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Testimony and attachments relating to HB486 – Senate Local Government Committee

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HB486 is a reintroduction of SB110 that was introduced in the 2007 session by Senator Liabe.

Though I concur with many sections of this bill, I am requesting a revisit of parts of Sections 5 & 6. Attached are suggested amendments to these sections.

Zoning is the way the governments control the physical development of land and the kinds of uses to which each individual property may be put.

Zoning laws typically specify the areas in which residential, industrial, recreational or commercial activities may take place. For example, an R-1 residential zone might allow only single-family detached homes as opposed to duplexes or apartment complexes. On the other hand, a C-1 commercial zone might be zoned to permit only certain commercial or industrial uses in one jurisdiction, but permit a mix of housing and businesses in another jurisdiction.

Zoning is defined as the division of a jurisdiction into districts to enable the regulation of land according to the nature and use of the land in order to promote the orderly development of the area, and the protection of public health, safety and general welfare.

Zoning regulations must be reasonable. For example, the size and location of signs may be regulated, but to ban them completely is considered unreasonable.

Zoning must not be confiscatory. If land is regulated to the extent it cannot be used for anything of economic value, the effect is to take the land. The courts have ruled that these regulations have exceeded the boundaries of power and are unconstitutional.

Ordinances should be uniform for each class of property throughout any zone. For example, all structures must be the same setback distance from the road in all townships. All housing developments must have the same distance of road frontage as all other housing districts in the same category.

In Montana, Part 2 zoning must conform to the criteria and guidelines as listed in 76-2-203 MCA. The proposed language in Section 5 of HB486 (page 4, lines 26-28) allow density to be used as a 'single issue' when creating a '201' district. By zoning for only density, it is unlikely that this would be enough to satisfy the required criteria for a zoning district. To resolve this, it is necessary to either remove density from the list, or require that density include 'use of

buildings / land'. In many cases, zoning districts address density as part of the 'use of land' section of statute. (see **Amendment #1**)

In addition, the proposed language should conform in structure to other sections of zoning laws (see **Attachment 1**).

Present law defines the statute of limitations for challenge of adopted '201' zoning districts as 5 years. HB486 proposes to reduce that to 60 days (SB110 proposed 30 days). A more reasonable time limit would be 3 years. I am not aware of any challenges that were initiated once zoning was adopted. A longer time period places a greater burden on government to exercise great care in the formation of a zoning district. (see **Amendment #2**)

Whenever a '201' zoning district is formed, property owners within the proposed district are provided 30 days to protest the adoption. HB486 is modifying the language from 'freeholders' to 'real property owners'. Because some owners are not residents, the 30 day limit has always seemed a bit short. It is suggested that the bill be amended to 60 days. (see **Amendment #3**) (SB 345 also contains the '30-60' modification)

Zoning regulation must be reasonable. For example, the size and location of signs may be regulated, but to ban them completely is considered unreasonable. **Amendment #4** would restore 'reasonable' as a requirement in creating zoning regulations.

Summary

The above modifications are important for citizens in Montana. It is important that zoning regulations be fair and reasonable. Please consider the proposed amendments to HB486. With the amendments, I support HB486.

Title 76 Zoning Laws (HB486 Attachment 1)

Part 1 (County / Petition) Zoning:

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

Part 2 (County / Top-Down) Zoning:

76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

Part 3 (Municipality / Top-Down):

76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

Zoning Criteria & Guidelines (HB486 Attachment 2)

Per current Montana law:

76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2); and
- (b) designed to:
 - (i) lessen congestion in the streets;
 - (ii) secure safety from fire, panic, and other dangers;
 - (iii) promote public health and general welfare;
 - (iv) provide adequate light and air;
 - (v) prevent the overcrowding of land;
 - (vi) avoid undue concentration of population; and
 - (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

After passage of HB486:

76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with the growth policy; and
- (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

HB486 Amendment #1 (Page 4, lines 24-26)

Purpose: Restore regulation language to be in closer conformance with the other sections of MCA zoning regulations (attached), AND to correctly address the requirements and purposes of zoning (attached).

establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate ~~the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land~~ **AND RESTRICT THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR, OR USE OF BUILDINGS, STRUCTURES, OR LAND.**

(Above language is currently used in 76-2-302 MCA)

OR

establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the **DENSITY**, erection, construction, reconstruction, alteration, repair, **OR** location, **OR AND** use of buildings or structures **OR AND** the use of land **AND DENSITY.**

HB486 Amendment #2 (Page 4, line 30)

Purpose: Increase the statute of limitations to a more reasonable length of time.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within ~~5 years~~ ~~60 days~~ **3 YEARS** after the date of the order by the board of county commissioners creating the district or adopting the regulations.

HB486 Amendment #3 (Page 7, line 13)

Purpose: Modify the length of time to receive property owner protests from 30 days to 60 days.

(d) that for ~~30~~ 60 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

HB486 Amendment #4 (Page 6, line 4)

Purpose: It is important that zoning regulations be reasonable.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall **REASONABLY** consider: