SENATE LOCAL GOVERNMENT
EXHIBIT NO. 6
DATE 2.11.09
BILL NO. SB 345

Testimony on Senate Bill 345 before the Senate Local Government Committee
February 11, 2009
Jeff Sealey, Deputy County Attorney testifying on behalf of Lewis and Clark County

SB 345 is an attempt to block County zoning. The bill does so by increasing the procedural requirements to a level that is unduly burdensome, and well beyond the requirements of due process.

The bill makes the procedures for adopting interim zoning more cumbersome than the procedures for adopting regular zoning. The bill does this including notice requirements that force counties to justify a decision before the county commission has even considered the proposed action and before a public hearing has taken place.

Section 1, p. 1, line 17. This creates some confusion. As written, it sounds like the procedures in 76-2-205 apply to all zoning in Part 2. However, there are different procedures proposed for regular zoning under 76-2-205 and interim zoning under 76-2-206.

Section 2, p. 2. The changes proposed by this section significantly increase the procedures necessary to adopt regular Part 2 zoning. In fact, these notice procedures are more burdensome than any other statutory notice procedures I am aware of in the Montana Code. One must ask themselves, why should there be so much more notice required for zoning than for other governmental actions? The intent of the bill appears to be to block zoning outright by placing so many rigorous procedural hoops in the way that zoning is unlikely to be adopted.

Lines 24-26. This section will needlessly cost counties and their taxpayers significant amounts of money. Notice published in a newspaper has been the accepted way to notice governmental decisions for many years now. Very few statutes require direct mailings, and it is not necessary to require this extra notice for zoning issues.

More importantly, this requirement will subject counties to enormous liability. If the county fails to mail notice to one person in a proposed zoning district, a court may overturn any zoning that is adopted for lack of public notice. When a statute requires specific notice requirements, the courts have shown an unwillingness to allow any deviation from those enumerated requirements.

Zoning regulation almost always affect a large number of property owners. It is too easy to miss a real property owner, or to mail to the wrong property owner, or to mail to only one of multiple joint property owners to make this a requirement of zoning regulations. Published notice and, possibly, posted signs should be sufficient notice for zoning issues.

Additionally, this new language extends the notice period from 2 weeks to 2 months. There is simply no reason that would justify requiring two months

notice. Again, this is more notice than is required for most, if not all, other local government decisions. There is no reason to treat zoning as a "special case."

Lines 27-29. Posting notice within the district is not a bad idea, but 45 days is overkill for the reasons discussed above. Also, what is a "public place" in the district? Some zoning districts will not have 5 public places in them.

P. 3, line 23. The extension from 1 year to 2 years is not justified. This change, again, appears to be an attempt to block zoning for the sake of blocking zoning. The bill, as a whole, shows a distrust of county officials. This distrust is not warranted. Those officials are the representatives of the people in the county.

P. 3, lines 24-25. This change is not a bad idea. Clarification of what "taxed for agricultural purposes" means is appropriate. This issue came up in Lewis and Clark County, and the statutes *are* ambiguous. Whether "nonqualified agricultural land" should be counted or not in special zoning protests is a policy question for the legislature. Nonqualified ag. land is taxed differently from other types of agricultural lands, but it is also taxed differently from other non-agricultural lands. "Nonqualified" under the statute does not mean that those lands do not qualify as agricultural. It means that those lands do not qualify for certain tax breaks. Nonqualified ag. land does, however, receive other tax breaks for being agricultural in some sense.

Section 3, pp. 4-5, lines 13 through 19. This section adds substantial, and overly burdensome, procedural requirements for the adoption of interim zoning (emergency zoning). In general, the added requirements will make it harder to adopt interim zoning, which is temporary, than it is to adopt regular Part 2 zoning (76-2-205), which is permanent. This makes little sense, and will effectively destroy interim zoning, which is a useful tool for dealing with emergency situations.

Section 3, p. 4, lines 19-20. This should only require a general description of the emergency, not a "specific" description. At this point in the process, it has not even been established that there is an emergency. That is the point of the public hearing. The nature of the emergency may evolve through the public hearing process.

Lines 22-23. This language sets counties up for litigation. The language requires counties to <u>prove</u> that the proposed regulations will mitigate the emergency. Lines 1-2 already require that the purpose of the regulations be to classify and regulate the emergency. It is unduly burdensome to try to make counties prove that their regulations will be successful.

Additionally, county commissions are multi-member bodies. Some Commissioners will vote for zoning for one reason, while others may vote for it for a completely different reason. This is as true for county commissions as it is for this committee or the legislature as a whole. It does not work to try to force them to identify the reasons for their decisions, because different members have different reasons. This is particularly true at this point in the zoning process, when the Commission has not even

considered the proposed regulations yet or taken public comment. This language asks Counties to justify a decision that has not even been reached yet.

Line 24. This section is inappropriate. The bill assumes that there is something wrong with zoning, and therefore a county commission should be required to show that they have considered other methods of dealing with the problem. Counties are free to choose among any of the various methods available to them to deal with a particular problem. Including this language will simply show that the state legislature views zoning with suspicion and does not trust county officials.

Section 3, p. 5, lines 1-2. Interim zoning does not go to a Planning Board for review. Interim zoning is intended to be used for emergency situations. Therefore, the process for its adoption should be streamlined, not hindered by burdensome procedural requirements. This reference to the Planning Board adds confusion to this process.

Lines 3-19. This language adds a citizen protest process for interim zoning. Interim zoning is like a band-aid for a large cut. It is a temporary fix for a problem. It is applied quickly to stop the bleeding, while a more permanent solution is considered. The whole idea behind interim zoning is that the county does not have all of the facts, and it needs to conduct further studies to get all of the facts. County officials have been elected and have been entrusted to make these decisions. Providing a protest procedure for interim zoning will simply show that the legislature does not trust duly elected county officials to make these decisions.