

COMMIT 20
DATE 2-17-11
HB 542

DATE: 17 FEBRUARY 2011
RE: TESTIMONY ON HB542
TO: HOUSE LOCAL GOVERNMENT COMMITTEE
FROM: DICK THWEATT, MONTANA SMART GROWTH COALITION

The Montana Smart Growth Coalition opposes this bill for the following reasons:

Page 4, Lines 15 -19, amending 76-3-608(3)(a) MCA

This amendment would eliminate review and consideration of the conversion of the property to be subdivided from agricultural use and would limit review only to "surrounding agricultural operations." Quality agricultural land is as valuable a natural resource as any other and is being steadily eroded by conversion to residential use. It merits review, consideration, and mitigation as much as any of the other resources listed in this subsection.

Page 5, Lines 16 - 19, amending 76-3-608 MCA

This new subsection 8 would make two changes that unreasonably deprive governing bodies of valuable information.

First, it would prevent governing bodies from hearing the opinions of qualified experts on any issue on which a peer reviewed study is not available in scientific literature. Scientific studies necessarily have a narrow focus and there are many important issues that have not received such study, where the opinions of qualified experts are the best available information. It should be left up to governing bodies how much weight to give such opinions rather than force them to decide important issues in ignorance.

The second sentence would deprive governing bodies of relevant information when it may be most important. The obvious example is the Department of Fish, Wildlife and Parks upon which local governing bodies commonly rely for information on wildlife and wildlife habitat. Lands which are the subject of efforts to acquire conservation easements by DFWP or other entities are, by definition, those lands with the highest natural resource values. Governing bodies most need to be informed of the natural resource values of those lands. To assume that the experts employed by such agencies would misinform the governing body to further their agency's land acquisition goals is a disservice to their professionalism and to the public. Disclosure of their agency's acquisition efforts is all that should be required.

Page 6, Lines 14 - 15, amending 76-3-615

This new provision would prohibit holding a new hearing on information submitted by the subdivider on how it intends to mitigate adverse impacts identified in the review process. Such proposed mitigation measures are as important as any other new information and are of as much interest to the public as the original application itself. The public is entitled to become informed of the proposed mitigation measures and to be given the opportunity to comment upon them to the governing body before a final decision is made. This unwarranted exception to the right to a new hearing on new

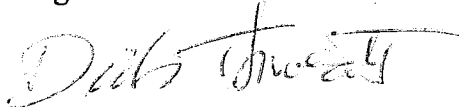
information is a violation of the right of participation of the public under Art. II, Section 8 of the Montana Constitution.

Page 6, Lines 14-15, amending 76-3-625 MCA

This proposed new subsection would make attorney fees available to a subdivider who prevails in litigation, but not to a local government or a contiguous landowner who prevails. This is contrary to the usual rule in American courts that each party must bear its own costs, and it is even contrary to the rule in English courts that either prevailing party is entitled to attorney fees. It would create a very unlevel playing field and would severely impair the ability of local government to administer the subdivision and platting act, or of private property owners to protect their interests. There are many issues concerning subdivisions that require adjudication where the outcome cannot be reliably predicted. The costs and risks of adjudication should be born equally.

Montana Smart Growth Coalition urges that this bill not be passed in its current form.

Thank you for considering these comments.

A handwritten signature in cursive script, appearing to read "Dils J. J. J.", is written in black ink. The signature is fluid and somewhat stylized, with a long horizontal stroke extending to the right from the end of the name.