LORENTS GROSFIELD had offered an amendment reading, "Page 2, Line 29 amend to read: 'documents on file in the records of the county clerk and recorder's office. PARCELS IDENTIFIED IN THE ORIGINAL GOVERNMENT SURVEY ARE TRACTS OF RECORD ONLY IF THEY HAVE BEEN IDENTIFIED IN A SUBSEQUENT SURVEY OR DOCUMENT OF CONVEYANCE.'" (EXHIBIT #1)

REPRESENTATIVE EMILY SWANSON asked whether "identified" meant parcels or tracts of record.

Bill Spilker, Montana Association of Realtors, thought it meant parcels.

CHAIRMAN BECK asked whether it should be tracts of record or parcels.

Bill Spilker said "parcels identified are tracts of record only if the tracts of record have been identified in a subsequent survey...."

CHAIRMAN BECK asked if anyone would be interested in adding that language to the bill.

{Tape: 1; Side: A; Approx. Time Count: 2:13}

SENATOR GROSFIELD said an Attorney General's (AG) opinion had been requested on this issue.

GEORGE SCHUNK, Assistant AG, said an opinion was requested last fall. The argument was advanced that by surveying a community, parcels showing up on deeds as descriptions in parts of sections or boundaries on U.S. Government Survey maps were divisions of land for purposes of the Subdivision and Platting Act (SPA). If they were already subdivided or transferred and today were part of a larger piece of property, they wouldn't have to go through subdivision review. Work was stopped on this opinion when it appeared there would be legislation on this issue. When **REPRESENTATIVE McGEE'S** bill was tabled, work began again. The opinion has not been distributed.

The federal grid system was used during exploration of the west. Government lots were established where sections met and around bodies of water.

Montana acts are more designed to provide review of divisions of land to promote orderly community growth and are very different from federal laws. The division of land definition in the subdivision act will probably control.

When you separate something from common ownership it is a division of land - that holds true whether or not you go to the state subdivision act.

If the committee decides to go to tract of record it will change things and all the legislative history would have to be reviewed to see what was intended.

Mr. Schunk said there are thousands of government lots in Montana. The tract of record definition in the bill was added in 1993. That definition was put in so that Clerks & Recorders could insist that there be an orderly property description before they accept a deed.

{Tape: 1; Side: A; Approx. Time Count: 2:25}

REPRESENTATIVE JAY STOVALL said the government surveys included more than just lots, and asked why that description would be considered a division. If the federal government's description were used, he asked if it would be considered a division.

Mr. Schunk said a division is a division. A description like the N $\frac{1}{2}$ NW $\frac{1}{4}$ is a good legal description. When you take that good legal description out of a larger parcel and transfer it to someone else you trigger a subdivision review.

As a matter of policy, you could say "all parcels described by U.S. Government Survey are not divisions of land for purposes of the subdivision act and would not require review."

REPRESENTATIVE STOVALL said "under 160 acres." But it sounded like he was saying any division. He could understand it under 160 acres, but not over.

Mr. Schunk said if you purchased 20 acres described as 1/32 Section and then transferred it, the description would be based on government survey and it wouldn't go through subdivision review. You would be just buying and selling 20's, and 20 acre plots are not covered by the subdivision act. If you bought a large ranch and wanted to take one 20 acre plot out and sell it, it would trigger subdivision review.

REPRESENTATIVE STOVALL commented that in other words, **Mr. Schunk** was recognizing the federal government survey if the tract in question were over 160 acres. **Mr. Schunk** said the government surveys are recognized throughout the State of Montana as a means of describing land, but he didn't think that meant divisions of land if that land were being removed from a larger contiguous parcel.

SENATOR GROSFIELD said if he owned 640 acres and purchased it by 20 and 40 acre contiguous increments at different times and wanted to sell the first 20 acres and put the rest with a tract already purchased, would that trigger a subdivision review? **Mr. Schunk** said he hadn't addressed that issue.

SENATOR GROSFIELD asked if he would have aggregated and merged it unless it had been mentioned on the deed.

