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LEGAL OPINION

2008-010

TO: John Engen, Mayor; City Council; Bruce Bender, Chief Administrative Officer; Marty Rehbein, City Clerk; Roger Millar, OPG Director; Mike Barton, OPG; Tim Worley, OPG; Denise Alexander, Janet Rhodes, OPG; Marty McCrea, OPG; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Gregg Wood, Project Development Coordinator; Carla Krause

FROM: Jim Nugent, City Attorney

DATE October 27, 2008

RE: A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

FACTS:

Citizen inquiry has been received concerning what the deadline is for withdrawal of previously filed protests. This interest arises with respect to the Stony Brook zoning protests that are scheduled for public hearing before the City Council Monday night, October 27, 2008.

ISSUE:

What is the statutorily recognized process as well as deadline for withdrawal of protests pertaining to action items pending before the city council?

CONCLUSION:

Montana general municipal government statutory law provisions, expressly authorizes that "a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body." See subsection 7-4-4132(4) MCA.

LEGAL DISCUSSION:

Title 7, Chapter 1, Part 41, MCA is entitled *Municipalities*. Mont. Code Ann. § 7-1-4132 of Montana's general municipal government statutes expressly authorizes that "a person may in writing withdraw a previously filed protest at any time prior to final action by a governing body."

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

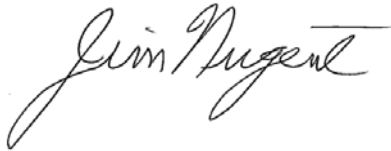
(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures. (Emphasis added.)

CONCLUSION:

Montana general municipal government statutory law provisions, expressly authorizes that “a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.” See subsection 7-4-4132(4) MCA.

OFFICE OF THE CITY ATTORNEY



Jim Nugent, City Attorney

JN:mdg

cc: Legal Staff