

Hon. Benjamin J. Fosland
District Court Judge
15th Judicial District Court
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MONTANA SEVENTH JUDICIAL DISTRICT COURT, PRAIRIE COUNTY

<p>PRAIRIE COUNTY, Plaintiff,</p> <p>v</p> <p>SHANE EATON and TYLENE EATON and GLENDIVE WIND, LLC, Defendants.</p>	<p>Cause No. DV-40-2026-01</p> <p>Honorable Benjamin J. Fosland</p> <p><u>ORDER DENYING DEFENDANT EATONS' REQUEST TO GRANT SUMMARY JUDGMENT AND GRANTING PLAINTIFF'S MOTION TO STRIKE</u></p>
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Before the Court is a Notice of Issue filed by Eatons and Motion to Strike filed by Prairie County. The matter has been fully briefed and is ripe for the court's consideration. The court finds ruling on Eaton's summary judgment motion to be inappropriate at this time and declines to do so, and also finds Prairie County's argument persuasive concerning the striking of certain documents and grants that motion. The court's reasoning is detailed below.

FACTUAL AND PROCEDURAL BACKGROUND

This case presents questions of the constitutionality, validity, and sufficiency of a proposed citizen-initiated zoning ordinance in Prairie County. Prairie County's initial complaint was filed on January 29, 2026.¹ Following the Defendant's Answer and motion for scheduling order² on February 5, 2026, Eatons then filed a motion for

¹ Doc. No. 1.

² Doc. No. 9.

Summary Judgment on February 9, 2026.³ This court promptly set the matter for a scheduling hearing, recognizing that the suit would likely be time-sensitive.

A scheduling hearing was held on February 10, 2026, at which counsel for both Prairie County and Eatons appeared.⁴ The parties and the court agreed to deadlines for filing motions for summary judgment, and specifically discussed Eatons retaining their ability to amend their previously filed motion, if they so chose. The parties do not now dispute this.⁵

Despite this agreement and mutual understanding between the parties and the court, on March 6, 2026, a Notice of Issue was filed by Eatons claiming that the window for responding to its original motion for summary judgment had lapsed, and therefore, the court should summarily rule in Defendants' favor.⁶

A flurry of response and reply briefing concerning the Eatons' Notice of Issue and a Motion to Strike by Prairie County followed. Most recently, on March 18, 2026, Glendive Wind appeared in the case and simultaneously filed an unopposed motion for a second scheduling conference.⁷

DISCUSSION

A. Notice of Issue

Concerning motions for summary judgment, a court is allowed to decide a motion in favor of one party if the other party does not respond.⁸ Importantly though, summary judgment should only be entered in such cases "*if appropriate.*"⁹

³ Doc. No. 12.

⁴ See Doc. No. 17.

⁵ See Defendant's Reply in Support of Notice of Issue, Doc. No. 23, p. 5 ("Back on February 10, 2026, at the hearing on the Scheduling Order, the Eatons wanted to keep their options open to amend."); Plaintiff's Objection to Proposed Notice of Issue, Doc. No. 22, p. 2 ("At the Scheduling Conference . . . counsel for Prairie County clearly stated on the record that the new date for filing motions would also give Defendant Eatons' counsel time to amend their Motion for Summary Judgment as Mr. Overstreet had given himself little time to prepare said Motion and Brief in Support.")

⁶ See Doc. No. 21.

⁷ See Doc. Nos. 31, 30.

⁸ See M.R.Civ.P. 56(e)(2); See *Fisher v. First Citizens Bank*, 2000 MT 314, ¶ 23, 302 Mont. 473, 14 P.3d 1228.

⁹ See *id.*

The court finds that granting summary judgment in this instance would be inappropriate and declines to do so. As noted above, it is undisputed that the parties contemplated filing or amending motions for summary judgment on the timeline agreed-upon at the scheduling hearing and by the dates set forth in the court's scheduling order. These dates were set with a view toward a full and fair investigation and briefing of the issues and the law while maintaining a tight enough timeline to get the measure on the fall ballot if Eatons were successful. Whether Eatons later changed their minds as to amendment is irrelevant, as that change was never communicated to the other parties or the court. When both parties contemplated cross-motions for summary judgment, as well as some limited discovery to occur, it would be wholly inappropriate to short-circuit the legal process and rule on the record as it stands.

As an alternative but equally important basis for denying Eatons' request, Glendive Wind has now appeared and has requested a scheduling conference to modify various deadlines. It has had no opportunity to respond to Eatons' summary judgment motion whatsoever. The court does not presume to know Glendive Wind's position about dismissal, and finds that the party itself would be in the best position to speak on that point and any others.

B. Motion to Strike

Prairie County has also requested that the court strike two separate items. First, Prairie County argues that Eatons' Reply to the Notice of Issue raised new arguments that the case is moot and described actions of Prairie County in a way that was inaccurate, immaterial, and impertinent. It requests those arguments be struck. Second, Prairie County argues the Declaration of Shane Eaton should be struck because it contains inaccurate, immaterial and an impertinent depiction of the actions of Prairie County and also goes beyond Prairie County's Objection.

Pursuant to Rule 12(f) of the Montana Rules of Civil Procedure, the court may act on its own or on motion made by a party and strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter."¹⁰ "Impertinent" is defined by Webster's

¹⁰ M.R.Civ.P. 12(f).

dictionary as “not restrained within due or proper bounds especially of propriety or good taste” and also, more simply, “not pertinent; irrelevant.”¹¹

The court views Eatons’ arguments in their Reply as potentially germane to their summary judgment motion, but agrees with Prairie County that the place for such arguments is not in a reply brief following a Notice of Issue. The same goes for the information in the Declaration of Shane Eaton. The process of motion, response, reply throughout civil and criminal procedure is designed to sharpen the issues presented and identify the key facts and legal principles upon which a matter depends. If Eatons wish to bring these arguments forward, they are certainly welcome to do so in the form of an amended motion for summary judgment or a motion to dismiss, filed within the timeline set by the court’s scheduling order. In their current location, however, the court finds these arguments and the declaration fall outside of their “proper bounds”. As such, the court finds Prairie County’s argument persuasive and will strike the requested items.

As a note in closing, this court takes a dim view of the gamesmanship displayed here by Eatons and has little patience for such tactics. The parties and counsel are expected to be mindful of the court’s time and each other’s, and to deal with each other fairly. Effective and good faith communication is essential for the efficient functioning of our justice system. All parties should bear that in mind as this litigation proceeds and ensure that any arguments put forth in the future are truly worthy of the court’s consideration.

Based on the foregoing discussion, the court HEREBY ORDERS as follows:

1. To the extent Eatons’ Notice of Issue requests that the court rule summarily on their motion for summary judgment, that request is DENIED;
2. Prairie County’s Motion to Strike is GRANTED;
3. Eatons are invited to incorporate in an amended motion for summary judgment or motion to dismiss any statements or arguments contained in their Reply to Notice of Issue; and

¹¹ See Merriam Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/impertinent>, accessed on 3/19/2026.

4. The Parties shall adhere to the deadlines as set forth in the Court's current scheduling order (Doc. No. 17) until further order of the court.

IT IS SO ORDERED. The Clerk of Court is directed to file this Order and provide copies to all Parties of record.

Electronically signed and dated below.

BENJAMIN J. FOSLAND
District Court Judge