{Tape: 1; Side: A; Approx. Time Count: 2:33}

Mr. Schunk said if you sell part of your holdings you have to go through subdivision review. Montana law is silent on the issue of merger and aggregation.

SENATOR GROSFIELD said before 1993, the trigger for subdivision review was 20 acres so this was never an issue. When the law went from 20 to 160 acres it became an issue.

Mr. Schunk commented that, in his opinion, not everyone was ready for these issues. The government lots question should be addressed.

{Tape: 1; Side: A; Approx. Time Count: 2:38}

REPRESENTATIVE TREXLER asked that the discussion return to the amendments before the committee - the bill should go forward.

Motion: **REPRESENTATIVE STOVALL** moved **EXHIBIT #1** entitled "Conference Committee Amendment 2."

SENATOR GROSFIELD opposed the amendment because it would prejudice the issue being discussed. The amendment presumes there is a tract of record if it is identified. It would set up a situation where all government lots could be determined to be separate tracts of record avoiding review under the subdivision act.

Vote: A roll call vote showed **REPRESENTATIVES STOVALL** and **TREXLER** voting **AYE** and the remainder of the committee voting **NO** and the **MOTION FAILED**.

SENATOR ECK asked about parcels greater than 160 acres - if it would help to add "for purposes of the Montana Subdivision and Platting Act."

SENATOR GROSFIELD commented that statement might prejudice in the opposite direction.

REPRESENTATIVE SWANSON said she wanted to go back to page 1, lines 21-23 referring to **Mr. Schunk's** comment to tie together division of land and tract of record. If the intent were to say that if you have a parcel that has already been divided once and you convey it, you don't have to go through subdivision review again, you could strike the words on line 21, "tract of record or an entire."

Mr. Schunk thought that was appropriate and would cover the situation she wanted to prevent.

{Tape: 1; Side: B; Approx. Time Count: 2:47}

Martha Colhoun said this language was added in the House Natural Resources Committee. It was part of the **MERCER** amendments. Its intent was to clarify existing law. If you strike that part it wouldn't do anything.

Motion: **REPRESENTATIVE SWANSON** moved to **STRIKE** lines 21-23, amendment #2 of the House Natural Resources Committee.

REPRESENTATIVE TREXLER said "tracts of record" was a problem - it was meant to clarify something. A tract of record would be anything you went into the Court House and conveyed to someone else. He didn't think the language was a problem and he would oppose the amendment.

REPRESENTATIVE STOVALL agreed.

Vote: SENATOR ECK and REPRESENTATIVE SWANSON voted AYE; the remainder of the committee voted NO and the MOTION FAILED.

Motion: REPRESENTATIVE SWANSON moved to STRIKE just "tract of record or entire" from line 21, page 1 of the bill.

Vote: SENATOR BECK, REPRESENTATIVES STOVALL and TREXLER voted NO; the remainder of the committee voted AYE and the MOTION FAILED.

{Tape: 1; Side: B; Approx. Time Count: 2:53}

SENATOR GROSFIELD commented that the last amendment from the House said the act applied retroactively. He didn't think subdivisions from the 1930's would be protected.

Mr. Schunk said he wasn't sure retroactively meant before this bill.

SENATOR GROSFIELD said the subdivision act went back to 1973.

Mr. Schunk said it would be important to make the intent clear as that would control the way the bill is interpreted.

Martha Colhoun said she thought they were reading off the Local Government Committee amendment - it was done on the floor. The salmon copy of the bill was filed.

SENATOR GROSFIELD said this amendment was added on the House floor. He didn't think a conference committee could say what it meant.

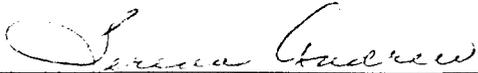
CHAIRMAN BECK stated that it was time for the Senate to meet and asked committee members to return on adjournment to finish the discussion.

ADJOURNMENT

Adjournment: 2:59 p.m.



SEN. TOM BECK, Chairman



SERENA ANDREW, Secretary