

SUPREME COURT OF MONTANA

Fasbender v. Lewis and Clark County Board of County Commissioners

Fasbender v. Lewis Clark Co., 2009 MT 323 (2009) · No. DA 08-0404 · Decided October 1, 2009

SUMMARY

The Montana Supreme Court affirmed summary judgment upholding interim zoning regulations adopted by the Lewis and Clark County Board of County Commissioners. The Court held that the interim zoning statute required notice and a public hearing but did not incorporate all procedural requirements applicable to permanent zoning regulations. The Court also held that the Board’s publication of only one of two required notices for permanent zoning regulations did not substantially comply with the statute, and the permanent regulations were therefore void.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Brian Morris; Justice John Warner; Justice W. William Leaphart; Justice Jim Rice; Justice James C. Nelson
JURISDICTION	Montana
DECIDED	October 1, 2009
DOCKET	DA 08-0404
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a district court order granting summary judgment to the Lewis and Clark County Board of County Commissioners in a challenge to the adoption of interim and permanent zoning regulations.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; conclusions of law and statutory interpretation are reviewed de novo for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Michael J. Fasbender, John W. Herrin, John and Jane Does 1-25 v. Lewis and Clark County Board of County Commissioners, Deputy County Attorney Paul Stahl, Chief Administrative Officer Ron Alles

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QUESTIONS PRESENTED

1. Whether the notice and public hearing provided by the Board satisfied the procedural requirements applicable to adoption of interim zoning regulations under §§ 76-2-205 and 76-2-206, MCA (2005).
2. Whether the Board substantially complied with the notice requirements of § 76-2-205, MCA (2005), when it published only one notice of passage of the resolution of intent to adopt permanent zoning regulations.

HOLDINGS

1. Section 76-2-206, MCA, incorporates only the notice and hearing requirements applicable to interim zoning regulations, not all procedural prerequisites for permanent zoning regulations. The Board's two published notices and public hearing satisfied those requirements.
2. The Board did not substantially comply with § 76-2-205(5), MCA, because it published only one notice of passage of the resolution of intent when the statute expressly required publication once a week for two weeks. The district court correctly declared the permanent zoning regulations void.

KEY QUOTATIONS

“This Court in Bryant and Christian read only the notice and hearing requirements of the permanent zoning statute into the interim zoning statute. Due process requires nothing more.” (¶ 17)

“The Board published one notice when the statute explicitly requires two published notices during two consecutive weeks. This effort fails to rise to the level of substantial compliance.” (¶ 25)

“A well-settled rule of statutory construction provides, however, that “the specific prevails over the general.”” (¶ 27)

FACTUAL BACKGROUND

The Board published notices and held a public hearing concerning zoning in the Helena Valley, then attempted to adopt permanent zoning regulations. It published only one of the two notices required after passage of the resolution of intent, and later recognized that the omission prevented adoption of the permanent regulations. The Board then adopted substantially similar interim regulations after publishing two notices and holding a public hearing, but without Planning Board review, a resolution of intent, or a 30-day protest period.

PROCEDURAL HISTORY

The Board adopted interim zoning regulations after discovering that it had failed to publish the second notice required for adoption of permanent zoning regulations. Fasbender filed suit challenging the interim regulations and asserting that the Board had substantially complied with the notice requirements for the permanent

regulations. The District Court of the First Judicial District granted summary judgment to the Board on both issues, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Citizen Advoc. for a Livable Missoula, Inc. v. City Council of City of Missoula, 2006 MT 47, 331 Mont. 269, 130 P.3d 1259
- Patterson v. Verizon Wireless, 2005 MT 261, 329 Mont. 79, 122 P.3d 1193
- Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, 803 P.2d 601 (1990)
- LHC, Inc. v. Alvarez, 2007 MT 123, 337 Mont. 294, 160 P.3d 502
- Bryant Dev. Ass'n v. Dagel, 166 Mont. 252, 531 P.2d 1320 (1975)
- State ex rel. Christian, Spring, Sielbach & Assoc. v. Miller, 169 Mont. 242, 545 P.2d 660 (1976)
- Yurczyk v. Yellowstone Co., 2004 MT 3, 319 Mont. 169, 83 P.3d 266
- Petty v. Flathead City Bd. of City Comm'rs., 231 Mont. 428, 754 P.2d 496 (1988)
- State v. Smith, 2004 MT 191, 322 Mont. 206, 95 P.3d 137
- State v. Feight, 2001 MT 205, 306 Mont. 312, 33 P.3d 623
- Jones v. County of Missoula, 2006 MT 2, 330 Mont. 205, 127 P.3d 406

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