

MONTANA SUPREME COURT

Russell v. Flathead County

2003 MT 8 (Mont. 2003) · Decided January 23, 2003

SUMMARY

The Montana Supreme Court affirmed a judgment upholding Flathead County's zoning restrictions on Russell's property. The Court held that Russell's challenge to the creation of the zoning district was barred by the five-year statute of limitations, that his property was included within the district, and that his expanded heavy-equipment repair and storage activities were not a permissible continuation of the prior nonconforming use.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Montana Supreme Court                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Chief Justice Rice                                                                                                                                                                                                                                               |
| JURISDICTION          | Montana                                                                                                                                                                                                                                                          |
| DECIDED               | January 23, 2003                                                                                                                                                                                                                                                 |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Russell appealed the District Court's judgment affirming county zoning determinations and enjoining his use of the property except as permitted by the applicable zoning regulations.                                                                            |
| STANDARD OF REVIEW    | The Supreme Court reviews an order granting summary judgment de novo, applying the same Rule 56 evaluation as the district court. It reviews the district court's legal determinations for error and upholds factual findings supported by substantial evidence. |
| PRECEDENTIAL VALUE    | Published Montana Supreme Court opinion; precedential                                                                                                                                                                                                            |
| PARTIES               | Russell v. Flathead County, Flathead County Board of Adjustment                                                                                                                                                                                                  |

TOPICS

- zoning
- statutory interpretation
- real estate
- standard of review
- appellate procedure

PRACTICE AREAS

- real estate law
- zoning law
- municipal law
- appellate procedure

## QUESTIONS PRESENTED

1. Whether Russell's challenge to the creation of the zoning district and its subdistrict classifications was barred by the five-year statute of limitations in § 76-2-202(1)(b), MCA.
2. Whether Russell's property was included within the boundaries of the Highway 93 North Zoning District when the district was created.
3. Whether Russell's post-purchase heavy-equipment repair and storage activities constituted an impermissibly expanded nonconforming use rather than a continuation of the prior use.

## HOLDINGS

1. Russell's challenge was a challenge to the creation of the zoning district with its distinctive subdistricts and therefore was barred because it was filed more than five years after the district's creation.
2. Russell's property was properly included within the Highway 93 North Zoning District when the district was created.
3. Russell's use was an impermissible expansion and change of the preexisting nonconforming use because it substantially exceeded the prior use in both manner and extent.
4. The district court did not improperly legislate by limiting the type and number of equipment, hours of operation, and visibility of stored equipment; it enforced the requirement that the nonconforming use continue in the same manner and extent as it existed when zoning was adopted.

## KEY QUOTATIONS

*“Thus, Russell's true challenge is to the creation of this zoning district, and because his Complaint was filed more than five years after the creation of the District, his claim is time barred by the statute of limitations set forth in § 76-2-202(1)(b), MCA.” (¶ 21)*

*“The word “continued,” defined as “lasting or extending without interruption,” means simply that a pre-existing use may be maintained.” (¶ 42)*

## FACTUAL BACKGROUND

Flathead County created the Highway 93 North Zoning District in May 1991, and Russell's 4.9-acre property was within the district and classified SAG-1. Before Russell purchased the property, the prior owner operated a dairy farm, repaired farm equipment and built trailers in a shop, and occasionally stored one to three pieces of farm equipment. After purchasing the property, Russell operated a substantially larger heavy-equipment repair and storage business, employing another person and storing approximately twenty to thirty logging trucks, semitrailers, buses, and bulldozers. The county determined that Russell's use was nonconforming, and the district court restricted the use to the manner and extent existing when the zoning district was created.

## PROCEDURAL HISTORY

The county zoning administrator determined that Russell's use was nonconforming. The Flathead County Board of Adjustment affirmed. In the ensuing district-court action, the court granted the County summary judgment on

Russell's challenge to the zoning district, then conducted a bench trial on the remaining claims and entered findings, conclusions, and an order in favor of the County. Russell appealed.

#### **DISPOSITION**

affirmed

#### **CASES CITED**

- Bruner v. Yellowstone County, 272 Mont. 261, 900 P.2d 901 (1995)
- Kersmoe, 156 Mont. 401, 480 P.2d 833