

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT  
STILLWATER COUNTY**

**BEARTOOTH FRONT COALITION, LAZY  
Y DIAMOND BAR LP, LANA and  
CHARLES J. SANGMEISTER, WILLIAM  
A. and CAROLYN F. HAND, and  
MARGARET BARRON and DOXEY RAY  
HATCH,**

Plaintiffs,

vs.

**BOARD OF COUNTY COMMISSIONERS,  
STILLWATER COUNTY, and HEIDI  
STADEL, in her capacity as Clerk and  
Recorder of Stillwater County,**

Defendants.

Cause No. **DV 18-12**

Judge: **Blair Jones**

**ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT**

Before the Court is a *MOTION FOR SUMMARY JUDGMENT* filed by Defendants Board of County Commissioners, Stillwater County, *et. al.* ("County"). The County is represented by Bethany A. Gross and Nancy L. Rohde. The Plaintiffs, Beartooth Front Coalition *et. al.* ("Beartooth") are represented by David K. W. Wilson, Jr. The motion was originally filed as a *RULE 12(b)(6) MOTION TO DISMISS* but was converted to a *MOTION FOR SUMMARY JUDGMENT* on June 25, 2018. After due consideration of the parties' briefs, together with the applicable law, the Court concludes that the

1 County's *MOTION FOR SUMMARY JUDGMENT* should be denied.

2 **BACKGROUND**

3 Beartooth filed suit challenging the County's refusal to consider Beartooth's petition to  
4 create the Beartooth Front planning and zoning district in Stillwater County. The lawsuit seeks  
5 mandamus and declaratory relief requiring the Stillwater County Clerk and Recorder to certify  
6 signatures gathered by Beartooth as satisfying the requirement of § 76-2-101(1), MCA, and the  
7 Stillwater County Commission to act on the petition under § 76-2-101, MCA. (*Pls.' Compl.*, ¶ 34).  
8 Beartooth alleges that the County refused to consider the petition, despite the fact that Beartooth  
9 gathered over 60% of the surface land owners' signatures on the petition. Beartooth claims that the  
10 County determined that the petition was not valid because Beartooth failed to gather the requisite  
11 signatures of the real property owners in the area when the owners of mineral estate interests are  
12 included. (*Pls.' Compl.*, ¶ 18).

13 According to Beartooth, members of the Beartooth Front Coalition organized to seek citizen-  
14 initiated zoning under the Part 1 zoning process pursuant to § 76-2-101, MCA. (*Pls.' Compl.*, ¶ 13).  
15 The petition requested adoption of regulations on oil and gas activity within the proposed district.  
16 (*Id.*). Beartooth began collecting signatures in 2014 and submitted its petition in February 2017 .  
17 (*Pls.' Compl.*, ¶ 16). In August 2017, the Stillwater County Clerk and Recorder validated the  
18 signatures and determined that the petitioners had gathered more than 60% of the signatures of the  
19 real property owners. (*Pls.' Compl.*, ¶ 17). However, that same month, the Stillwater County  
20 Attorney informed the petitioners that, while they had gathered over 60% of the "surface holders,"  
21 it was unclear whether the requisite number of signatures of the mineral rights owners would also  
22 be required. (*Pls.' Compl.*, ¶ 18). On January 24, 2018, the Stillwater County Clerk and Recorder  
23 informed the Stillwater County Commissioners that, due to the lack of mineral rights owners'  
24 signatures, the petition submitted by Beartooth did not meet the 60% requirement. (*Pls.' Compl.*, ¶  
25 23). The County Commissioners later met and accepted the determination of the Clerk and Recorder  
26 and denied the petition. (*Pls.' Compl.*, ¶ 24).

27 The County filed a *MOTION TO DISMISS*, arguing that the *Complaint* fails to state a claim upon

1 which relief can be granted. Essentially, the County argues that the Court should not consider  
2 whether the County followed the correct procedure in considering the petition because  
3 notwithstanding the creation of the zoning district, state law preempts the County or a zoning district  
4 from promulgating any regulations relative to oil and gas activity, which is the gravamen of  
5 Beartooth's petition. Beartooth contends that the issues are not ripe for decision because no actual  
6 regulations have been issued, and, even if the issues were ripe, local regulation of oil and gas  
7 activities through Part 1 zoning is not preempted by state law.

