

EXHIBIT 2
DATE 3.15.05
SB 350

541 McLeod Ave.
Missoula, MT 59801
March 14, 2005

Local Government Committee
House of Representative
Montana Legislature

Dear Committee Members, Chairman Noennig, Vice Chairman Jacobson, Vice Chairman Stahl,

SB350 is an excellent bill, and I hope you will pass it out of this committee to the full House for consideration. This bill clears up the intent of the subdivision law by enforcing local zoning regulations.

Some ill-conceived or poorly written municipal ordinances have led land speculators in Missoula to exercise dubious "development rights" in violation of existing zoning requirements. In one court case expressly on this issue under consideration now by the Hon. James A Haynes, District Judge (Ballas vs City of Missoula, the defendant, et al) Judge Haynes states:

Conclusion: The City's alleged housing infill policy in residential zones has not been codified and enacted by legislative approval of the Missoula City Council, and cannot be found in the City's nonconforming use ordinances. A nonconformity review of zoned residential lots for which a building permit is sought must be properly conducted by OPG or BOA. At a minimum, nonconformity review must address nonconformity issues relating to abatement, lot area, variance for a building permit, and all other applicable zoning issues. No such appropriate review was performed for Lot 15A. The Defendants have not made an evidentiary showing that BOA's review of the issuance of the building permit for Lot 15A applied the City's applicable zoning laws or that the BOA's decision to uphold the issuance of a building permit for Lot 15A contained no abuse of discretion. Accordingly, the Defendants' summary judgment motions should be denied.

This bill will clearly establish the intent of zoning laws. If a variance is requested by a petitioner, he/she may always apply for a legal variance through the City or County Board of Adjustment. Please vote to approve SB350 in order to avoid further legal complications concerning the guaranteed protection provided by zoning regulations for the citizens.

Sincerely,

Lee Clemmensen (Member
of City of Missoula BOA)