

October 13, 2014

Ms. Nancy Rohde

Deputy County Attorney

Office of the Stillwater County Attorney

P.O. Box 179

Columbus, MT 59019

Re: Signature rules regarding citizen-initiated zoning

Dear Ms. Rohde:

As you know, the undersigned are involved in a citizen-initiated zoning effort in southern Stillwater County. Based on our meeting with you and the County commissioners on Thursday, October 9, 2014, we hereby submit our analysis regarding signature rules for our proposed citizen-initiated zoning petition. We ask that, in conjunction with your advice to the Stillwater County Clerk regarding appropriate signature rules for purposes of our citizen-initiated zoning petition ("CIZ petition"), you consider this submission.

#### I. Background

The citizen-initiated zoning provisions of the Montana code annotated (Title 76, Chapter 2, Part 1) do not contain any explicit rules regarding verification for signatures submitted in support of a CIZ petition. In addition, we are aware of no other statutory provisions that prescribe signature rules with respect to a CIZ petition.

Stillwater County is required under § 76-2-101, M.C.A., to confirm that the signatures submitted with a CIZ petition are valid signatures. In addition, the signature verification rules should not be unduly burdensome on the property owners submitting the petition. Accordingly, the issue is to achieve an appropriate balance between the interests of Stillwater County and the petitioning landowners.

If the County Clerk has any reasonable basis to doubt the validity of a signature page, it is the duty of the County Clerk to investigate and make a determination of whether the signature page is valid, and that investigation may legitimately require the submission of additional documentary proof regarding the identity and authority of the person signing the signature page.

If there is a discrepancy between the legal description of the property on the signature page of the CIZ petition and the legal description of the property in the Stillwater County property records, that would be an independent basis on which to reject that signature page. The remainder of this document is concerned only with the signature/s on the signature page in support of the CIZ petition.

## II. Minutes from 1997 meeting

It is our understanding that you may consider as relevant a document captioned "MINUTES FROM 6/13/97 MEETING WITH BLAIR JONES, SPECIAL COUNSEL." In particular, we are concerned with Question 7, and Answer 7 states as follows:

The trust counts as one freeholder, therefore only one signature can be counted. This also applies to Corporations. Partnerships can have as many signatures as there are partners, with the stipulation that all partners are listed whether they have signed or not.

1. Property held in trust. We agree that, with respect to property held in trust, there is but one legal owner (the trustee), regardless of the number of beneficiaries under the trust agreement.

2. Property held by corporation. We agree that, with respect to property held by a corporation, there is but one legal owner (the corporation), regardless of the number of shareholders.

3. Property held by partnership. The meaning of Answer 7 above is unclear. We conclude that, with respect to property held by a partnership, there is but one legal owner (the partnership), regardless of the number (or class) of partners. Under Montana law, a partnership is an entity separate from its partners. See § 35-10-201, M.C.A. (general partnership), § 35-12-509(1), M.C.A. (limited partnership).

As to who has signature authority for a partnership, the conclusion depends upon whether the partnership is a general partnership or is a limited partnership. Each partner of a general partnership generally has authority to act on behalf of (and bind) the partnership. See § 35-10-301, M.C.A. A general partner generally has authority to transfer partnership property. See § 35-10-302, M.C.A. See also §§ 35-10-310 and 35-10-311 (statement of partnership authority and statement of denial).

With respect to a limited partnership, however, a limited partner does not have authority to act on behalf of (and bind) the partnership. See § 35-12-706, M.C.A. Accordingly, only a general partner of a limited partnership has authority to act on behalf of (and bind) the partnership. See § 35-12-806, M.C.A.

We discern no reason why "all partners ... [must be] listed whether they have signed or not." Because the partnership is an entity distinct from its partners, we (1) do not believe that a listing of partners is required or appropriate and (2) believe that an action by a general partner generally binds the partnership. We acknowledge that some M.C.A. provisions require public disclosure of all partners. See § 35-10-310, M.C.A., which authorizes, but does not require, a "statement of partnership authority," which (if used) requires the names and mailing addresses of all of the partners (or of an agent for the partnership) for specified purposes; 35-12-601, M.C.A. (requiring the certificate of limited partnership to include the name and the business mailing address of each general partner). Those public disclosure provisions relate to public policy concerns regarding persons who engage in business transactions with

the partnership. There is no manifest rationale to import those partner-listing requirements into the CIZ provisions.

