

Amendments to House Bill No. 499  
1st Reading Copy

Requested by Representative Ellie Boldman Hill

For the Senate Local Government Committee

Prepared by K.V. Aldrich  
March 19, 2013 (4:29pm)

1. Page 2, line 5.  
**Strike:** "sale,"

2. Page 2, line 14 through page 2, line 19.  
**Strike:** subsection (3) in its entirety

- END -

**HB 499. Testimony to the Senate Local Government Committee.**

**Sterling Miller, PO Box 822, Lolo MT 59847. [Sterlingmil@gmail.com](mailto:Sterlingmil@gmail.com). 406 531 8361**

I have been involved in SLR issues since 2010 when Missoula County declared that a structure on our property was an “unauthorized subdivision” and had to undergo review as a “subdivision for lease or rent”. I asked Rep. Champ Edmonds to carry HB 494 last session; this bill as amended by Gov. Schweitzer passed the House but tied on the second vote in the Senate. I was the only representative of private landowners on the working group of stakeholders who met during the interim under HJR 39 (2011 legislature). Rep. Hill consulted with me during the drafting of HB 499.

HB 499 addresses a significant proportion of the problems created by the January 2012 AG’s decision regarding “subdivision for lease or rent” or SLR. However, HB 499 has 2 flaws the Senate should consider fixing.

Part (3) of this bill as currently written will disqualify and prevent some landowners with existing structures from qualifying for the “grandfather” exemption in Part (2). These are landowners who are not currently in compliance with their existing Certificates of Subdivision Approval or COSAs.

The COSA is designed to assure that sanitation (and water) on a property are appropriate for the uses that occur on the property. An important incentive in SLR reform legislation should be to encourage landowners not currently in compliance to come into compliance with the required sanitation (and water) requirements for their uses. This incentive is lost if such properties can’t qualify for the exemption provided in HB 499.

Part (3) of HB 499 as passed by the House specifies that the existing structures are “subject to:...”

“(a) 76-4-130 if the conveyance causes facilities previously approved under Title 76, chapter 4, part 1, to deviation from a condition of approval;...”

The entirety of 76-4-130 is: “76-4-130. **Deviation from certificate of subdivision approval.** A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.”

Correspondingly, a structure or structures on a parcel that currently deviates from their COSA, is not eligible for the “grandfather” exemption in Part (2) of HB 499 as their use deviates from their COSA. It makes more sense to encourage such parcel owners to become eligible for the exemption by coming into compliance with their COSAs.

Part (3) (a) and (b) are unnecessary and redundant and have the unfortunate consequence described above. I know from first-hand experience that it is unnecessary to tie prosecution for not being in compliance with the COSA on a property. Missoula County took us to Court this year to try and shut down our guest ranch business because we were in violation of our COSA. In our case, the only reason

we were not in compliance is because the County had refused, for 3 years, to allow us to come into compliance until we completed review as a subdivision for lease or rent.<sup>1</sup> This is a Catch 22 that HB 499 should not allow to continue.

The best way to fix this is to eliminate Part (3) in the current version of HB 499 altogether. It is unnecessary and redundant.

Another way to fix this would be to replace Part (3) with something like:

(3) Structures exempted in Part (2) of this section must either be in compliance or COME INTO compliance with all applicable sanitation and water supply regulations administered by the Department of Environmental Quality to qualify for the exemption.

The "come into" part provides an incentive for people who need to upgrade their septic (or water) systems to qualify for the exemption to do so.

#### **SECOND RECOMMENDATION:**

I also recommend that the Senate eliminate the word "sale" as part of the exemption in part 1 (and in part 3 if that stays in). It was never the intention of this grandfather exemption bill (which was a consensus recommendation of the stakeholder working group advising the legislature under HJR 39 (2011 legislature) to exempt the sale of anything. The sale of a part of a building to someone (as in Part 1) makes that a condominium and condominiums are dealt with elsewhere in Title 76 and shouldn't be exempted here. The sale of a building on a parcel (as in Part 3 currently) SHOULD BE considered a subdivision; selling a building without selling the land it sits on is asking for trouble down the road as people will later insist sale is a "*defacto* subdivision approval".

"Sales" of any kind are not exempt in SB 324 and shouldn't be. Keeping the word "sale" in HB 499 is a poison pill that could cause the Governor to veto the bill.

