

TESTIMONY OF HOMER STAVES
TO THE
MONTANA SENATE COMMITTEE
LOCAL GOVERNMENT
SB 324
FEBRUARY 20, 2013

Good afternoon. My name is Homer Staves, I am a fifth generation Montanan, I was born in Missoula, grew up in Polson, earned a BA and MBA in Business from the University in Missoula, spent 8 years raising cherries on Flathead Lake and thirty years working for Kampgrounds of America in Billings. Since 2000 I have owned Staves Consulting Inc., a Montana corporation which helps over 30 clients a year build RV parks and campgrounds throughout North America. I reside in Billings with my wife of fifty years and we spend the summer helping our sons operate the KOA Kampground we own between Whitefish and Kalispell. I currently serve as President of COAM, the Campground Owner's Association of Montana as well as President of the Montana - Wyoming KOA Owners Association. I am here to speak to SB 324, a bill to revise subdivision laws related to lease or rent.

Many years ago the Montana Legislature created the subdivision law to control development in the state and to prevent property all over the state from being chopped up into small parcels and sold by real-estate developers. The campground owners support this concept and feel it has helped preserve those things we all appreciate about our state. However, over the years the law has been modified many times and the result has been to create onerous regulations on small businesses that have no intention to chop up and sell small parcels of their property. Campgrounds or RV parks were added to the law about eight years ago and since then almost no new parks or park expansions have taken place in the state. During the same time period, tourism in the state has grown significantly and thousands of new hotel and motel rooms have been developed. I assist people throughout the United States with campground development and I have never found any other state that requires campgrounds or RV parks to go through a subdivision process.

Our park is fairly typical of the campgrounds in this state. We have about 100 approved RV and tent sites. 90% of our total revenue occurs in less than 100 days. In July and August we run about 100% occupancy every night. We really need to add some additional sites but can only afford to add a few each year out of working capital. In 2011 we met with the local Health Department and asked what we needed to do. Once we looked at everything the cost of applying for the subdivision approval to build even one additional site was almost \$40,000.00. When we talked to several banks about proceeding we were told they would not loan us any money until the subdivision was approved. There is no way we can afford \$40,000 just to ask for permission to add a few sites to our 40 acre parcel of land.

Even without subdivision rules we would still have to comply with all of Montana's building codes, zoning rules, and health codes. Currently we are required to have five

different business licenses to operate our campground and the Health Department inspects us five times in about four months. From an operational standpoint we are probably subject to more inspections than most businesses but that's OK. The problem comes from the added burden of the subdivision law that only applies to new construction and not to operations. If we did not have to comply with the subdivision regulations we would still have to meet the same requirements in order to obtain a business license but we could expand our campground or build new ones with a much lower cost both in money and time.

At the present time one out of every seven households in the United States who own an automobile also own a RV. Our industry serves a very large percentage of the population and these owners use their RVs for a wide variety of reasons. The vast majority use them for summer vacations and short visits to local tourist attractions. In a few cases a RV park will deteriorate into cheap housing but this existing law will not prevent that from happening.. Most of us in the industry dislike this small market and wish it did not exist, but it does. I think that is probably why RV parks were singled out during past legislative sessions and forced into the subdivision law. The problem with that is I have never heard of anyone setting out to build a RV park to serve the cheap housing market. This subdivision law only applies to new construction so it has no effect on the quality of campgrounds over time. If that is what we want to control then this is not the tool to use. Poorly operated parks can only be controlled by Health Department inspections and the parks business license.

As an industry we support the intent of this bill to not place onerous requirements on property that is not being sold but only rented. However, if it passes in its present form campgrounds or RV parks will still have to go through subdivision procedures to build any sites while everyone else in the rental business will not have to. In order to put our portion of the tourism industry on an equal footing with the rest of the industry, we request the following three modifications to this bill.

1. Under New Section "Section 1". Definitions (1) "Buildings", Delete "Recreational Camping Vehicle"
2. Under the new section 2 (2) (a) delete, "recreational camping vehicles or"
3. Under New Section "Section 9" 76-3-103MCA definitions
(15) "Subdivision" either delete Recreational Camping Vehicles or after Vehicles, add "that are not subject to the lodging facility use tax under title 15 Chapter 65.

Under New Section "Section 1". Definitions (1) "Buildings", Delete "Recreational Camping Vehicle"

A recreational vehicle is definitely not a building. The present Montana Code Annotated defines recreational vehicles in several different places but never as a building. 50-60-402 requires all RVs sold in Montana to comply with the NFPA code A119.2 which defines a Recreational Vehicle as:

A vehicular type unit that is primarily designed as temporary living quarters for recreational, camping, or seasonal use; has its own motive power or is mounted on or towed by another vehicle; is regulated by the National Highway Traffic Safety Administration as a vehicle or vehicle equipment; does not require a special highway use permit for operation on the highways and can be easily transported and set up on a daily basis by an individual.

