



GALLATIN COUNTY

311 West Main, Rm. 306 • Bozeman, MT 59715

County Commission
Senate Local Govt. Comm.
Exhibit No. 3
Date 1-20-11 William A. Murdock
Bill No. SB 183 Joe P. Skinner
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Gallatin County Testimony on Senate Bill 183

January 26, 2011

Senator Jon Sonju, Chairman
Senate Local Government Committee

Mr. Chairman and Distinguished Senators

On behalf of the Gallatin County Commission we would ask your consideration of Senate Bill 183 by Senator Brown. The current position of the commission on this bill is that two commissioners (Commissioner Skinner and Commissioner Murdock) are opposed to the bill as currently written; one commissioner (Commissioner White) wants to see what comes out of the testimony and committee work on amendments before he takes a position.

After careful review of this bill the Gallatin County Commission have increasing concerns about the changes this bill would undertake. In our discussions on this legislation and in discussions on past uses of Interim Zoning by the Gallatin County Commission we recognize the issues that this bill is attempting to correct are legitimate, however the language as currently written doesn't clarify the use of Interim Zoning and in our opinion would only confuse the use of Interim Zoning by a county.

Our first concern is the language of the Bill which states "(4) A board of county commissioners may not establish an interim zoning district or interim regulation to prevent a proposed use of land:" The use of the term "prevent" is unclear in its application. At what point would a county "prevent" the use of the land? Can the county still place conditional use requirements like hours of operation, dust control, traffic control or other conditions meant to mitigate public safety? This bill as written doesn't stop interim zoning; it only confuses the process which will end up spending more time and money in courts fighting over meanings and interpretations.

Second, the new language proposed in SB 183 is similar to language in current statute 76-2-209 "Effect on natural resources. " In this section of zoning code it states, "...may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest or agricultural resource."

The difference in the existing language in 76-2-209 and the proposed language in New Section (4) of the Bill is that existing language in the 209 zoning language further explains the terms as, "prevent the complete use, development, or recovery". This additional language helps guide the intent of the existing statute in its use of "prevent" making it clear to local governments and citizens as they try to utilize this tool.

Additionally the existing provision of 76-2-209(3) goes further in explaining that a local government may "reasonably condition but not prohibit" natural resource issues, making it clearer the rules that apply in looking at traditional zoning.

However, we do recognize that no language currently exists in 76-2-206 (Interim Zoning Statute) that applies to protection of natural resource use or any other use for that matter. When Gallatin County undertook Interim Zoning over gravel mining operations in the county a few years ago we recognized the importance of protecting the ability to develop natural resources like gravel under conditional uses, even though the Interim Zoning statutes did not require us to do so. Recognizing this we do understand the Sponsors and the proponents interest in leveling the playing field between Interim Zoning and regular Zoning; but we ask that the Sponsor and the Committee look for a way to ensure that the language in both Interim Zoning and regular Zoning are consistent and equal.

Our second concern about SB 183 is (4)(a) that states, "the proposed use is subject to regulation and approval by state or federal agency and the agency has received a complete application for the proposed use;" The problem with this language is how broad it could be applied. The terms, "regulation and approval by a state or federal agency" could mean almost any use. Liquor licenses, Medical Marijuana Growing Operations, Casinos, Building Permits, Fire Codes, Health Codes, Wetland Permits, Water Rights, and etc. all could be construed as "use" subject to "regulation".

Again, the vagueness of this language will be subject to interpretation by different county attorneys and private attorneys pulling the use of Interim Zoning back into the courts.

Also, the language as written in (4) (a) only speaks of a single regulation by a state or federal agency, not regulations plural or agencies plural. The reason this is important is the establishment and timing of what would be exempt from or conditioned by Interim Zoning as an existing use. If a gravel pit is near a wetland and stream off a state highway it may be required to get a 404 permit from the Army Corps of Engineers, a 310 permit from the DNRC, an encroachment permit from Department of Transportation, as well as the gravel permit from DEQ. Would all of these permits have to be complete to be exempted from Interim Zoning or just one?

In closing, we would ask that the committee and the sponsor look to ensuring that the language in this legislation gives clear direction to local governments on the use of Interim Zoning and that it be consistent with other provisions of the Zoning code.

If you have any questions or comments, please feel free to contact me: Michael Harris, Gallatin County Legislative Liaison, 311 West Main, Room 304, Bozeman, MT 59715, Phone: 406/582-3178, Cell: 406/580-3029, Email: mike.harris@gallatin.mt.gov.

Again, thank you for your assistance in this important matter.

Montana Code Annotated 2009

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

76-2-209. Effect on natural resources. (1) Except as provided in [82-4-431](#), [82-4-432](#), and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except [76-2-206](#), may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.

(3) Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

History: En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991; amd. Sec. 1, Ch. 340, L. 2005.

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