

Attachment

A

**BEFORE THE  
GALLATIN COUNTY COMMISSION  
GALLATIN COUNTY, MONTANA**

**IN THE MATTER OF WHETHER TO  
ADOPT THE BELGRADE DONUT/FOUR  
CORNERS AREA INTERIM ZONING  
DISTRICT, REGULATION, AND MAP IN  
ORDER TO REGULATE GRAVEL PIT AND  
ASPHALT OPERATIONS.**

**FINDINGS OF FACT**

On Wednesday, March 26, 2008, after proper notice was provided the public, the Gallatin County Commission (Commission) held a hearing on the following agenda item:

2. Public Hearing and Consideration on Citizen Request to Establish an Interim Zoning District and Regulation Pursuant to Section 76-2-206, MCA, for the Regulation of Operations that Mine Sand and Gravel or Operations that Mix Concrete or Batch Asphalt in All or Portions of the Belgrade City-County Planning Jurisdiction of Gallatin County (Heidi Jensen, Belgrade City-County Planner).

THEREFORE, with completion of the review, consideration of all written and public testimony, County staffs' input and recommendations, the Commission being fully advised of all matters presented to it regarding this application, the Commission makes the following Findings of Fact:

## **FINDINGS OF FACT**

### **I.**

Montana Department of Environmental Quality (MDEQ) is the state agency responsible for oversight of gravel pit operations. MDEQ grants permits for gravel mining operations and regulates gravel mining operations under §§82-4-401 through 446, MCA. §82-4-431(6), MCA provides that:

Sand and gravel opencut operations must meet applicable local zoning regulations adopted under Title 76, chapter 2.

### **II.**

On April 25, 2007 the Commission sent a letter to MDEQ. This letter is attached to these findings as Exhibit A. In the letter the Commission asked whether MDEQ might impose certain conditions upon gravel pit operations. On June 15, 2007 Mr. Neil Harrington, Chief of MDEQ's Industrial and Energy Minerals Bureau, replied by way of a letter attached to these findings as Exhibit B. Most of the Commission's suggested conditions could not be imposed by MDEQ, either because MDEQ did not have the authority to impose such conditions or, where authority did exist to impose a condition, because MDEQ traditionally did not impose such conditions or did not impose conditions at the level the Commission deemed adequate to protect the public welfare.

### **III.**

According to the November 6, 2007 staff report of Planning Director Greg Sullivan, a report pertaining to proposed gravel pits in the Highline Road and Gallatin Gateway areas

of Gallatin County, there are currently 34 privately owned gravel pits in operation in Gallatin County. Exhibit E attached to Sullivan's report showed at least seven proposed gravel pit operations in Gallatin County.

#### **IV.**

In population terms Gallatin County is the fastest growing County in Montana. Areas to the North of the Gallatin Canyon and along the West Gallatin River have seen considerable residential development in recent years. This area also contains considerable gravel deposits that may be subject to commercial gravel operations and/or asphalt operations.

#### **V.**

On November 8, 2007 the Commission conducted an extensive hearing on whether to impose interim zoning to regulate gravel pits in the Highline Road and Gallatin Gateway areas. The Commission voted on November 20, 2007 not to impose interim zoning in this area of the County. The Commission nevertheless heard the concerns of residents in the area of the current and proposed new gravel operations. Those concerns included increased truck traffic; dust; noise; light; loss of residential property values; water quality; and water quantity.

#### **VI.**

During the November 8, 2007 hearing the Commission heard the testimony of Alan English, Manager of the Gallatin Local Water Quality District. English also entered his

written testimony into the record. English stated that the Water Quality District did not take a position on whether interim zoning should be imposed the Highline Road/Gallatin Gateway area. English did offer, however, the following comments:

Once gravel-mining operations move into the ground water system, the potential risks to water quality are significantly increased, and there will be changes in ground water flow patterns, changes in ground water levels, and a new consumptive loss of ground water through evaporation.

In my opinion, these potential impacts to water quality and water quantity are not being sufficiently and accurately addressed under current Montana Department of Environmental Quality Openpit Mining Program. The DEQ Program does not appear to effectively involve the public, and public comments that are received do not appear to be taken seriously in some cases.

