



February 8, 2005

Representative Karl A. Waitschies, Chair
Committee Members
House Taxation Committee
Montana State Legislature
State Capital
Helena, MT 59620-0400

Subject: Support for HB 506

Dear Representative Waitschies and Committee Members,

I am here before this committee to solicit your support of HB 506. The purpose for the proposed bill is to address an issue of fairness, and to advocate economic growth for both rural and urban areas of Montana. With current legislation, the Montana Department of Revenue currently assesses large tracts of lands, which were formerly agriculturally classified properties, as commercial properties when the lands are subdivided, infrastructure improvements made, and the property is planned and marketed as a higher use, such as a commercial. This reclassification and appraisal results in a much higher rate of taxation for these subdivided lands. It doesn't matter whether the subdivided property has sold or not.

In addressing the issue of fairness I would like to make a comparison of this taxation philosophy, with that of income tax. Since in this case property is taxed on the fact that it might be sold for a certain value based on a subdivision plan and investments made for improvements. It is assumed the land is being converted to a higher and better use and therefore, taxed at that higher value. It does not matter whether the land sells in one year or 10 years. Let's assume you applied this same philosophy to an income tax assessment.

Universities will tell you an individual with a Masters degree in accounting can expect to earn a starting average salary of \$40,000 per year upon entering the work force. So if that individual plans to secure the degree by enrolling at the university and invests in obtaining the degree by paying the tuition, books, lab fees etc., then it would be assumed that the individual should pay an income tax on a \$40,000 a year salary, because, like the current situation with property taxation, the student planned a better use for a career. However, let's assume that it took the individual two years to secure the expected job, and in the interim the student took a job that only paid \$25,000 per year. Based on the current legislation for property taxation, the individual would be assessed an income tax on \$40,000 instead of the \$25,000 actually earned. This would not be right or fair. This current property tax application is not fair either.

Our concern with this practice is not on the taxation of property that has been sold and building improvements made, but with the property to be sold, still vacant and exceeds 20 contiguous acres. We do not understand why the taxes are increased dramatically on vacant property, still being used as agriculture property, even though we are trying to sell it. The actual use of the property is still ag, until it is sold or leased and building improvements are made for a better economic use.

We challenged this practice by appealing to the County Tax Appeal Board, which we won. This decision was challenged by the Department of Revenue to the State Tax Appeal Board, which they won. We finally challenged this decision through District Court, which we lost. It was suggested to us by the courts that the statutes would need to be changed in order to effectively address our concern. That is why we have proposed this Bill.

Let me explain our concern with examples of properties we are currently developing. Bottrell Family Investments, LP currently owns two individual tracts of property in southwest Billings. The subdivisions are:

1. Transtech Center, 120 acres, subdivided as Transtech Center Subdivision and Gabel Subdivision 2nd Filing. The area is being developed as a high tech business park. Seven of the 42 lots have been sold or leased over the past three years. This represents about 15 of the 120 acres. The only income generated from the remaining vacant acreage is from the sale of hay. All of the vacant remaining properties are contiguous. All of the properties that we still own in these two subdivisions, whether leased or vacant are now classified and assessed as commercial property with an assessed value of \$2.50 per square foot and higher. General taxes on the remaining vacant properties increased from \$20,730 in 2002 to \$84,414 in 2004. An increase of 407% in those two years.
2. Gabel Commercial Center Subdivision, 30 acres, subdivided as a commercial development with expected multiple use such as retail, manufacturing, military, and wholesale activities. Six of the 17 lots have been sold the past two years. This represents about 6 of the 30 acres. The remaining vacant lots are currently assessed at \$2.45 per square foot. General taxes on the Gabel Road Commercial Center Properties increased from \$ 801 in 2002 to \$12,051 in 2004. An increase of 1,504% in those two years. During those two years the lands had remained vacant. The property was hayed two years ago, then last year the vacant land was leased as a leased staging area for the rebuilding of Gabel Road rather than for the cutting and selling of hay.

Property development is not a game for the feint of heart. In the case of the two above noted subdivisions of ag properties, we have incurred significant costs. Costs to acquire the land and, annual expenses for taxes, special assessments, and insurance while holding the property, has added considerably to the overall cost of development. The cost to bring roads, water/sewer lines, storm sewer, lighting, gas and electric utilities to

individual lots is now running in excess of \$2.00 per square foot. In addition to incurring the initial costs to build new infrastructure, the City also assesses annual charges for maintenance of the new streets and storm sewer recently installed and paid for by the developer. Finally, there are ongoing costs to market and sell the property. As you can see, developing property can be a risky business. As strong as Billings has been economically, we still expect it will take 12 to 15 years to sell or lease all the individual lots currently under development. This time frame can be much longer in some of the rural areas of Montana.

Our point of concern is this. With the costs of development, and the expected time period to complete the development, these higher annual costs for taxes are hard to endure. Especially since the actual use of the property, and the income from such use, has not changed. In our example of the Gabel Road Commercial Center property is still only generating approximately \$2,000 per year in ag income, yet our taxes on the property has gone up from \$801 per year to \$12,051.

This is why development is restricted to a few well to do individuals in only the large urban areas of the state. With this additional annual cost for taxes, plus the significant investment in land acquisition, infrastructure improvements, special assessments on the new improvements, and cost to market and sell the property, it is difficult to survive the long periods of time needed to move the property. This is also why there are few or none development properties available in rural, and in some cases urban, areas of the State.

We can attest to this, when we were looking for property in Havre, Great Falls, Lewistown and Miles City to build new facilities for a client we found it very difficult, if not impossible, to find good lots in which to build on that also provided city services. We did eventually find a site in Great Falls, and by a stroke of luck, secured a location in Miles City. We eventually abandoned the development projects in Lewistown and Havre. We would have had to buy large chunks of land and subdivide. Based on the cost of holding and developing property, as stated earlier, we did not feel there was an economic benefit to do this. Therefore, we and our client backed away from the project, resulting in no new facilities being constructed in those communities.

The current legislation, as it now exists is not fair and it does hamper economic growth. It does not encourage investment in new infrastructure or new facilities. It does not produce the spin-off benefit to communities, by putting trades people to work, by generating new taxes from new buildings and lands being put to a higher use.

Thanks you for your time and support consideration.

Sincerely,


Jerry S. Thomas
Director of Business Development