If these 2 changes are made, HB 499 will go to conference and this will give SB 324 time to get completed and signed. When and if SB 324 is signed, HB 499 will become moot. However if SB 324 doesn't become law, it is important that the best possible version of HB 499 is forwarded to the Governor. Otherwise, we might end up in the same situation we did last session when no SLR reform bill became law.

Thank you for considering these changes.

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<sup>1</sup> This tenuous legal logic is based on the contention that 74-4-125 requires public comment on a COSA rewrite (septic and/or water system upgrade) before a permit to upgrade these systems can occur. According to Missoula County, at least, this means that SLR (or subdivision review) must occur before a COSA rewrite can be done. Missoula County is interpreting a COSA designation as a de facto zoning tool rather than as a tool to be sure the uses of a property have appropriate sanitation and water facilities.

## Subdivision laws stifling small business in Missoula; 2013 Legislature must seek solutions

DECEMBER 23, 2012 7:00 AM • MISSOULIAN EDITORIAL

We can talk about economic development until we're blue in the face, but when a coffee cart owner has to pay more than \$6,600 in fees and spend months waiting to expand her small business, it's time to admit something important is missing from the conversation.

In this case, what's missing is a discussion about how best to mitigate the negative effects of a relatively new interpretation of certain state subdivision laws. And since incoming Gov. Steve Bullock is none other than the author of that interpretation, he's the perfect person to lead such a discussion – and propose some permanent fixes.

The coffee cart owner is Missoula's own Cindy Archer, who is struggling to open a second location under the staggering weight of the state's subdivision for lease or rent regulations. Archer owns the Caffe Gita coffee kiosk at the corner of North and Higgins avenues, and would like to open another coffee shop named Lefty's Place at 900 E. Broadway, on the Diamond Jim's Casino and Liquor Store property.

Lefty's Place was supposed to open in September but is now months behind schedule. Archer has also spent a whopping \$6,637 on fees – about half the cost of the coffee cart itself. ("That's a lot of money for a micro-business," Archer told a Missoulian reporter. Actually, that's a lot of money for any business).

The reason for the delay and the reasoning behind the fees is that the coffee cart could be considered an additional "leased structure" on a parcel that already contains a building – thus, it requires approval as a subdivision. And as any housing developer can attest, subdivision review is an arduous, and expensive, process.

For businesses like Archer's this process would be on top of the one that's already in place for business licensing. Unfortunately, while Lefty's Place is reportedly the first Missoula business to face the fallout from this overly inclusive new interpretation, unless the regulations are amended – and amended quickly – it won't be the last.

The regulations covering subdivision for lease or rent have been a point of contention in Missoula County for several years now. In an effort to clear up the controversy, Missoula County asked the Montana Attorney General's Office to take a close look at the oft-disputed statutes. In January, Attorney General Steve Bullock issued his interpretation – but this didn't end the controversy. Indeed, several months later Missoula County Commissioners, seeking to add some flexibility to the subdivision regulations, voted in favor of an amendment that allowed residents to make small changes to their properties without a full review – so long as they first sign a user agreement pledging not to lease or rent any new structures.

More recently, Missoula City Attorney Jim Nugent has been examining the regulations with an eye toward squeezing in an exemption for structures that don't stand on a permanent foundation. That's a good start, but it doesn't go far enough.

County resident Sterling Miller, who co-owns a guest ranch in Lolo, has a good idea of what's needed to get excessive subdivision regulations off the backs of small businesses once and for all. Miller has been actively involved in subdivision for lease or rent regulation arguments for some time now, and is working with an interim committee that will be introducing a set of legislative suggestions this session.

Miller was a supporter of a previous effort to make improvements to the Subdivision and Platting Act during the last legislative session as well. However, House Bill 494, which was sponsored by Missoula Republican Rep. Champ Edmunds, fell victim to Gov. Brian Schweitzer's veto after the governor's amendments to the bill were rejected by the House.

Archer isn't waiting on the Legislature, of course. She continues to jump through all the required hoops, although she really shouldn't have to. Nobody in her position should have to.

Partially in recognition of this, a Missoula City Council committee recently threw its support behind a motion to waive Archer's fees. Then, just last Monday, the full council ended up tabling that recommendation.

Clearly, City Council is in no position to provide the swift resolution that's needed to help this one business, let alone make headway toward long-term subdivision regulation changes. Instead, everyone seems to be looking to the 2013 Legislature for solutions. ("We're certainly looking for a legislative fix this session because I think the product here is not what anyone necessarily intended," Mayor John Engen told a Missoulian reporter.)

