



2016 State Legislator Candidate Questionnaire

The Missoula Organization of REALTORS® is the voice of the Missoula real estate industry. Our members would like to know your thoughts on priority REALTOR® issues. We thank you for being specific in your responses.

MOR has endorsed candidates in past elections, and may do so in these elections. If we consider an endorsement in your race, we will ask you and your opponent(s) to each meet with us for candidate interviews.

Please return the questionnaire by Friday, September 23 to Sam Sill at ssill@missoularealestate.com.

BACKGROUND

Name: Michael Ellsworth

Office You Are Seeking: House District 98

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CAMPAIGN ORGANIZATION

Treasurer's Name, Address and Phone Number: "Campaign of Michael Ellsworth"

Will you accept PAC contributions? "Yes, Please."

ISSUES

The year to date median home sales price in Missoula County has risen to \$250,000. This is an all-time high, and well beyond what a median income family can afford. In a September 4, 2016 article in the *Missoulian*, UM chief economist Pat Barkey was quoted as saying that the housing supply was low because of restrictions on development, and that for prices to go down, developers need to be able to build large subdivisions for a relatively low cost. In 2014 and 2015, only two subdivisions were approved in Missoula County. This session, the legislature will consider policies that affect the ability of working families to afford a home.

1. Missoula County is treated as a closed basin, meaning that no new appropriations of water are allowed without first acquiring an existing water right for mitigation through the DNRC permitting process. This process is unpredictable, lengthy, and often cost

prohibitive. As a result, exempt wells had long been used to provide water for new homes, businesses, and industry outside of Mountain Water's service area. As long as the wells were not physically connected, they were exempt from the mitigation requirement. Exempt wells have a priority date and are subject to calls from senior water users. They account for less than 0.5 percent of the water appropriated in Montana each year.

A 2014 district court decision has severely limited their use by requiring DNRC to treat unconnected exempt wells as a "combined appropriation," requiring an existing water right for mitigation in Missoula County. This has drastically limited the ability of developers to build subdivisions with homes that working families can afford. **Should the legislature codify this new definition of combined appropriation from the court decision, or should the legislature codify the previous definition that was in place for over 20 years?**

"The legislature should codify the previous definition of 'combined appropriation' that has been in place for over 20 years. Provided further, there should be a separation of definitions as applicable to 'aquifer recharge' and 'groundwater recharge,' whereby aquifer is defined as subterranean water reservoirs or storage within permeable rock, whereas groundwater is defined as rain runoff or snow melt or other surface seepage as directed towards surface waters and its recharge through the hydrogeological cycle...thus separating water sources for deep well construction and the need to preserve creeks, streams, and rivers. Provided further, the mitigation process within the Montana DNRC should be codified as to thwart off those burdensome Administrative Rules that affect 'Change of Use Authorization,' in order that prior existing, historical/beneficial uses be permitted as convertible rights to some new beneficial use appropriation without overall deduction of the water supply and sources thereto."

2. Governing bodies are required by state case law to take a "hard look" when examining certain subdivision review criteria. Experience has shown that it is difficult for local governing bodies to know when they have applied the hard look standard. As the standard is currently interpreted by the courts, someone can always claim the governing body didn't look hard enough. This can result in an unfortunate situation where a governing body's conscientious review is overturned based on a distortion of the record or insignificant factors. **If elected, would you support legislation that makes it easier for governing bodies to meet the hard look standard?**

"No, however, the purpose of the 'hard look standard' should not be directed upon the applicant seeking subdivision under the strict scrutiny test, it should be directed upon the local governing board as to safeguard the development rights, water use appropriations, and economic rights of the applicant. For example, the local governing board would have to give good cause in showing that the labor, contract, and development rights of applicant would be harmed or that there is a need to comply with specific EPA standards in the development plans, etc. in order to deny an applicant; and

not whereby the local governing board could in way possible deny an applicant simply because of conflicts of agenda setting, theories in sustainable development, or any other harmful measure or maneuver that can impact an applicant's rights."

3. The Legacy Ranch court decision from Ravalli County is spurring changes to local subdivision phasing and extension rules in Missoula County and other jurisdictions. In Missoula County, the rules will be changed to shorten the approval period, restrict extensions, and require additional public hearings for extensions. This will add uncertainty and increased costs to an already expensive development process. It will also bring about lesser quality neighborhoods by denying developers the ability to plan for street grid connectivity, large interior parks, sidewalks, and other infrastructure. This session, the legislature may consider clarifying subdivision law to provide governing bodies a better framework for handling phased developments. **If elected, would you support legislation that extends the approval period, clarifies that phased developments are allowed, and provides a more streamlined process for governing bodies to review extensions?**

"As a house representative, I would vote for the extension of approval period for phased developments and for specific adjudication in the planning process to be directed to the neighborhood councils, including allowing for preliminary platting review or otherwise subdivision review design in the first instance, since neighborhood councils are elected and local governing bodies, even superior in authority that the consolidated planning boards. Second, I would advocate for rights-based legislation supporting the development, economic, and contractual rights of all persons, businesses, and representing agencies as indispensable and irrevocable to the final determinations as made by the developers themselves under doctrine of self-determination and self-execution." And third, I would support the transition the field offices of the Montana DNRC, Dept. of Ag., and Dept. of Commerce into community workshops as to streamline and merge state and local subdivision regulations together, as well as, have an adjudicated system of administrative processes to receive the necessary approvals or in the alternative to a secondary place to carry out estate planning and design."