15-65-101 defines a recreational vehicle park as an accommodation, the same as a motel or hotel. If a recreational camping vehicle is a building does that mean that every Wal-Mart in Montana has buildings in their parking lot overnight and must also prepare a subdivision filing?

Under the new section 2 (2) (a) delete, "recreational camping vehicles or"

This section exempts buildings in unzoned areas if they are required to collect the Montana accommodations tax. RV parks are included in 15-68-101 MCA as accommodations with the exact same requirements as other forms of lodging. They should also be included in this section the same way as motels.

Under New Section "Section 9" 76-3-103MCA definitions

(15) "Subdivision" either delete Recreational Camping Vehicles or after Vehicles, add "that are not subject to the lodging facility use tax under title 15 Chapter 65.

This bill proposes to delete rent or lease in this section but if the present language remains then RV parks will still be forced to comply with all subdivision rules even though they rent their camping sites for short term use.

All of us in the RV portion of the tourism industry appreciate your attention to this issue and your consideration of our request to pass this bill with the three amendments we have outlined.

Tom Llewelyn
Llewelyn Associates
1925 Grand Avenue #124
Billings, MT 59102

SB 324
Revise Subdivision Laws related to Lease or Rent

In all the years that I have developed land we have always considered a division of land as a subdivision. When or how the definition was changed, I don't know, but it doesn't make sense and is in conflict with MCA 76-4-103 What constitutes a subdivision (copy attached). We need to maintain consistency which realistically is only a division of land is a subdivision, not whether it is for lease or rent; which is not a division of the land.

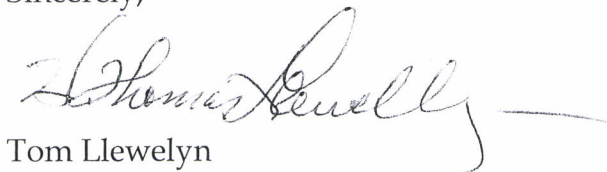
The attached drawing was used by the Yellowstone County Planning staff as part of an explanation of what causes a subdivision for rent or lease. Additional requirements or land that is already zoned doesn't make sense.

The Missoulian article implies to me that review of subdivision under for 'for lease or rent' is used for additional revenue. No consideration for the cost, feasibility with additional costs, or the time. The subdivision process is not an easy process anyway and time is always the enemy to accomplish a project as the world changes. In most cases there have already been a subdivision and review, now adding to that tract of land additional buildings which have been approved by zoning is ridiculous.

In condominiums/townhouses under the trust ownership act are exempt from a subdivision review.

We need consistency and my definition which is my opinion is "A subdivision is a division of land".

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Llewelyn", followed by a horizontal line extending to the right.

Tom Llewelyn

**Tom Llewelyn
Llewelyn Associates
1925 Grand Avenue #124
Billings, MT 59102**

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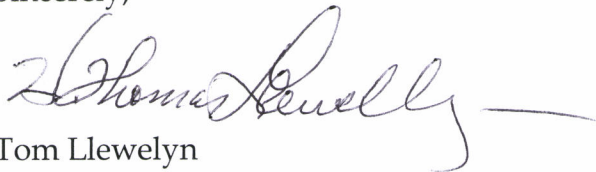
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Tom Llewelyn

Montana Code Annotated 2011

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not. **The rental or lease of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.**

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 2, Ch. 592, L. 1985.

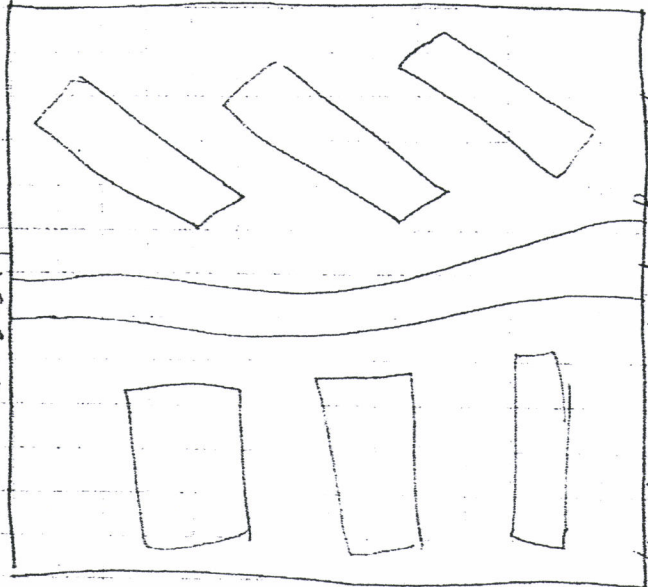
Provided by Montana Legislative Services

