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State of Montana Dept. Comm.
Exhibit No. 10
Date 4.6.11
Bill No. HB629

Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

BILL DERICK and JOYCE DERICK, Plaintiff(s), vs. LEWIS AND CLARK COUNTY, Defendant(s).	Cause No.: BDV-2007-403 AFFIDAVIT OF RICHARD WEDDLE
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STATE OF MONTANA)
 : ss
LEWIS AND CLARK COUNTY)

Richard M. Weddle, Esq., being first duly sworn upon oath, deposes and says:

1. I am a graduate of DePauw University, Greencastle, IN (BA,1963) and Indiana University School of Law, Bloomington, IN (JD, 1966).
2. For a period of 29 years, I served as a Special Assistant Attorney General and Staff Attorney for the Montana Department of Commerce and its predecessor agencies specializing in the law of land-use planning, zoning, and subdivision regulation.
3. I was the principal draftsman of the Montana Subdivision and Platting Act (SB 208) adopted in 1973, and I was involved to one degree or another in the drafting of virtually all subsequent amendments to the Subdivision and Platting Act up until 2000.
4. I am the author of the Montana Zoning Law Digest (1989, 1996, 2000) and the

Montana Subdivision Law Digest (1992, 1994, 1995, 2000).

5. During my 29 year-tenure with the State of Montana, I was the State of Montana's designated expert on local government and land use law and responsible for providing direct legal assistance and guidance regarding these areas of law to county attorneys, city attorneys, county and city planners and other local government officials to insure uniformity of administration of subdivision and land use laws across the state.

6. I was responsible for conferring with the staff of the Montana Attorney General in the drafting of Attorney General opinions pertaining to local government and land-use law, particularly including the Subdivision and Platting Act, and I was responsible for reviewing and commenting on draft Attorney General opinions in these statutory and practice areas.

7. I was responsible for coordinating the administration of local government law among the various local government entities in the state to ensure consistency in application, identifying and resolving inconsistencies among local governments and providing consistent advice and direction to city and county attorneys. This included researching legislative intent and developing formal legal opinions to provide guidance in consistent application of land-use laws throughout the state. I provided legal opinions for local government administrative proceedings and helped resolved conflicts between local governments, attorneys, and the public.

8. I gave scores of presentations on the Subdivision and Platting Act (and on the Administrative and Model Rules implementing the Act) and on related land-use laws at seminars sponsored by numerous local governments and a wide range of organizations including the State Bar of Montana, the University of Montana School of Law, the Montana County Attorneys Association, the Montana Association of Clerks and Recorders, the Montana City Attorneys Association, the Montana Association of Counties, the Montana League of Cities and Towns, the Montana League of Women Voters, the Public Land Law Review, the Montana Planners Association, the Montana Land Title Association, the Montana Association of Registered Land Surveyors, the American Society of Farm Managers and Rural Appraisers, the Montana Environmental Quality Council, the Montana Consensus Council, and Montana State University.

10. I provided legal assistance and advice to legislators and representatives of the Governor's Office on the formulation and analysis of proposed local government and land-use legislation including drafting bills and amendments, reviewing drafts prepared by others, coordinating research with the Legislative Services Division, and identifying and articulating the impacts of legislative alternatives.

11. I understand that Bill and Joyce Derick own a single lot upon which are located two dwelling units, a main house and a separate garage building with an apartment above the garage. I understand that the Dericks propose to rent the apartment above the garage, but not the garage on the lower level.

12. I understand further that Lewis and Clark County officials have taken the position that the rental of the garage apartment by the Dericks would be a "subdivision" subject to subdivision review and regulation by the County under the Montana Subdivision and Platting Act.

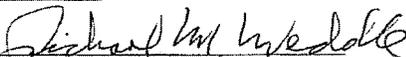
13. If I had been asked to comment on this situation during my tenure with the Department of Commerce, I would have taken the position that the Derick's proposal is not a "subdivision" as that term is defined in section 76-3-103(15), MCA, because it: (a) does not involve a division land, (b) will not constitute a resubdivision or a condominium, and (c) will not create an area that will provide multiple spaces for recreational camping vehicles or mobile homes. This would be my opinion regardless of whether the Dericks intended to rent the entire garage/apartment structure rather than just the apartment unit.

14. With exceptions not pertinent to the Dericks' proposal, the application of Montana's Subdivision and Platting Act is triggered by a "division of land" as that term is defined by section 76-3-103(4), MCA. The activity proposed by the Dericks is not a division of land under that subsection. Furthermore, it is expressly exempted from subdivision review by section 76-3-204, MCA. This provision, initially adopted in 1973, was amended by the Montana Legislature in 1985 to "clarify that the conveyance of one or more parts of a building is not a subdivision."

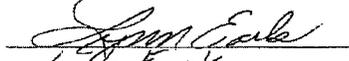
15. I understand that Lewis and Clark County is basing its position regarding the Dericks' proposal in part on a decision rendered by Montana's Twenty-First Judicial Court, Jefferson County, in *John Rose and Sandy Rose, d/b/a/ Skalkaho Lodge and Steak House v. Ravalli County*, Cause Number DV 05-016, decided May 1, 2006. Based on my knowledge of the Montana Subdivision and Platting Act it is my opinion that the *Rose* decision misconstrues section 76-3-208, MCA, in a way that would effectively nullify section 76-3-204, MCA, and frustrate the obvious legislative intent underlying that provision. Furthermore, the facts involved in the Dericks' situation appear to be readily distinguishable from those presented in the *Rose* case. The Dericks propose to rent a single apartment with insignificant land-use implications. The Roses, on the other hand, had proposed to construct and rent four separate guest cabins located on a tract already occupied by a commercial guest lodge. In reaching its conclusion the *Roses* court may have been heavily influenced by the sheer magnitude of this proposal.

Further your Affiant sayeth not.

Dated this 17th day of December, 2008.


Richard M. Weddle

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public for the
State of Montana, this 17th day of December, 2008.



Lynn Earls

(Printed Name)

Notary Public for the State of Montana

Residing at: Helena, MT

My Commission expires: 12/2/2009

(SEAL)