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COMMITTEE REPORT

SENATE

2/15/83

FURTHER:

Date: _____

Mr. President:

The Committee on GERA has had SB 125

An Act annulling a regulation relating to subdivision plan review.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

ANNULMENT OF SUBDIVISION PLAN REVIEW

This regulation requires that subdividers submit a sewage/drinking water plan for proposed subdivisions to the Dept. of Environmental Conservation for review and approval.

The "argument" over the regulation:

Subdividers and Kenai residents maintain the DEC review is unnecessary because banks will later require that sewage/water systems on individual lots be reviewed before home loans on those lots are approved. The two reviews duplicate each other.

DEC maintains the reviews are different. The first determines what kinds of systems are possible and safe for the subdivision; the second, that the systems installed are acceptable and functioning.

Governor Sheffield supports the regulation because it fulfills DEC's responsibility to protect the public health.

For more extensive information see attached materials and letter from the Governor on the issue.

The following is a summary of the three main issues surrounding the Department of Environmental Conservation's waste water and drinking water regulations, and AHFC's proposed regulation requiring DEC approval of individual waste and drinking water systems.

1.) DEC's required Subdivision Plan Review (18 AAC 72.065). This plan has already been adopted as a permanent regulation, effective 12/30/82. The regulation requires that subdividers submit a plan to DEC to determine that a proposed subdivision is capable of handling waste water and drinking water systems. The plan also shows what kinds of systems are possible for the subdivision, given the soil and topographical conditions, layout of the streets and sewers, etc. If the plan meets the public health standards of DEC, then the plat for the subdivision is approved, and the approval put directly on the plat.

DEC has the authority to establish waste water and drinking water standards, and to approve subdivision plans. But DEC doesn't have the authority to issue "home" permits or to review and approve each individual waste water and drinking water system before they are installed by a homeowner within a subdivision. AHFC, and banks, however, require that each individual home system be certified as being in compliance with the DEC regulations before they finance a home loan. Because of this AHFC requirement, the following situation occurs:

Mr. Smith buys a lot in a subdivision, which has been approved by DEC for certain kinds of wastewater and drinking water systems. Mr. Smith builds a house, but before AHFC or a bank will approve the loan, Mr. Smith has to hire a professional engineer to test his system for being in compliance with DEC requirements.

The land surveyors and subdividers maintain that the initial Subdivision Plan Review by DEC is unnecessary because each individual lot will be reviewed by an engineer as a requirement for getting a mortgage. The reviews duplicate each other and are costly.

DEC maintains that the two "reviews" are different and serve different purposes. The Subdivision review determines what systems are possible; the lot review determines that the systems installed are acceptable and functioning. In addition, they have a responsibility to set standards to protect the public health, although they lack the authority (and manpower and money) to review each individual home for compliance. (See Governor Sheffield's letter to Mayor Thompson regarding the Subdivision Review Process, as well).

It is important to note that the second review is not required by DEC--it is a requirement of all lending institutions, AHFC included. In fact, DEC lacks "express" statutory authority for certifying individual homes for sewage and water systems; however, they are the only available public health agency in most parts of the state qualified to do this.

Before AHFC was created, the DEC did these kinds of certifications for banks and home buyers as a courtesy. But the creation of AHFC created a "housing boom" and DEC, in order to handle the increased cer-

tification load, developed the "On-Lot Technical Assistance Program". This program allows certified professional engineers to conduct the tests on individual sewage/water systems, rather than DEC, who lacked manpower and money. Under this program, the professional engineers file the results of their tests with DEC; DEC then issues a certificate for the lending institution stating the systems are in compliance. Because DEC is liable for whatever they certify, DEC wants to be assured that the methods used by the professional engineers are in accord with good engineering practices. DEC has established the "adequacy test" (attached) for use by engineers. (It is important to note that engineers are free to use other test methods, provided those methods are reviewed by DEC).

2.) This test is the second issue. DEC's testing requirements are not established by regulation. DEC has outlined general procedures that should be followed by engineers when conducting the tests. Those procedures are attached. Again, other methods can also be used, provided DEC reviews the methods first.

The debate here is a rather technical one, between the professionals in the field. Some of the engineers have maintained that the test will damage the sewage system; DEC maintains that the method has been used successfully for years, in Anchorage and elsewhere, and if done properly, will not damage a system. This debate seems to center on the amount of water injected into a system. Too much water can flush solid waste into the leechfield, which would cause damage. DEC stated that professional engineers would know how much water to inject after their initial tests and that this kind of "error" would be extremely rare. If, however, an engineer did damage a system during a test, the engineer, and not DEC, would be liable for it.

Another problem surrounding the test is the cost. Engineers in some parts of the state are charging home buyers very high fees for the test.

