



OFFICE OF THE CITY ATTORNEY

Senate Local Govt. Comm.

Exhibit No. 14

Date Feb. 17, 2005

Bill No. SB 350

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February 17, 2005

Re: SB 350 providing that divisions of land that are exempt from review as subdivisions are subject to applicable local zoning regulations

Honorable State Senators:

SB 350 is requested in order to provide a statutory standard or guideline for subdivision exemption pursuant to Mont. Code Ann. § 76-3-207 of the Montana Subdivision and Platting Act.

The introductory paragraph to Mont. Code Ann. § 76-3-207 provides:

76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions: (Emphasis added.)

The chapter referred to in the above quote is Title 76, chapter 3, the Montana Subdivision and Platting Act. Zoning is not a subdivision regulation. Zoning regulations are distinctly different from subdivision regulations.

The Montana Supreme Court held in Hampton v. Lewis & Clark County, 2001 MT 81, 305 Mont. 103, 23 P.3d 908:

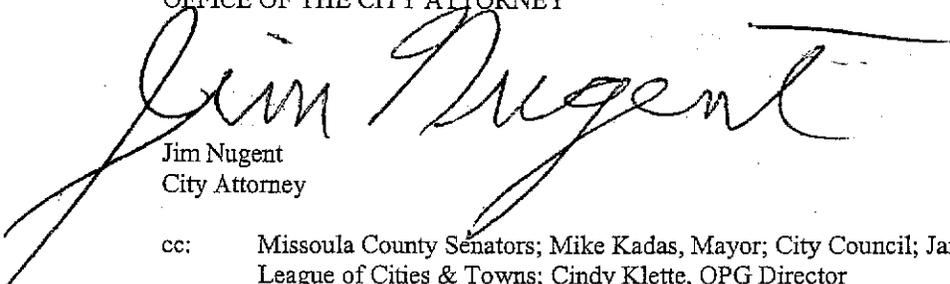
... Under § 76-3-207(1), the Legislature has provided a caveat to the various "divisions of land" exemptions to subdivision review that a party may claim. The statute provides that "unless the method of disposition is adopted for the purpose of evading this chapter" the listed divisions of lands are not subdivisions. There are no statutory guidelines or standards--let alone imposed affirmative duties--for how the determination of an "evasion" must be made by a county in either accepting or rejecting a certificate of survey with a claimed exemption....

The Hamptons have not presented any authority establishing an affirmative duty on the County to analyze or investigate an exemption claimed under § 76-3-207(1), MCA, beyond the steps taken here--that is, to accept for review a certificate of survey or other evidence establishing the claimed exemption. The Hamptons have not presented any authority, for example, that the County shall conduct a hearing, or shall gather evidence above and beyond the certificate of survey, to test for any "evasion" of subdivision review where a property owner divides his or her land and claims an exemption under § 76-3-207(1), MCA. Likewise, there is no indication here that any sort of defined threshold of evidence must be met in order for the County to accept a claimed exemption. (Emphasis added.)

SB 350 provides that compliance with zoning regulations would be a statutory standard for utilization of subdivision exemptions identified in Mont. Code Ann. § 76-3-207.

Sincerely,

OFFICE OF THE CITY ATTORNEY


Jim Nugent
City Attorney

cc: Missoula County Senators; Mike Kadas, Mayor; City Council; Janet Stevens, CAO; Alec Hansen, Montana League of Cities & Towns; Cindy Klette, OPG Director