

Sen. ... Govt. Comm.
Exhibit No. 11
Date 4.6.11
Bill No. HB 629

HB 494. Testimony of Bill and Joyce Derick in favor.

Our address is 3936 E. Shore Drive, Helena, Mt. 59602 our email is mt.mini@yahoo.com, and our phone is: 406 475 9898 or 406 422 8200 (cell). We regret we are out-of-town for medical reasons. We have asked Jack Walsh to present this testimony on our behalf.

- We are the litigants in the case *Derick v Lewis and Clark County* filed in 2007 after 4 years of trying unsuccessfully to resolve the issue without litigations. This case resulted because Lewis and Clark County mandated that we undergo subdivision review because we have a 1,300 ft² apartment on our property above a detached garage as well as our house. Our goal was to supplement our retirement income by renting to a single person or couple. Instead we've spent tens of thousands trying to resolve. My wife and I are the only occupants of our house. The county has acknowledged that we fully conform to septic requirements and other utilities are acceptable for both units.
- The fact that our litigation is ongoing currently is the main reason that the Attorney General has not yet issued his March 2010 draft opinion requested by Missoula County on whether the county is correctly interpreting the subdivision for lease or rent (SLR) language in Title 76. The draft opinion says it is being correctly interpreted. If that opinion is finalized, it will become established law in all 56 counties in Montana. This means this legislature must correct and clarify the language leading to this interpretation. HB 494 does this but it is necessary to be sure that it is absolutely clear that the exemption described in part 1 of 76-3-204 (as proposed in HB 494), apply to unzoned portions of Montana. The currently language can be misinterpreted because of the "only" in part 2 of the proposed change. This leaves it open to a interpretation that part 1 applies "...ONLY...WHEN... local zoning regulations are in effect". This mis-interpretation does not reflect the intent of the legislation proposed by Rep. Edmunds at the behest of Sterling Miller.
- Subdivision review is an impossible burden in our situation as it also is for many other landowners. These stipulations are completely ridiculous for a 1 acre parcel that will most probably house a maximum of 4 people (but approved for two - 2 bedroom homes). To illustrate this point, I attach a list of the stipulations mandated by the County for successful completion of subdivision review of our property.
- Please note especially, point 5 relating to the requirement that we obtain a 60' public access and utility easement on Federal roads over which we have absolutely no control. Also note requirement 8 that we install a 30,000 gallon water storage tank for fire protection even though we live right on the Canyon Ferry Reservoir which has millions of gallons of water. Also, please note the requirements that we hire a professional engineer to verify various things that can be easily seen with the naked eye.
- Finally, as part of our litigation we obtained the attached affidavit from Mr. Rich Weddle who was the author of the 1973 version of Title 76 and virtually all amendments subsequently and was an assistant Attorney General in Montana for 29 years. Mr. Weddel affirms that the County's interpretation of requiring subdivision in my case is incorrect (see points 13-15 on page 3).
- Thank you for helping fix this horrible abuse of authority by County officials.