



Denis Applebury and Terry Nelson

Professional Land Surveyors

Land Use Planning & Design

914 U S Highway 93

Victor MT, 59875

Phone (406) 961-3267 Fax (406) 961-3567

Email to appleburysurvey@cybernet1.com

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 4

DATE 2.6.09

BILL NO. SB 305

February 6, 2009

Testimony for SB205

Dear Senators,

I am a licensed surveyor, owner of a survey company, and developer. Applebury Survey has been in business since 1975 and I have been involved since 1992. I have been the consultant for over 380 Subdivisions in Ravalli County including 4 personally. I have seen the regulations and interpretations change drastically in the past 16 years. In the past 3 years we started 14 subdivisions in 2006, 6 in 2007, and did not have any subdivisions in 2008. This was due mainly to a change in commissioners and a drastic re-interpretation of these subdivision regulations. I would like to address a few items that this bill fixes. First, I would like to speak to the time limits. We are currently trying to finish a subdivision for ourselves that we began in 2005. Our average time for a subdivision to be started to being found sufficient is approximately 2 years. It used to be the planning office which typically took up to 6 months to respond to a subdivision application. Since the fall of 2007, when a settlement was reached in a lawsuit dealing with the time frame, the planning office has been doing their review in the allotted time, however, they have found other ways of delaying the process. The three main tactics are to keep asking for new, different information, require a subdivision to do a floodplain study and determine it deficient until their floodplain administrator reviews the floodplain study (usually 3-4 months between deficiency letters) or determine it deficient until their contracted engineering firm reviews our engineer's road plans (again usually several months between deficiencies). We are currently working on 3 subdivisions which were started in 2006. In the past, when complaining about the time it was taking to review the subdivision, we were told by the Planning Director to just sue them. Our clients were not usually hurt by the process since property values were increasing. Now that is not the case and I believe we have suffered great monetary loss on our own subdivision because of the downturn in the housing market. Another problem with the extended times is in 76-3-604(8)(a&b) which states that if the regulations change before sufficiency is reached, you are under the new regulations. We have had several subdivisions which were required to pay substantially more fees and mitigation than other subdivisions started the same time

because of holdups in planning and changes in regulations or interpretations. The second Item I would like to address is the "Mitigation" or "Exaction Fees" on subdivisions. Although there is state law concerning the method of determining "Impact Fees" our county has adopted regulation, and in the absence of regulation, simply interpretation of the rules, to extract huge fees from subdivisions. In the past 10 years, the county has collected well over \$2 million in "Pro-Rata fees" for county roads leading to subdivisions, but has not used any of the money on those roads to benefit the subdivision. We had one subdivision pay \$120,000 for 4 lots and the county also required the developer to have dust abatement put on the gravel part of the road since they had no intention of using the money on the road. We also have to pay "Voluntary" fees for schools, fire departments, public safety, open lands, and the county's general fund. We have been told by the Commissioners that if we do not "volunteer" these fees, the subdivision will not have been properly mitigated and would have to be denied. When MCA 7-6-1601 included impact fees in 2004, our commissioners changed their request for "Impact Fees" to "Exaction Fees" and said that they no longer were "Impact Fees".

The third item I would like to address is the credible evidence. We have had countless issues with subdivisions where we have experts testify and then have either the public or the commissioners question the expert without any evidence. I remember once we had a hydrologist testify to the aquifer, went over all the wells he had tested, the extensive drawdown tests he had done, and the report which showed that there was plenty of water in the aquifer for this subdivision. An adjoining neighbor stated he didn't believe the hydrologist and the commissioners stated that since it was one persons word against the other, they would rather believe the neighbor who lived nearby.

I have worked with several government agencies over the years and find that most of them are helpful and use common sense, but these rules need to be changed to keep the few officials that want to abuse their power.

Thank you for your consideration of these things and I would ask you to approve this bill.



Terry Nelson
1021 Jessica Court
Corvallis, MT 59828
406-360-2941