





1 Mont. at 102, 951 P.2d at 1354). The only relevant document when considering a  
2 motion to dismiss is the appeal and any documents it incorporates by reference.  
3 Here, this includes only the exhibits submitted with the appeal.

#### 4 ANALYSIS

5 Setting aside the legal conclusions or allegations that have no factual basis,<sup>1</sup>  
6 the relevant facts set out in Payne’s appeal are these:

7 1. Payne was not given direct notice of the public hearing, so no  
8 representative of Payne Logging was present at the “public” hearing. The  
9 Resolution only states that there was “unanimous opposition and no proponents.”  
10 Payne Logging was not given a chance to explain or advocate for the boundary  
11 adjustment.

12 2. The boundary adjustment requested in the Application is not an  
13 increase in acreage, but a change in the location of the delineated boundaries. The  
14 adjustment would allow for a more practical space to store and process the junk  
15 vehicles. With this boundary adjustment, Payne Logging would be better able to  
16 satisfy its shielding requirements.

17 3. If these requested improvements, which will also include shielding of  
18 junk vehicles, are allowed, the neighboring landowners will benefit.  
19 The facts that are contained within Payne’s exhibits also ought properly to be  
20 included in this analysis, and are reviewed below.

21 Payne’s legal arguments in its notice of appeal are threefold. First, it states  
22 that DEQ’s denial is based solely on the County’s denial. Second, it argues that,  
23 because the County did not make a quality-of-life finding that was required by law,

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24 <sup>1</sup> Payne’s statement that the County may only oppose the location of a proposed  
25 facility if that location will “significantly affect the quality of life of adjoining  
26 landowners and the surrounding community” is a legal conclusion and is addressed  
27 below. Payne’s statement that this appeal is timely and proper pursuant to Mont.  
Code Ann. § 75-10-515, and that Lincoln County’s 30-day statutory period to  
conduct another public hearing and object to the project has now passed, are both  
legal conclusions, and neither is germane to this decision.

1 and because the hearing was without proper notice, the County's denial was  
2 improper. Finally, it argues that, since the County's denial was improper, DEQ's  
3 denial of the permit is, in turn, improper.

4 Payne's first two arguments can be addressed through a plain reading of the  
5 statute. its first argument is that DEQ's denial of the Application was improper  
6 because it is based solely on the County's opposition. Mont. Code Ann. § 75-10-516  
7 reads as follows:

8 **75-10-516. Motor vehicle wrecking facilities and motor vehicle**  
9 **graveyards -- licensing process -- decision criteria.** (1) When an  
10 application for a motor vehicle wrecking facility or motor vehicle graveyard  
is filed with the department, the department shall notify by mail:

11 (a) each owner of property adjoining the proposed facility;

12 (b) the governing body of the county in which the proposed facility is to  
be located; and

13 (c) a newspaper of general circulation in the area where the proposed  
facility is to be located.

14 (2) Within 30 days of receipt of the notification in subsection (1)(b), the  
governing body of the county may:

15 (a) conduct a public hearing to determine whether the proposed facility  
16 will significantly affect the quality of life of adjoining landowners and the  
surrounding community; and

17 (b) adopt a resolution in support of or opposition to the location of the  
18 proposed facility and transmit a copy of the resolution to the department.

19 (3) The department may not grant a license to a facility that a governing  
body has opposed under subsection (2)(b).

20 (4) In making its decision to grant or deny a license application, the  
21 department shall consider the effect of the proposed facility on adjoining  
landowners and land uses.

22 The Montana Supreme Court has repeatedly held that implementing the  
23 intention of the Legislature when interpreting a statute is paramount. *In re K.M.G.*,  
24 2010 MT 81, P 26, 356 Mont. 91, 229 P.3d 1227 (*citing* Mont. Code Ann. § 1-2-  
25 102; *Montana Vending v. Coca-Cola Bottling Co.*, 2003 MT 282, ¶ 21, 318 Mont. 1,  
26 78 P.3d 499). One determines the intention of the Legislature first from the plain  
27 meaning of the words used, and if interpretation of the statute can be so determined,

1 one may not go further and apply any other means of interpretation. *State v. Trull*,  
2 2006 MT 119, P 32, 332 Mont. 233, 136 P.3d 551 (citing *Dunphy v. Anaconda Co.*,  
3 151 Mont. 76, 79-81, 438 P.2d 660, 662 (1968)); *see also Tongue River Elec. Coop.*  
4 *v. Montana Power Co.*, 195 Mont. 511, 515, 636 P.2d 862, 864 (1981); *Haker v.*  
5 *Southwestern R.R.*, 176 Mont. 364, 369, 578 P.2d 724, 727 (1978); *State ex rel.*  
6 *Huffman v. District Court*, 154 Mont. 201, 204, 461 P.2d 847, 849 (1969). “In the  
7 search for plain meaning, ‘the language used must be reasonably and logically  
8 interpreted, giving words their usual and ordinary meaning.’” *Gaub v. Milbank Ins.*  
9 *Co.*, 220 Mont. 424, 427, 715 P.2d 443, 445 (1986) (quoting *In re McCabe*, 168  
10 Mont. 334, 339, 544 P.2d 825, 828 (1975)).

