



"From the Back of a Horse the World Looks Wider" ~ Joyce Gibson Roach

EXHIBIT 6
DATE 3.24.11
HB 629

Testimony is support of HB 629

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SUBDIVISION LAW; REVISING THE EXEMPTION FOR THE RENT OR LEASE OF BUILDINGS OR STRUCTURES OR PARTS OF BUILDINGS OR STRUCTURES; PROVIDING REVIEW PROCEDURES FOR THE RENT OR LEASE OF MORE THAN THREE BUILDINGS OR STRUCTURES; PROVIDING AN EXEMPTION FROM HEARING REQUIREMENTS; PROVIDING AN EXEMPTION FROM PARK DEDICATION REQUIREMENTS; AMENDING SECTIONS 76-3-201, 76-3-204, 76-3-208, 76-3-504, 76-3-506, 76-3-605, 76-3-608, 76-3-620, 76-3-621, 76-6-203, AND 76-7-203, MCA; REPEALING SECTION 76-3-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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Current Law is Bad for Business and Private Property Rights: The subdivision for lease or rent (SLR) language currently in Title 76 is a looming disaster for thousands of private property owners and small businesses in Montana. Many Montana jobs are at stake, especially in Montana's tourist and building industries. The current law also seriously threatens and erodes private property rights and property value. Failure of the legislature to act will seriously impede Montana's economy and appropriate landowner rights and prerogatives.

Subdivision "Review" for Lease or Rent is Costly, May Impose Impossible Requirements, and Applies to All "Structures" Regardless of Age or Intended Use. Subdivision "review" may sound innocuous but in many counties involves extremely costly or impossible-to-achieve elements. For example, in our case the required subdivision review would require that we obtain very wide access easements on a private road that has many adjacent landowners; such easements would be impossible for us to obtain and are unnecessary to achieve any legitimate local government concern or interest. The current law requiring SLR review applies to a second structure regardless of how long it has been there. There is a case in Condon where County officials mandated SLR review in a case where the second structure on a parcel was 100 years old and falling apart even though the entire parcel was in conservation easement and could never be subdivided. In our case the structure now being considered an "unauthorized subdivision" requiring subdivision review was legally built 25 years ago, long before we bought our property.

Subdivision "Review" for Lease or Rent Stalls Legitimate Public Interest Regulations. Local county officials currently hold hostage to completion of SLR review, permits for things that are legitimate public interests such as sewage system upgrades or building permits for structures that are not residences.

Pending Attorney General's Decision Requires Legislation NOW. The Attorney General has a draft decision (dated March 2010) that, if released in its current form, will expand the scope of SLR to all 56 counties in Montana and not just the 3 where it is currently being applied by overzealous county officials. These officials are using the current law as a surrogate for zoning thereby circumventing local voters' reluctance to pass zoning regulations. I'm informed that the AG has delayed issuing his draft opinion in the hope that this legislature will address this abuse by County officials.

Pending Attorney General's Broadens Impact of Current Law. The draft AG's opinion finds that subdivision review is required when there is any alteration of a parcel of land that will allow a portion of it to be leased or rented, whether existing or proposed. Although currently being applied by the 3 counties primarily when the alternation involves a second structure on a property that includes a "residence", the AG's draft opinion makes clear that nothing in the current law restricts its application to residences or even structures. SLR review is required under the existing law even though nothing on the parcel or any portion of the parcel is actually being sold. The draft AG's opinion makes it clear that the mere existence on a parcel of a structure or piece of land that is or could be used for lease or rent exposes the landowners to the review requirement.