

CITIES AND TOWNS - Protest areas in connection with municipal zoning amendments;
LOCAL GOVERNMENT - Protest areas in connection with municipal zoning amendments;
PROPERTY, REAL - Protest areas in connection with municipal zoning amendments;
MONTANA CODE ANNOTATED - Sections 7-5-4121(1), 76-2-301, 76-2-302(1), 76-2-305;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 58 (1977).

HELD: Section 76-2-305, MCA, applies to proposed zoning amendments affecting nonrectangular or nonsquare parcels of land. Identification of the statutorily-defined protest areas affected by the proposed amendments must be made with reference to the particular facts.

17 June 1986

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning a question which I have phrased as follows:

Do the protest provisions of section 76-2-305, MCA, apply to a rezoning request affecting a parcel of land whose configuration is neither rectangular nor square?

The land at issue is bounded on the east by Hillview Way; its remaining boundaries are unassociated with any public rights of way. The north and south boundaries of the parcel are generally parallel with each other, while the east and west boundaries are irregularly shaped. You anticipate that protests may be filed by individuals whose property abuts the northwest portion of the parcel.

Section 76-2-301, MCA, authorizes municipalities like Missoula to engage in zoning activities. Under section

76-2-302(1), MCA, the city council "may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of" its zoning authority. Amendments to zoning district classifications are permitted by section 76-2-305(1), MCA, but, when sufficient protests have been filed pursuant to section 76-2-305(2), MCA, must be adopted by a three-fourths vote of all council members rather than by a simple majority of a duly constituted quorum. See § 7-5-4121(1), MCA.

Section 76-2-305(2), MCA, states in full:

In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

I have previously held that section 76-2-305(2), MCA, creates four separate protest areas:

- (a) the area of the lots included in the proposed change;
- (b) the area of the lots immediately adjacent in the rear of the lots included in the proposed change extending 150 feet from those lots;
- (c) the area of the lots adjacent on either side of the lots included in the proposed change within the same block;
- (d) the area of the lots directly opposite the area of the blocks included in the proposed change extending 150 feet from the street frontage of such opposite lots.

37 Op. Att'y Gen. No. 58 at 226, 227-28 (1977). Determination of whether the requisite protests have been filed must be made with individual reference to each of the protest areas. Consequently, if owners of 20 percent or more of the land within any of those areas challenge the proposed zoning change, the three-fourths voting requirement applies. A fundamental purpose of section 76-2-305(2), MCA, is to give property owners adjacent to the parcel affected by the proposed zoning change an opportunity to participate in some protest group.

Section 76-2-305(2), MCA, is most easily applied to zoning changes affecting rectangular or square parcels of land. Nonetheless, in view of section 76-2-302(1), MCA, it also has application to amendments affecting irregularly-shaped parcels. The issue here is simply identifying the boundaries of the statutory protest areas. See Olson v. City Commission, 146 Mont. 386, 393-94, 407 P.2d 374, 378 (1965).

Three of the four statutorily-prescribed areas are involved in this matter. The first is the area composed of all lots, or land, within the parcel proposed to be rezoned and has been described generally above. The second is that property "directly opposite [the rezoned parcel] extending 150 feet from the street frontage of such opposite lots," i.e., the property abutting Hillview Way on the parcel's eastern boundary. In this regard it must be emphasized that the term "frontage" generally refers to "that part of the parcel sought to be rezoned that gives access frontage on a roadway, alley or other public way." Chapman v. County of Will, 55 Ill. 2d 524, 304 N.E.2d 287, 290 (1973). "Frontage" is modified, however, in section 76-2-305(2), MCA, by the word "street" to limit consideration to those portions of the parcel where a street, as opposed to a public right-of-way such as an alley, abuts. When a parcel is abutted by more than one street, determination of whether the requisite protests have been filed must be made in reference to all portions of the parcel so abutted. See Village of Bannockburn v. County of Lake, 17 Ill. 2d 155, 160 N.E.2d 773, 775 (1959). The third protest area is composed of "those [lots] immediately adjacent in the rear [of the rezoned area] extending 150 feet therefrom." This area encompasses all lands outside the parcel sought to be rezoned which, although abutting or within 150 feet of such parcel, (1) are not

separated therefrom by a street or (2) are not on either side of the parcel within the same block. The term "rear" must therefore be construed, if a principal purpose of section 76-2-305(2), MCA, is to be implemented, as including all adjacent property which does not fall within the other statutorily-defined protest areas. Since the protest area associated with rezoning changes in a particular block is inapplicable presently, this final area encompasses all property which is within 150 feet of the rezoned parcel, excluding those "opposite lots" bordering or within 150 feet of Hillview Way. Determination of whether a sufficient number of owner signatures have been secured within any of these protest areas is, lastly, a factual inquiry best undertaken by appropriate city officials.

THEREFORE, IT IS MY OPINION:

Section 76-2-305, MCA, applies to proposed zoning amendments affecting nonrectangular or nonsquare parcels of land. Identification of the statutorily-defined protest areas affected by the proposed amendments must be made with reference to the particular facts.

Very truly yours,

MIKE GREELY
Attorney General