## VII.

The Commission was presented a legal memo dated November 6, 2007 from Attorney Michael Kakuk to Cary Hegreberg, Executive Director of the Montana Contractors' Association. In the memo Mr. Kakuk offered the following:

### 1. Can there be any advantages to the gravel industry through zoning?

In my opinion a reasonably constructed zoning ordinance can most definitely be in the industry's best interests. A fair, effective and efficient regulatory process can lead to:

- Increased certainty for the resource owner, the resource provider, neighboring landowners, and the community as a whole. Good regulations should start with identifying those areas where it is appropriate to mine and process the resource. Additionally, the regulations should then set out the conditions under which a gravel operation can take place.
- Permitting efficiencies due to a quicker permitting process. If the areas appropriate for gravel mining and processing have already been identified,

and the reasonable regulations have been adopted through the public zoning process, which requires a public hearing, there should be no need for an additional public hearing if an operator can meet the established regulations. However, if an operator can not meeting the conditions already in place through the zoning process, then that operator would be sent through the variance process which could include another public hearing on the variance application.

- Improved relationships between landowners, operators, and neighbors resulting from the increased certainty and an opportunity to be involved in the permitting process. (emphasis in original)

Kakuk, memo, pg. 5.

## VIII.

After the Commission conducted the November 8, 2008 hearing on gravel pits in the Gallatin Gateway/Highline Road area, residents in the area south and east of Belgrade learned of three applications for new gravel pit operations. The proposed operations are described in Exhibit F.

## IX.

The proposed operations are all located within the planning jurisdiction of the Belgrade City-County Planning Area. In October, 2006 the Belgrade City-County Planning Board adopted a Growth Policy for its planning area. The Growth Policy, consisting of 37 pages and attachments, is hereby incorporated in these findings. The Growth Policy included a general map outlining future land use within the City County Planning Board's jurisdictional area. A copy of the Land Use map is attached to these findings as Exhibit C.

## X.

According to Exhibit C, the land where the proposed gravel pits are located is designated for High Density or Medium Density residential development. According to pg. 37 of the Growth Policy “High Density” development “should be reviewed as if it will someday be located within the City of Belgrade.” Growth Policy, page 37, in its description of “Medium Density,” specifically named Valley Grove and Wiley Creek Estates, subdivisions located in close proximity to the new proposed gravel pits:

Most of the sections designated as Medium Density by the Growth Policy have already had a significant amount of subdivision activity. Some of the most successful rural residential subdivisions in Gallatin County are located in this category including, Mountain View, Valley Grove, Wiley Creek Estates, Landmark, and Cobblestone. Given the popularity of these subdivisions and others, the Plan recognizes that future subdivision activity will be strong in these areas.

## XI.

On February 8, 2008 Kathy Brekke and Jody Gryder, Gallatin County residents residing near the proposed gravel pit operations described in ¶8 above, filed a written request for emergency zoning with the Belgrade City-County Planning Board. On February 25, 2008 a hearing was conducted before six members of the Belgrade City-County Planning Board. The Board considered testimony and evidence regarding whether to recommend that Commission impose interim zoning to deal with the impact of gravel pit operations. The Board recommended, by a 4-2 vote, that this Commission impose interim zoning.

## **XII.**

On March 26, 2008 the Commission held a public hearing to consider the request of the Belgrade City County Planning Board to impose Interim Zoning and heard testimony concerning this request.

## **XIII.**

During the March 26, 2008 hearing Kathy Brekke spoke in support of imposition of interim zoning. Ms. Brekke's testimony is summarized as follows. Particulate matter such as fine dust is related to increases in several diseases and premature death. Dust is produced from a variety of gravel pit operations including crushing, screening, stacking and truck and loader transport on and off site. Dust is also produced from overburden removal, construction of berms and from wind blowing over gravel stockpiles. Hot mix asphalt facilities can also emit significant particulates which can cause acidic changes in lakes and streams, nutrient change in river basins, depletion of soil nutrients and damage to farm crops. Hannah Parsons PA-C, and J. Sofianek, MD wrote that their patients who reside in the area of the proposed gravel pits may suffer adverse effects from the increased dust from gravel mining operations. Noise produced by gravel pit operations may have a deleterious effect on health. Increased truck traffic from gravel operations may pose a threat to public safety, and may damage the surface of county roads. Persons residing near gravel pit operations may suffer from a diminution of their property values.