*Annotation in
Subdivisions*



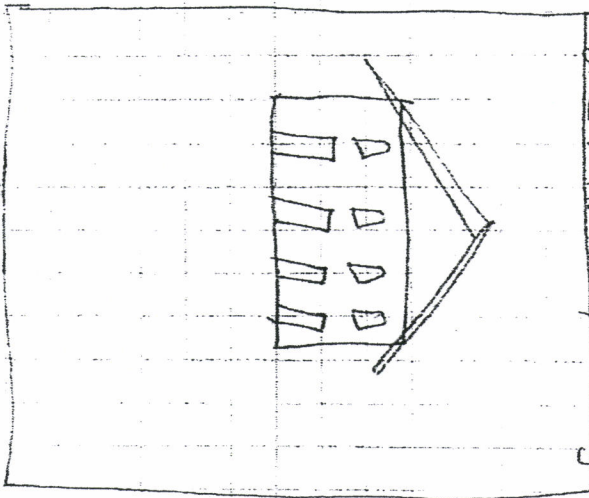
PLANNING

1st - must meet definition of a subdivision - less than 100 acres



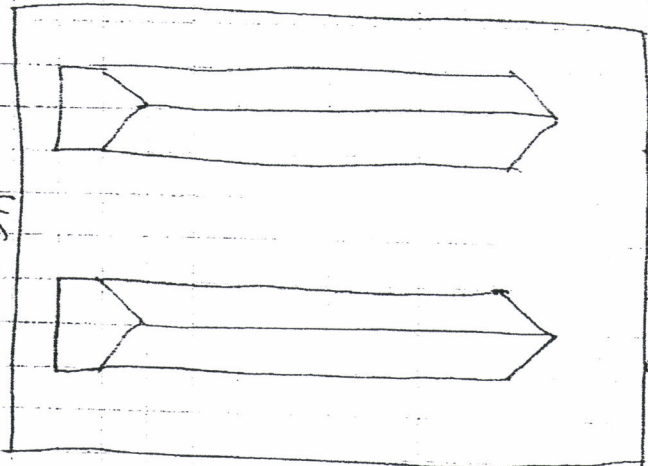
RV Park/Manufactured Home Park
Already Performed as Rent/Lease

YES - Done Now



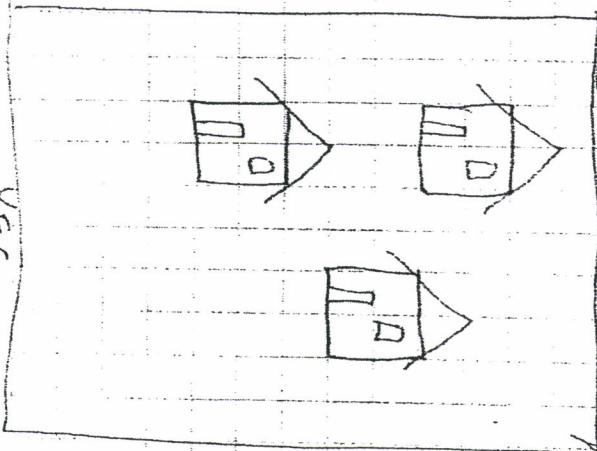
One multi-family Building

NO



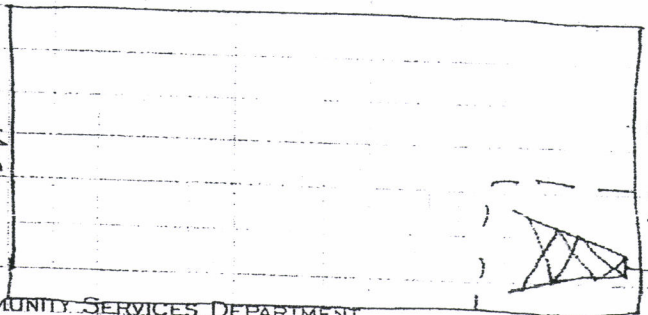
Mini Storage

YES



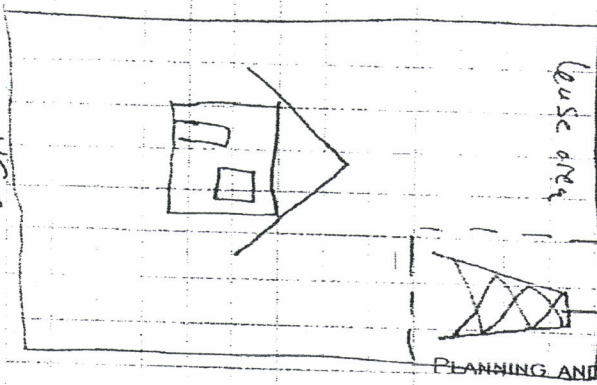
SFD homes or multifamily

YES



Cell tower lease area

NO



Cell tower lease area

YES

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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 Caffè 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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