8 Because the County relied on materials outside of the pleadings in advancing the *Motion to*  
9 *Dismiss*, this Court converted the *Motion to Dismiss* to a *Motion for Summary Judgment*.  
10 Accordingly, the Court gave both parties further time to supplement their filings. On July 26, 2018,  
11 the Court held a hearing on the motion.

#### 12 STANDARD OF REVIEW

13 *M. R. Civ. P.* 56 controls the Court's review of a motion for summary judgment. "Under  
14 Rule 56(c), judgment 'shall be rendered forthwith if the pleadings, depositions, answers to  
15 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
16 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter  
17 of law.'" *Roe v. City of Missoula*, 2009 MT 417, ¶ 14, 221 P.3d 1200 (quoting *Corporate Air v.*  
18 *Edwards Jet Ctr.*, 2008 MT 283, ¶ 24, 190 P.3d 111). "A material fact is a fact that involves the  
19 elements of the cause of action or defenses at issue to an extent that necessitates resolution of the  
20 issue by a trier of fact." *Schweitzer v. City of Whitefish*, 2016 MT 254, ¶ 9, 383 P.3d 735 (quoting  
21 *Roe*, 2009 MT at ¶ 14).

22 "The party moving for summary judgment has the initial burden of establishing both the  
23 absence of genuine issues of material fact and entitlement to judgment as a matter of law."  
24 *Schweitzer*, ¶ 9 (quoting *Roe*, 2009 MT at ¶14). "If the moving party has met its burden then the  
25 burden shifts to the non-moving party and "the non-moving party must set forth specific facts" to  
26 establish the existence of a genuine issue of material fact." *Schweitzer*, 2016 MT at ¶ 9 (quoting  
27 *Thomas v. Hale*, 246 Mont. 64, 67, 802 P.2d 1255, (1990)). "The party opposing the motion for

1 summary judgment cannot rely on mere allegations in the pleadings, but must present its evidence  
2 raising genuine issues of material fact in the form of affidavits or other sworn testimony.” *Arnold*  
3 *v. Yellowstone Mt. Club, LLC*, 2004 MT 284, ¶ 14, 100 P.3d 137 (citing *Yarbro, Ltd. v. Missoula*  
4 *Fed. Credit Union*, 2002 MT 152, ¶ 10, 50 P.3d 158.) If no genuine issues of material fact exist,  
5 the district court “then determines whether the moving party is entitled to judgment as a matter of  
6 law.” *Roe*, 2009 MT at ¶ 14.

7 The purpose of summary judgment is to dispose of claims for which there remain no genuine  
8 issues of material fact, thereby eliminating the expense and burden of a trial. *Cane v. Miller*, 258  
9 Mont. 182, 852 P.2d 130 (1993). But summary judgment is an extreme remedy that should not be  
10 a substitute for a trial on the merits; thus, the Court must draw all reasonable evidentiary inferences  
11 in favor of the nonmoving party. *Jobe v. City of Polson*, 2004 MT 183, ¶ 10, 94 P.3d 743.

## 12 DISCUSSION

13 The motion raises two issues for the Court’s consideration: ripeness and preemption. As a  
14 determination on the issue of ripeness is dispositive, the Court will address only that issue.

### 15 **Ripeness**

16 “The judicial power of the courts of Montana is limited to justiciable controversies.” *Greater*  
17 *Missoula Area Fedn. of Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 22, 353  
18 Mont. 201, 211, 219 P.3d 881, 889. This limitation derives from both constitutional requirements  
19 as well as policy considerations. *Id.* “The central concepts of justiciability have been elaborated  
20 into more specific categories or doctrines--namely, advisory opinions, feigned and collusive cases,  
21 standing, ripeness, mootness, political questions, and administrative questions--each of which is  
22 governed by its own set of substantive rules.” *Id.*, ¶ 23.