## **XIV.**

The testimony of Keith Mainwaring, Shane Skinner, and Robert Urich provides evidence that the roads in the area of the proposed gravel pits are not adequate to handle the

volume of heavy trucks that will be generated from gravel pits. It is clear that trucks coming from any of the three proposed gravel pits must use a combination of Alaska Road South, Love Lane, Valley Center Road, and/or Cameron Bridge Road East to transport gravel to areas away from the City of Belgrade. Gravel pit operators should be required to improve and/or maintain county roads that will be damaged due to increased truck traffic. Gravel pit operations should be approved only where the operators respect the residential character of the neighborhoods through which gravel trucks will travel. MDEQ's permitting process is inadequate to mitigate the effects of large truck traffic.

## XV.

The Commission heard and received evidence of the harmful effect that gravel pit operations may have upon residential property values. Joyce Thompson, a broker with Keller Williams Montana Realty, wrote that

[a]s a licensed Broker in Montana, it is my obligation to act in good faith and disclose all adverse material facts known to me about the properties I list. . . It is my professional opinion, the impending gravel pit is a significant adverse material fact and it would certainly be of enough significance to affect a buyer's decision to enter into a contract to buy.

Another real estate agent with 20 years experience, Tom Rapp, wrote:

A buyer would look at the unreasonable heavy truck traffic, uncontrolled speeds, front yard accidents, heavy dust, loud truck noise, and of coarse [sic] the potential of an accident from having to back-up out onto Cameron Bridge . . . . and ask themselves... Why would I want to invest in a home that has to cope with all of these adverse material facts.

To illustrate Ms. Thompson's and Mr. Rapp's point, in December, 2007, Karen Semerau and her fiancé closed on a home located next to one of the proposed gravel pits.



The fact that a gravel operation was proposed next to her home was not revealed to Ms. Semerau or her fiancé during the real estate transaction. Ms. Semerau testified that she was greatly concerned over a potential loss of the value of her home.

## **XVI.**

Economics Professor Orville Bach testified regarding the economic impact of proposed gravel pits upon residential values. Mr. Bach described the economic situation of the resident located near a gravel pit as a “Market Failure,” or a situation where a producer of a good such as gravel harms a third party and the third party has no means to be compensated for the harm. According to Mr. Bach the “Market Failure” situation is one in which government intervention is warranted. Mr. Bach estimated that properties near gravel pits would decrease from 5% to 40% in value. The dollar value of such diminution could result in a \$24 to \$30 million decrease in property values in a 2 mile range of the proposed pit. Some homeowners may lose between \$30,000 to \$50,000 in the value of their homes. Cecilia Lasich, Curtis Crow, Drew Jenkins and Kathy Brekke also testified about their concerns over loss of property values.

## **XVII.**

Several persons testified regarding concerns about how the proposed gravel pits may affect water quantity, water quality, air quality, and MDEQ resources to adequately monitor operations. Larry Lasich was concerned about how the Montana Department of Natural Resources and Conservation (DNRC) views the surface water near gravel operations. According to Mr. Lasich, DNRC classifies the water as wastewater, and requires no

showing from the operator that no adverse impact is created through gravel pit operations. Jody Gryder testified that MDEQ was more interested in the reclamation of old gravel sites that it was in protecting air or water quality during the times the site was in operation. Rep. John Sinrud testified that MDEQ did not have the resources needed to adequately monitor operations. Gryder's and Sinrud's testimony confirms a report from the Bozeman Daily Chronicle, summarized in Kathy Brekke's written testimony. In a Chronicle article regarding interim zoning Mr. Cronin, an MDEQ employee, was quoted as saying that there were currently 2,000 active gravel pits in Montana, with more than 100 gravel pit applications pending MDEQ review, with MDEQ having only 5 employees to approve and regulate the gravel pit operations.

#### **XVIII.**

Several persons testified regarding the impact that gravel pit operations would have on their quality of life. Kathy Brekke, Shane Skinner, Lois Kahler, Jody Gryder, Wally Taylor, and Curtis Crow all testified that gravel pits in the area would be significantly detrimental to quality of life, businesses and general welfare.

