

By: \_\_\_\_\_

To: Board of Environmental Review  
Case No. BER 2020-01 OC

RE: Definite Grounds for Appeal

Date: Oct 23 2020

Back in 1997 I purchased Block 5 of South Hills Subdivision, Phillips County, Montana. On the Declaration of Protective Covenants, the property and The State of Montana Department of Health and Environmental Sciences Certificate of Subdivision Plat Approval Dated Dec 17, 1993 states,

"Blocks 4 and 5 shall be used for commercial development, and, that each individual water system will consist of a well... That each individual sewage treatment system will consist of a septic tank and subsurface drain field..." Phillips County zoned this property as, Commercial none restricted.

In 1997 I built an Assisted living Facility on the property. The septic and water were installed under the direction of Phillips County Sanitarian Danna Stoble.

The facility operated as an assisted living facility for 18 years. In 2015 the local nursing home was struggling financial and had announced they were closing. As a member of the community and knowing how important the nursing home was to the community, I agreed to sell a successful business to the local nursing home so they could consolidate the two faculties and survive. I did this for the better of the community. It might be worth noting I went almost 5 years without receiving a single payment. Yet as a result of this I have received nothing but continued harassment from the local sanitation dept.

I planned to move into the facility, and live in it as my house, however the grand children wanted to open it as a hotel. This also became a nightmare, because of the change of use the septic and water needed to be updated to current standards. This was cost prohibited, there was no way that I would ever be able to recuperate my investment. Somewhere along the way with the continual changeover of personal at DEQ it suddenly was no longer a problem, but there were always new problems that would arise.

The summer of 2010 I built 3 one-bedroom cabins on the property, I applied for, and was granted a septic permit by Mike Rinaldi Phillips County Sanitarian.

Some time later I was having conversation with one of the county Commissioners and for some reason Mike Rinaldi's name came up in the conversation. I made a commit that Mike had sold me a set on plans for a septic system then approved them. I made a comment I didn't think that was ethical. That was the beginning a very expensive adventure and continual harassment.

In 2014 I planned to build 4 more cabins, while building the first one I applied for a septic permit, I was told I would have to hire an engineer to design the septic. To this point never in Phillips County had anyone ever been required to hire an engineer to design a simple gravity system. I also was required to hire an engineer to drive all the way from Great Falls to do a percolation test. No one in Philips County has ever had to hire an engineer to do a percolation test. I hired an engineer to design the septic. And start a subdivision review. I requested a septic permit and was told by the local sanitarian he could not

issue one that I needed to get it from the state Dept. of Environmental Quality. When I would contact DEQ I would be told they do not issue permits they are only issued through the county. The turn over rate at DEQ was such that I was Always dealing with someone new. Each one had a different opinion what needed done. Every time I would ask what needed to be done, I would get a different answer, or something like “we haven’t even started to look at water sheds studies to determine if you need curb and gutters. I made multiple requests to the County for a permit, each time I was told I had to get the permit from DEQ. DEQ would say, “we do not issue permits you have to get them from the County”.

During this time, I was informed by the Depart. Of DEQ that the septic system that was sold to me by the local sanitation dept did not meet minimal state law. The state law states that every house will have a minimum 1000-gal tank. A 2,500-gal tank was installed per the approved plans. This by all standards is adequate for 3 one-bedroom cabins with no laundry facilities. Even though the system is more than adequate it does not meet the letter of law and must be removed. No liability to the local sanitation dept, or no waiver from DEQ. I was never informed at any time that more than one septic was not allowed on the property.

The winter to 2014 the 4<sup>th</sup> cabin I build set empty even though I had obtained an engineer to design the septic system. I tried to obtain a permit through out the summer of 2014 and 2015. I was continually told by the local department that he could not issue a permit I had to get it though the department of DEQ. The Depart. of DEQ continued to say they do not issue permits. Late in the fall of 2015 and frost setting in it was get the septic in or wait another winter. I notified both the local sanitation department and DEQ that I needed a permit within 10 days. I never heard back from either department so I installed according to the engineer designed plans. I called in inspection before I covered it up. All of this was due to making a commit that it was unethical for the local sanitarian to sale plans then approve them.

During the summer of 2015 I added 6 RV spots and attached to the septic system that had been installed for another cabin that was never going to be build. Shortly there after I was informed that state law prohibit more than 1 RV hook up without a subdivision review. There is no way one could ever recuperate the expense of a subdivision review with 6 RV spots that average occupancy of 2 per night 6 months of the year. The RV park was abandoned. I guess this mean that small hotels will never be able to add RV parking spots. Why should someone in Helena care?

During all of this at no time did any one from the department of DEQ ever state there was a restriction prohibiting more than one well, or one septic on the property. This only came up when this year that the original subdivision approval stated, “That each individual water system will consist of a well”. The Dept suddenly decided to interpret this as prohibition more than one well, or one septic. This could be interrupted as, “There is no public water or sewer available every land owner is responsible for their own water and sewer.” I doubt anyone who looks at this objectively can say beyond reasonable doubt that it states that there cannot be more than one septic on the property.

In my reading and research, I came across an interesting Montana Code. I do believe this would apply to the circumstances at hand.

The sole purpose of the Department of Environmental and Quality is to protect the health and safety of the residents of Montana and to protect the environment from pollution or potential sources of pollution. I as a citizen providing employment and paying taxes should not have to hire a lawyer to sue

the State of Montana in District Court to get an exemption under MCA 76-3-201. Nor should I have to destroy or remove my cabins, when I have tried to follow the laws in good faith.

Under "liberal construction" law we should not be arguing the meaning of sentence structure on a document printed in 1993. Common sense at some point should prevail. Dose it mean you can only have one septic, or is it implying there is no public water and sewer and each land owner is responsible for their own.

"The Montana Department of Environmental Quality is charged with protecting a clean and healthy environment as guaranteed to our citizens by our State Constitution. Our ultimate goal is to protect public health and to maintain Montana's high quality of life for current and future generations."

The department has failed to provide any evidence of public health and safety, or environmental issues.

### **Montana Code > Title 2 > Chapter 3 > Part 2 > § 2-3-201**

#### **Montana Code 2-3-201. Legislative intent — liberal construction**

**2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.**

Duane Murray