3.) The third "issue" is the proposed AHFC regulation. This regulation will make it mandatory for any home buyer to have a DEC certificate stating that the home has adequate sewage/water systems before AHFC will approve their application for a loan.

Before now, AHFC has required DEC certification as a policy. They are just now adopting it as a regulation. AHFC apparently has a potential risk of half a million dollars in one subdivision alone, where the homes have inadequate sewage systems. Sewage systems are expensive to repair and it is often easier, and cheaper, for a homeowner to walk away from a home than to repair the system. This has happened in several places already and AHFC has assumed a loss.

AHFC maintains that they are justified in requiring DEC certificates to protect their investments and because the statutes instruct them to adopt the procedures and policies of independent lending institutions. All lending institutions require inspection and certification of sewage/water systems before they approve a mortgage loan.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1983

The Honorable Stan Thompson
Mayor
Kenai Peninsula Borough
Box 850
Soldotna, AK 99669

Dear Mayor Thompson:

Thank you for your January 18, 1983 letter regarding the Department of Environmental Conservation's (DEC) involvement with subdivision plan review. As you have pointed out, boroughs have platting approval authority under AS 29.33. That authority, however, does not convey with it the responsibility for approval of a subdivision's method of sewage disposal. That responsibility lies with DEC under AS 46.03.090, since one of DEC's main functions is to protect public health.

The department's wastewater disposal regulation is the vehicle they use to prevent serious diseases that are spread either by contamination of drinking water systems with sewage, or by sewage surfacing in a yard. It is also DEC's responsibility, as a branch of State government, to guard against the need for the State to fund expensive remedial construction of subdivision wastewater disposal systems which were improperly designed. That results in the kind of poor planning for capital projects which I am determined to change.

I definitely agree that the primary responsibility for all aspects of subdivision plan review should be with local governments. I understand that, through your help, major changes were made to DEC's regulations which greatly facilitate the ability of local government to assume the subdivision sewage disposal plan review program. I expect DEC to aggressively pursue delegation of this program to local governments willing to accept it. Until that occurs, however, some entity must regulate sewage disposal in subdivisions to ensure protection of public health. In the meantime, the opinions of engineers, surveyors, realtors, and local officials will be carefully considered as DEC fulfills its duties under the law.

The Honorable Stan Thompson

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February 3, 1983

A review of all these matters has led me to believe that a stay of the regulations would not be in the best public interest at this time. I assure you that Commissioner Neve' will closely oversee this matter to ensure that the concerns expressed by you and residents of your area are addressed by his staff.

Sincerely,

Bill Sheffield
Governor

bcc: Department of Environmental Conservation

Environmental Management
Deena Henkins
Bob Martin
Alex Viteri
Billie Trent

CTS: 3024733



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STANTHOMPSON
MAYOR

January 18, 1983

RECEIVED

JAN 21 '83

The Honorable William J. Sheffield
Governor of the State of Alaska
Pouch V, Mail Stop 0101
Juneau, AK 99801

GOVERNORS OFFICE

Dear Governor Sheffield:

I am requesting that the new Department of Environmental Conservation regulations 18 AAC 72.065 appearing in Register 84 be stayed pending a review by your administration.

The authority cited is AS 46.03.020, .050, and .090. Section .020 (Part 10) is the general grant of authority to adopt regulations; Section .050 is the grant of jurisdiction to prevent and abate pollution; and Section .090 is the authorization to require submission of plans for sewage disposal treatment.

There is no statutory authority for DEC regulation of subdivision plats. That authority was granted to the Borough in Chapter 33 of Title 29.

An example of the arbitrary nature of these regulations is the exemption for isolated subdivisions without an exemption for subdivisions completely within cities on DEC approved public water and sewer systems.

I would suggest that rather than trying to "band aid" existing regulations, that the Department first identify the problems and then look for efficient measures to prevent and cure. Perhaps professionals in the field, such as engineers, real estate brokers, surveyors, and subdividers could assist in drafting outlines for new regulations.

I am sure that there are a number of professionals in all parts of our Great Land who would be willing to help without cost to the State.

Sincerely,

Stan Thompson
Mayor

ST:bl

cc: The Department of Environmental Conservation
The Alaska State Legislators

SENATE BILL 125

"Annulling a regulation dealing with subdivision plan review."

P. Fischer.

Annuls a regulation dealing with subdivision plan review. The regulation requires that subdividers submit a sewage/drinking water plan to DEC.

ANNULMENT OF SUBDIVISION PLAN REVIEW

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Bill Sheffield
Governor

bcc: Department of Environmental Conservation

Environmental Management
Deena Henkins
Bob Martin
Alex Viteri
Billie Trent

15-11-83
CTS:3024733



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

January 18, 1983

RECEIVED

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