11 In this case, a plain reading of Mont. Code Ann. § 70-10-516(3) does not  
12 support Payne’s contentions. The plain language of the statute clearly states, “The  
13 department may not grant a license to a facility that a governing body has opposed  
14 under subsection (2)(b).” The plain meaning of this is that the County’s opposition  
15 is not only sufficient grounds to deny the permit, but is, in fact, an absolute barrier  
16 to granting that permit. This argument therefore fails.

17 Payne’s second argument is that the County may *only* oppose the location of  
18 a proposed facility under Mont. Code Ann. § 70-10-516(2)<sup>2</sup> if that location will  
19 “significantly affect the quality of life of adjoining landowners and the surrounding  
20 community.” Again, this is not supported by a plain reading of the statute, which  
21 reads as follows:

- 22 (2) Within 30 days of receipt of the notification in subsection (1)(b), the  
23 governing body of the county *may*:
- 24 (a) conduct a public hearing to determine whether the proposed facility will  
25 significantly affect the quality of life of adjoining landowners and the  
26 surrounding community; and
  - (b) adopt a resolution in support of or opposition to the location of the  
proposed facility and transmit a copy of the resolution to the department.

27 <sup>2</sup> Payne also refers to Mont. Code Ann. §70-10-516(3), but this statute is not  
applicable to the County.

1 Mont. Code Ann. § 70-10-516(2) (*emph. added*). The “may” emphasized above is  
2 permissive. It allows, but does not require, the County to conduct such a public  
3 hearing, and to adopt a resolution supporting or opposing the location of the facility.

4 However, there is no statutory requirement that the County do so, nor, more  
5 importantly, is there a statutory requirement that DEQ consider the basis of the  
6 County’s support or opposition. This argument is therefore similarly unpersuasive.

7 Payne’s third argument requires more than purely facial analysis. Payne  
8 makes the allegation that the County conducted its determination illegally. It is  
9 possible to construe this as a statement of fact, and not a conclusion of law.  
10 However, Payne goes on to argue that DEQ has an independent obligation to justify  
11 its own denial, and this independent obligation includes an inquiry into the legality  
12 and basis of the County’s determination. Payne Reply Brief, p.3.

13 Payne argues that, functionally, this is because DEQ’s denial has the  
14 improper effect of allowing the County’s judgment to replace its own, and cites  
15 *Mont. Envtl. Info. Ctr. v. Mont. Dep’t of Envtl. Quality*, 2005 MT 96, to support that  
16 argument. Payne Reply Brief p.3. This case is inapposite. It relies on an entirely  
17 different statutory scheme, and on statutory requirements for DEQ, that are not  
18 relevant to Payne’s permit application. The relevant decision criteria, as set out  
19 above, do not allow inquiry into whether DEQ was required to engage in  
20 independent analysis. Rather, the criteria forbid DEQ from engaging in such  
21 analysis. The County’s opposition to Payne’s application prohibited DEQ from  
22 granting Payne its license. The County adopted a resolution in opposition to the  
23 location of the proposed facility and transmitted a copy of the resolution to DEQ,  
24 which, in turn, was statutorily prohibited from granting a license to a facility that the  
25 County has opposed. Even assuming, *arguendo*, that the Board were to overturn or  
26 remand DEQ’s decision, Mont. Code Ann. § 70-10-516(3) would prohibit DEQ  
27 from granting Payne its license.

1 Payne states that the only relief available to it is through recourse to the  
2 Board. This is incorrect. The Board of Environmental Review lacks the power to  
3 grant such relief. It may only review DEQ's decision. The undersigned takes notice  
4 of Mont. Code Ann. Title 27, Chapter 19, Part 2, and its applicability to fact  
5 scenarios such as this. *See, e.g., Sweet Grass Farms, Ltd. v. Board of County*  
6 *Comm'rs, 2000 MT 147.* And, as the analysis above shows, there is no set of facts  
7 in support of Payne's claim that would entitle it to the relief it seeks from the  
8 Board.<sup>3</sup>

9 **CONCLUSION**

10 Even when viewed in the light most favorable to Payne, with all allegations  
11 of fact contained therein taken as true, Payne's appeal does not reveal any error on  
12 the part of DEQ. It is beyond a reasonable doubt that Payne can prove no set of  
13 facts which would entitle it to relief, given that the County has opposed its license  
14 application. Therefore, DEQ's motion to dismiss ought to be granted, and Payne's  
15 denied.

16 DATED this 14<sup>th</sup> day of July, 2016.

17 

18 BENJAMIN REED  
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20 Agency Legal Services Bureau  
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24 <sup>3</sup> Payne raises a new argument in its briefing. This is that DEQ has failed to follow  
25 its own rules – specifically, Admin. R. Mont. 17-50-202 and -203 – in denying  
26 Payne's application. These rules involve shielding of facilities from public view.  
27 Payne argues that its filing an application is tantamount to evidence of its  
compliance with the shielding requirements, and generally with Mont. Code Ann.  
Title 75, Chapter 10, Part 5; therefore, DEQ was required to have determined that  
the Payne was complying with shielding and other requirements, and was therefore  
required to issue the license. But Exhibits A and B contradict this, inasmuch as they  
both indicate that Payne was not in compliance with the shielding requirements.

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing Order  
to be mailed to:

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DATED: 14 July 2016 