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Legal Opinion 2016-015

TO: City Council, Mayor John Engen, Dale Bickell, Mike Haynes, Leslie Schwab, Laval Means, Marty Rehbein, Kirstin Hands, Ellen Buchanan, Chris Behan

CC: Department Attorney

FROM: Jim Nugent

DATE June 8, 2016

RE: When interpreting a law or ordinance the interpretation must ascertain what is stated and may not insert what has been omitted or omit language that has been inserted by the legislative body.

FACTS:

The current City of Missoula zoning ordinance provisions set forth in sections 20.85.085, 20.85.100 and 20.90.030 Missoula Municipal Code could be better written in several respects; because the current historic preservation ordinance provisions have some apparent inconsistencies as well as interpretation challenges.

ISSUE(S):

What general Montana rules of statutory construction are helpful for interpreting City of Missoula historic preservation ordinances?

CONCLUSION(S):

Rules of statutory construction that could be helpful to interpreting City of Missoula historic preservation ordinances include; but are not limited to, (1) ascertain and declare the existing language utilized in the ordinance, without inserting any language or omitting any existing language pursuant to interpretation; (2) if a general and a particular provision are inconsistent the particular provision is generally paramount to the general provision, and, (3) words and phrases used in the law/ordinance are to be construed according to the context and approved usage of the language utilized in the ordinance. Technical words and phrases are to be construed with their respective peculiar and appropriate meaning.

LEGAL DISCUSSION:

Title 1, chapter 2 Montana Code Annotated (MCA) is entitled “STATUTORY CONSTRUCTION”. Section 1-2-101 MCA is an important basic rule of interpretation that requires that the language of a law as written be ascertained and declared without inserting any language pursuant to interpretation or omitting any existing language pursuant to interpretation. Section 1-2-101 MCA provides:

1-2-101. Role of the judge -- preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Several Montana Supreme Court cases have utilized the plain meaning rule when interpreting laws. Basically, the “plain meaning rule” is a rule of construction or interpretation that provides that if a writing or a provision in writing appears to be unambiguous on its face its meaning must be determined from the written language itself without resort to extrinsic evidence, such as legislative history that might exist in the legislative history public record. See Black’s Law Dictionary, Eighth Edition, page 1188. The rule is intended to focus on the actual language utilized when interpreting the law or ordinance.

Basically, if an intent of a law or ordinance can be determined from the words used in the law or ordinance, then the interpreter of the law or ordinance is to go no further and is not to apply any other means of interpretation in attempting to interpret the law or ordinance. Montana Supreme Court decisions adopting this plain meaning interpretation rule include; but are not limited to: MM&I. LLC V Board of County Commissioners Gallatin County, 2010 MT 274, 358 Mont. 420, 246 P. 3d 1029 (2010); State v. Trull, 2006 Mt 119, 332 Mont. 233, 136 P 3d 551(2006); Dunphy v. Anaconda Co. 151 Mont. 76, 438 P. 2d 660 (1968); Tongue River Elec. Coop v. Montana Power Co. 195 Mont. 511, 636 P. 2d 862(1981); Haker v. Southwestern R. R. 176 Mont. 364, 572 P 2d 724(1978) and St. ex. Rel. Huffman v. District Court 154 Mont. 201, 461 P. 2d 847(1969).

Sections 1-2-102, 1-2-104, 1-2-105 and 1-2-106 MCA set forth additional rules of interpretation for Montana state laws. That provide:

1-2-102. Intention of the legislature -- particular and general provisions. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

1-2-104. Preference to construction favoring natural right. When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

1-2-105. General definitional rules -- verb tense, gender, and number. The following rules apply in this code:

- (1) The present tense includes the future as well as the present.
- (2) Words used in the masculine gender include the feminine and neuter.
- (3) The singular includes the plural and the plural the singular.

Also, see section 1.04.050 Missoula Municipal Code (MMC) entitled "Grammatical Interpretation"

1-2-106. Construction of words and phrases. Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law or are defined in chapter 1, part 2, as amended, are to be construed according to such peculiar and appropriate meaning or definition

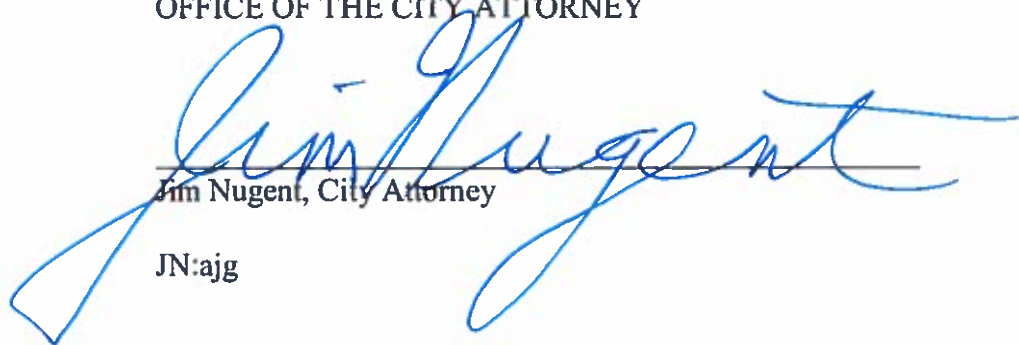
Also, see section 1.04.040 MMC entitled "Interpretation of Language" which states:

1.04.040. Interpretation of Language. All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

CONCLUSION(S):

Rules of statutory construction that could be helpful to interpreting City of Missoula historic preservation ordinances include; but are not limited to, (1) simply ascertain and declare the existing language utilized in the ordinance, without inserting any language or omitting any language pursuant to interpretation; (2) if a general and a particular provision are inconsistent the particular provision is generally paramount to the general provision, and, (3) words and phrases used in the law/ordinance are to be construed according to the context and approved usage of the language utilized in the ordinance. Technical words and phrases are to be construed with their respective peculiar and appropriate meaning.

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