### III. Informal conversations with County Clerk

We also have been informally advised by the Stillwater County Clerk that we may be required to provide, with respect to property held in trust or by an entity, additional documentary confirmation that the individual signing the petition has authority to do so. We understand that this might require a copy of the document/s authorizing the individual to sign. We do not know exactly what document/s may be required, but those documents might be:

1. For a trustee, a copy of some or all of the trust agreement. Many trust agreements intentionally are private documents (as compared to a will, which eventually becomes a public document), and the trust settlors legitimately may object to any disclosure of the trust agreement. In addition, some trusts may last over many years, and the identity of the trustee may change over time. The change in trustee may occur under the terms of the trust agreement or possibly by court order. It would be extremely burdensome for CIZ petitioners to confirm the validity of the trustee.
2. For a representative of a corporation, a copy of the corporate documents that empower the individual to sign the petition.
3. For a partnership, a copy of the partnership agreement or other documents that empower the individual to sign the petition.
4. For a limited liability company (which is not discussed in the 1997 MINUTES, but which also is an entity distinct from its members according to § 35-8-201, M.C.A.), a copy of the operating agreement or other documents that empower the individual to sign the petition.

We believe that no such additional documentary confirmation should be required because (1) it would be unduly and unreasonably burdensome on the petitioners and (2) it is not necessary to protect the interests of Stillwater County in determining the validity of a CIZ petition. We believe that the legitimate interests of Stillwater County can be satisfied by having a trustee or a representative of an entity execute and submit with the signature page a sworn affidavit stating that the person signing the signature page of the CIZ Petition has authority to do so. Under § 45-7-202, M.C.A., it is a misdemeanor if (1) a person knowingly makes a false statement under oath or equivalent affirmation and (2) the falsification is purposely made to mislead a public servant in performing an official function. This provision would apply to an affidavit submitted as part of the CIZ Petition, and the provision provides additional reliability that the signature is valid.

It is impossible to prevent an invalid signature page from being submitted with a CIZ Petition, but a signature page executed, under penalty of criminal law, by a trustee or representative of an entity provides a reasonable basis to accept the signature page as filed. We believe that the chances of an invalid signature page are not significant, and we believe that the interests of Stillwater County are adequately protected by use of an affidavit by a trustee or representative of an entity. Indeed, we

perceive no reason to think that a signature page submitted by a trustee or a representative of an entity is any more likely to be invalid than a signature page submitted by an individual, and we believe that it would be unduly burdensome and unreasonable for Stillwater County to require (in addition to an affidavit of authority) additional documentary confirmation regarding a trustee or a representative of an entity.

As stated above, if the County Clerk has any reasonable basis to doubt the validity of a signature page, it is the duty of the County Clerk to investigate and make a determination of whether the signature page is valid, and that investigation may legitimately require the submission of additional documentary proof. Absent any reasonable basis to doubt the validity of a signature page, we believe that the Stillwater County Clerk should accept as presumptively valid a signature page valid on its face that is (1) executed by an individual on his or her own behalf, (2) executed by an individual as trustee if the signature page is supported by an affidavit of authority, or (3) executed by an individual as the representative of an entity if the signature page is supported by an affidavit of authority.

#### IV. Conclusion

In conclusion, we ask that, in conjunction with your advice to the Stillwater County Clerk regarding appropriate signature rules for purposes of our CIZ petition, you consider this submission. We urge your favorable consideration of our suggestion that a signature page be deemed presumptively valid if (1) the legal description of the property is correct and (2) the signature page is (a) executed by an individual on his or her own behalf, (b) executed by an individual as trustee if the signature page is supported by an affidavit of authority, or (c) executed by an individual as the representative of an entity if the signature page is supported by an affidavit of authority.

We thank you for your consideration of this submission.

Sincerely yours,

  
Kayce D. Arthur

  
Henry J. Lischer, Jr.

  
Charles J. Sangmeister

cc: Maureen Davey  
Dennis Shupak  
Gerald Dell