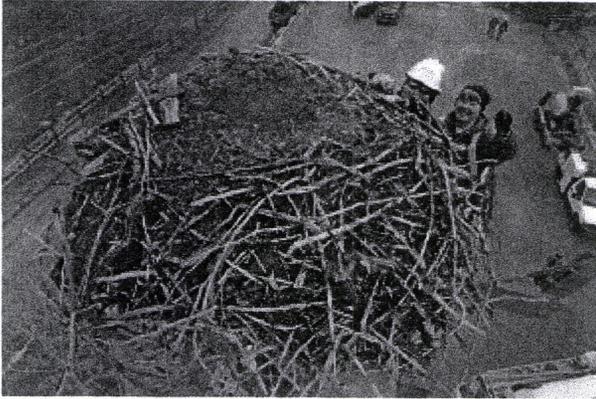
It's Bullock who should lead the legislature in proposing improvements. And he should make sure to meet with folks like Archer and Miller first.

As the person who came up with the current interpretation, no one is in a better position than Bullock to lead legislators through the intricacies of these rules to arrive at a solution that will require no further re-interpretation – or disproportionate burdens on small business owners.

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## Missoula County wants Lolo ranch temporarily shut down for noncompliance



11 HOURS AGO • BY KIM BRIGGEMAN OF THE MISSOULIAN

Owners of a popular Lolo guest ranch were in District Court at the Missoula County Courthouse on Wednesday, battling efforts by Missoula County to shut down their business until they comply with health and subdivision regulations.

Judge Ed McLean heard 90 minutes of testimony from attorneys and Sterling and SuzAnne Miller of Dunrovin Ranch before continuing the case until Friday at 8:30 a.m.

McLean scolded both sides during the hearing, saying at one point he would not let the complex case get sidetracked by attorney wars.

“When I see things tied up because of bureaucracies, then I go nuts and start saying, ‘Well, we’ll go without it,’ ” McLean said. “And bureaucrats aren’t just on the county side. Bureaucrats can be on both sides, including if attorneys start playing word games.”

The Millers have been active and outspoken advocates for reform of the state’s subdivision law for lease and rent since they ran up against it in 2010. They say they’re trying to do everything they can to make Dunrovin compliant, but that the county and deputy civil attorney James McCubbin in particular have used “draconian” measures in applying it to their business.

The county alleges numerous violations of state and county subdivision and sanitation regulations since SuzAnne Miller started the equestrian-oriented guest ranch in 2006. The Millers remodeled and expanded a former garage building to establish two apartments and started constructing a separate building before they were told they couldn’t without going through expensive subdivision review.

Foremost among Missoula County’s complaints is the absence of an updated certificate of subdivision approval, or COSA, from the state Department of Environmental Quality.

The Millers have applied for a COSA rewrite, but the application is sitting at the Missoula City-County Health Department.

"Its status is it's on hold because the property is not in compliance with Subdivision for Lease or Rent, and that is the problem," McCubbin said. "We can't process anything because we haven't received an application" for subdivision.

Such an application is in the works. Dunrovin's attorney, former deputy county attorney Colleen Dowdall, said the Millers met a month ago with the Office of Planning and Grants to find out what they needed to do to file a subdivision application. They've since submitted an extensive pre-application that was well-received by OPG's Tim Worley, Dowdall added, and another meeting is set for Friday to set the process in motion.

In the meantime, she said, McCubbin filed a request for a preliminary injunction to shut down Dunrovin "because of the allegations of violations."

"My point is the Millers are doing everything within their power to comply and not being allowed to comply," Dowdall said. "You have to have a COSA approved, but you can't get it approved until subdivision for lease or rent is approved and you can't get that approved until you've done who knows what. We don't know because we haven't been told what will happen."

The Millers, whose enterprises at Dunrovin include a osprey nest webcam that has drawn attention from around the globe, said it would be easy to reach a resolution that satisfies everyone and keeps them in business without dragging a judge into the melee.

They say they're willing and county commissioners have the authority to allow them to upgrade their septic system, rewrite the COSA and complete construction without shutting them down. They'd like to do it before the summer season begins in April, and they would agree to complete the subdivision review process within three months of the close of the 2013 Montana Legislature, where half a dozen bills are expected to be introduced to "fix" the subdivision for lease or rent statute.

"Let me tell you where I'm at with legislation," McLean said. "I'm not going to sit here and hold off waiting for a legislature to enact or not to enact. We're going forward with the laws that we have on the books."