23 A case is non-justiciable when it presents an issue that is not ripe for judicial determination.  
24 *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, ¶ 18, 333 Mont. 331, 338, 142 P.3d 864,  
25 870. “The doctrine of ripeness ‘requires an actual, present controversy, and therefore a court will  
26 not act when the legal issue raised is only hypothetical or the existence of a controversy merely  
27 speculative.” *Id.*, ¶ 19 (citing *Montana Power Co. v. Public Service Comm.*, 2001 MT 102, ¶ 32).

1 The basic logic behind this doctrine is “to prevent the courts, through avoidance of premature  
2 adjudication, from entangling themselves in abstract disagreements.” *Id.* (internal citations  
3 omitted).

4 Beartooth argues that the issue of preemption, upon which the County’s motion is based, is  
5 not ripe at this juncture because no zoning regulations have been issued. At this point, the zoning  
6 district has not been approved, and no regulations have been considered or adopted. Therefore,  
7 granting summary judgment on the basis that the regulations would be preempted by state law is  
8 premature. The Court agrees.

9 The Part 1 zoning scheme has clearly separated the act of adopting a planning and zoning  
10 district and the act of considering and adopting regulations. *See*, § 76-2-101, MCA and § 76-2-  
11 107, MCA. It is conceivable that the County would find that all the requirements of § 76-2-101,  
12 MCA have been met to create a planning and zoning district, but ultimately decline to adopt  
13 regulations under § 76-2-101, MCA. Similarly, the County may find that the requirements of § 76-  
14 2-101, MCA, have been met for the establishment of a zoning district, but after a public hearing  
15 required by § 76-2-106, MCA, decline to adopt it. Finally, the County could create a planning and  
16 zoning district and adopt a limited set of regulations that are not preempted by state law.

17 Here, the County rejected the petition, citing reasons other than preemption. The County  
18 did not hold a public hearing as required by § 76-2-106, MCA. Stated simply, because the County  
19 failed to follow the statutory procedure in creating or rejecting a proposed planning and zoning  
20 district as outlined in § 76-2-101, MCA, *et seq.*, it is premature to consider whether hypothetical  
21 regulations adopted subsequent to the creation of a planning and zoning district are preempted by  
22 state law.

23 To grant summary judgment to the County based on a state law preemption theory, the Court  
24 would have to issue an advisory opinion. The Court would have the impossible task of deciding  
25 what regulations, if any, are permissible under relevant Montana statutes without having any specific  
26 regulations to analyze. The Montana Supreme Court has consistently declined to issue advisory  
27 opinions. *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 9, 355 Mont. 142,

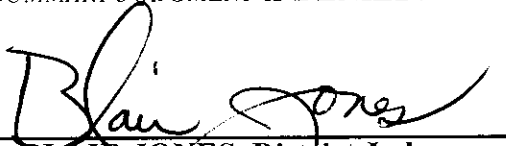
1 142, 226 P.3d 567, 569. This Court declines as well.

2 Because the Court's determination as to the ripeness issue is dispositive of this motion, the  
3 Court finds it unnecessary to discuss the remaining issue of preemption.

4 Accordingly, for the reasons stated above,

5 **IT IS ORDERED** that the County's *MOTION FOR SUMMARY JUDGMENT* is **DENIED**.

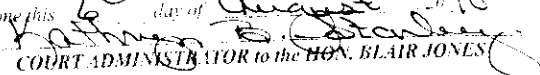
6 **DATED** this 6<sup>th</sup> day of August, 2018.

7   
8 **BLAIR JONES, District Judge**

9 cc: Bethany A. Gross  
10 Nancy L. Rohde  
11 David K. W. Wilson, Jr.

12  
13 **CERTIFICATE OF SERVICE**

14 This is to certify that the foregoing was duly served by mail,  
15 fax, or email upon the parties or their attorneys of record at  
16 their last known address.

17 Done this 6<sup>th</sup> day of August, 2018  
18 By:   
19 **COURT ADMINISTRATOR to the HON. BLAIR JONES**

20  
21  
22  
23  
24  
25  
26  
27