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**HB 494 – Revise laws relating to subdivision exemptions**

**Sponsor: Rep. Champ Edmunds**

**Senate Local Government, Wed., Mar. 9, 3 pm, Rm 405**

Testimony: Glenn Oppel, [goppel@montanarealtors.org](mailto:goppel@montanarealtors.org), 431-3685

The primary reason this legislation is being brought before the Legislature is confusion over recent local government interpretations of the exemption from subdivision review for rent or lease uses by landowners. This confusion led to a request to the Montana Attorney General to provide an opinion on the interpretation of the exemption. The AG's draft opinion in March of 2010 interprets the "a" as singular in the current language "a building, structure, or other improvement" (emphasis added). This means that more than one building, structure, or improvement for rent or lease would automatically get pulled into subdivision review by both cities and counties. The AG's draft opinion is a very narrow interpretation that, if adopted, would have a profound impact on landowners, local subdivision reviewing agents, and, ultimately, local economies. The AG has withdrawn his opinion in light of pending court cases. Nonetheless, we believe that the Legislature should clarify this exemption to the Subdivision and Platting Act for the following reasons:

- 1. If adopted, the AG draft opinion will substantially increase the number of subdivision reviews in communities with planning staff that is already having difficulty complying with review deadlines.** This is particularly the case in higher growth communities. Although many communities have experienced a slowdown in growth, when local economies resurge a narrow interpretation of the exemption will mean a marked increase in reviews for rent or lease projects. Cities that have zoning that allows rent or lease uses will be forced to review many such projects as subdivisions under the AG's draft opinion. Although counties rarely have zoning, the potential number of reviews could increase dramatically. It's not unreasonable that counties would have to review, for example, the construction of two storage sheds under the AG's draft opinion.
- 2. Property owners, developers, and local planning staffs won't know what is or is not a subdivision for rent or lease based on current regulations and the AG's draft interpretation.** Would it include a horse barn where the stalls are to be rented? Would it include two duplexes on a lot platted and zoned for four units, but not include a four-plex? What about four houses? Under the draft opinion, property owners, developers, and local planning staffs will be forced to make judgment calls on a case-by-case basis. The default will be to require subdivision review in instances where it is completely unnecessary based on existing regulations. For this reason, the Legislature has to retool the exemption to allow uses that have no or minimal impact.

3. **Increasing the cost of doing rent or lease projects could have a chilling effect on what little construction is occurring at this time.** Many of our local communities are experiencing considerable job losses; so any negative economic impact of regulations poses a challenge for local economies trying to get out of the current slump. Small rent or lease projects keep skilled workers in the construction trades employed, owning homes, renting apartments, purchasing good and services, and paying taxes. This assumes, of course, that landowners would want to bring projects forward and bear the costs of the time-consuming and expensive review process.

With the proposed amendments, HB 494 clarifies the exemption to enable property owners to place additional structures on their property for sale, rent, lease, or other conveyance. Furthermore, HB 494 would result in minimal impact to the public while creating predictability and certainty for landowners and local planning staff.