

VOLUME NO. 37

OPINION NO. 47

COUNTY COMMISSIONERS - Counting protests to creation of zoning districts; FREEHOLDERS - Protests to creation of zoning districts; ZONING DISTRICTS - Protests of freeholders; REVISED CODES OF MONTANA, 1947 - Sections 11-3830, 16-4705, 93-401-16.

HELD: For purposes of counting protests pursuant to section 16-4705(b), R.C.M. 1947, all freeholders within a zoning district whose names appear on the last completed assessment role of the county are entitled to one vote without regard to the number of parcels they own within the district.

20 July 1977

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion concerning the following question:

When counting zoning protests under chapter 47, Title 16, R.C.M. 1947, does a person owning property have a "vote" for each parcel of land within the zoning district or does a person have only one vote within a zoning district without regard to the number of parcels owned?

Chapter 47, Title 16 of the Revised Codes of Montana provides the authorization and procedures for county commissioners to adopt zoning regulations for jurisdictional areas created pursuant to sections 11-3830 or 11-3830.2, R.C.M. 1947.

When establishing or revising boundaries of zoning districts and/or adopting or amending zoning regulations, the commissioners are directed to follow procedures outlined in section 16-4705, R.C.M. 1947. These include notice of a public hearing on the proposals and the holding of a hearing at which the public is afforded an opportunity to express its views. After reviewing the proposals of the planning board, the commissioners may pass a resolution of intention to create a zoning district and adopt zoning regulations for the district. After notice of the passage of a resolution of intention is published, the commissioners are required to receive written protests for 30 days from persons owning real property within the district as determined by the last completed county assessment roll.

The statute directly applicable to the question is section 16-4705(6):

Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year. (Emphasis added.)

Your question is whether this statute should be construed as forty percent of persons owning real property within a district or forty percent of the freehold parcels within a district.

In the construction of a statute, the intention of the Legislature is to be pursued if possible. Section 93-401-16, R.C.M. 1947. The intention of the Legislature must in the first instance be determined from the plain meaning of the words used. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 66 (1968).

The plain meaning of "...forty (40) percent of the freeholders within such district..." is simply forty percent of those persons who can be defined as freeholders within the district. A "freeholder" is one who holds an estate in real property, either of inheritance or for life. Warren v. Chouteau County, 82 Mont. 115, 125, 265 P. 676 (1928). It is evident that the legislative intent was to restrict protests to a particular class of persons. The language does not refer to the quantity of interest within the class of freeholders.

Beyond a reading of the plain meaning of the statute, legislative intent may also be determined by the legislative history of the statute. State ex rel. Federal Land Bank v. Hays, 86 Mont. 58, 63, 282 P. 32 (1929).

Section 16-4705(6) enacted as section 5(6), chapter 246, Session Laws, Thirty-eighth Legislative Assembly, originated as House Bill 262. The only amendments to H.B. 262 were those involving the language under scrutiny here.

As introduced and passed by the House, H.B. 262 precluded adoption of the zoning resolution of the county commissioners where timely protests were filed by "owners of forty (40) percent of the taxable valuation of the real property" within a district. House Journal, Thirty-eighth Legislative Assembly of Montana, p. 664. The Senate, however, abandoned the original statutory scheme of "weighing" protests according to quantity of interest by striking the phrase "owners of forty (40) percent of the taxable valuation of the real property" and substituting "thirty-five (35) percent of the freeholders." Journal, supra, p.664. A final amendment was made by Conference Committee before passage of H.B. 162 which adjusted the percentage figure to forty. Journal, p. 664.

The rejection of the original weighted protest scheme of H.B. 162 in favor of simply "forty (40) percent of the freeholders" as shown by the legislative history supports the determination of legislative intent from analysis of the plain meaning of the statute as discussed above.

THEREFORE, IT IS MY OPINION:

For purposes of counting protests pursuant to section 16-4705(6), R.C.M. 1947, all freeholders within a zoning district whose names appear on the last completed assessment role of the county are entitled to one vote without regard to the number of parcels they own within the district.

Very truly yours,

MIKE GREELY
Attorney General