#### **XIX.**

Several persons spoke against interim zoning. Reasons offered in support of a denial of interim zoning were that there were old pits in Gallatin County that had been properly reclaimed; that there were other large gravel pits in the vicinity; that current operations in the area were safe and did not pollute water; and that construction costs would greatly increase if interim zoning was imposed. The Commission finds it significant that

Doug Chandler, an engineer, and Cary Hegreberg, executive director of the Montana Contractor's Association, testified that they were willing to work with the county and with the neighbors to arrive at reasonable conditions governing gravel pit operations. Mr. Hegreberg summarized his Association's belief in what conditions might be reasonable through a set of proposed "Good Neighbor Provisions," attached to these findings as Exhibit D.

## **XX.**

The Commission has held hearings considering adoption of zoning throughout Gallatin County. In addition, several neighborhood groups are actively working to adopt neighborhood plans and potentially zoning in Gallatin County. These meetings are ongoing and open to the public.

Importantly, the Belgrade City-County Planning Board has held hearings several meetings regarding the adoption of permanent zoning for the Belgrade planning jurisdiction.

## **XXI.**

Montana law permits the imposition of emergency or interim zoning. §76-2-206, MCA, provides in pertinent part:

- (1) The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:
  - (a) The purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and
  - (b) The county:

- ...
- (ii) has held or is holding a hearing for the purpose of considering any of the following:
    - (A) A growth policy;
    - (B) Zoning regulations; or
    - (C) A revision to a growth policy . . . or to zoning regulations pursuant to this part.

In deciding whether an emergency exists that would warrant imposition of interim zoning, the Montana Attorney General has opined that “[t]he question of what constitutes an “exigency” is necessarily fact-bound, and under the law it is left largely to the discretion of the local governing body.” 49 Op. Att’y. Gen. No. 23, pg. 9.

## XXII.

Based on the foregoing, the Commission finds that residents living in the area of gravel pits have numerous valid concerns regarding the impact that gravel pit and/or asphalt operations may have on their properties, homes, and quality of life. Those concerns included traffic; wear and tear on county roads; noise; dust; hours of operation; water quality; water quantity; and diminution of property values. These concerns, if not addressed through an interim zoning regulation, would have a serious adverse impact on the health, safety and welfare of residents living in the area of gravel pit operations.

## XXIII.

As part of its permitting process it is possible the MDEQ might be able to adequately address the concerns set forth in these Findings of Fact. Whether MDEQ does not have adequate legal authority, and/or whether it does not have adequate resources,

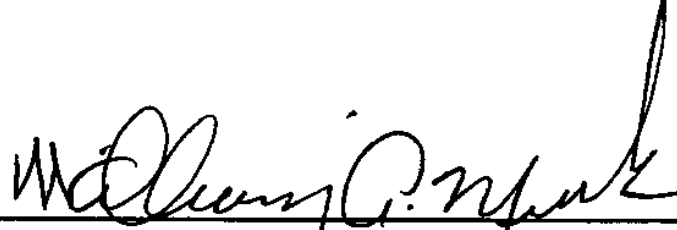
MDEQ's permitting and regulatory processes are not sufficient to protect residents living in the vicinity of gravel pit and/or asphalt batch plant operations.

#### **XXIV.**

Based on the aforementioned, an emergency therefore exists warranting the imposition of interim zoning for a period of at least one year. Gallatin County meets the requirements of §76-2-206, MCA.

DATED this 7th day of May, 2008.

**GALLATIN COUNTY COMMISSION**

  
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WILLIAM A. MURDOCK, CHAIRMAN

DATE 5/8/08

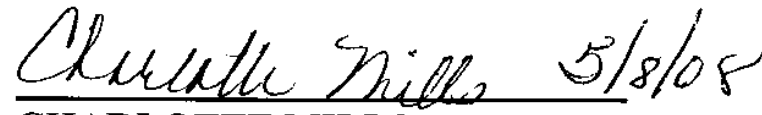
  
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JOE P. SKINNER, MEMBER

DATE 5/08/08

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R. STEPHEN WHITE, MEMBER

DATE \_\_\_\_\_

ATTEST:

  
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CHARLOTTE MILLS,  
CLERK & RECORDER