

To: Members of the House Local Government Committee

From: Tom Burnett

Dated: February 14, 2005

I wish to urge you to support and vote for House Bill 594. That a change to the Constitution is needed is evidenced by land use regulations that "take" a portion of the value of certain private property. The purposes are public, but the burden is private, felt by just a few owners, sometimes a single owner. Passage of such harmful regulatory measures is easy, as the many can dominate the few at election time. A constitutional change will restrain a government agency that wishes to accomplish its purposes with little cost, but disproportionate impact on property owners.

Why pay \$1.25 million to acquire land for open spaces, when at a tiny fraction of the cost, a county, or city, or regional planning authority can zone the land to achieve most of its desired end, that is, the restriction of new construction? An owner of a parcel of land may value it at \$1,000,000 if it were prepared and sold for residential housing. That same 10 or 20 acres may produce hay, forage or row crops whose annual profit may be \$1,000 - \$2,000. Appraised value of the land, if locked-in to agriculture through any of a variety of land use regulations, would be in the tens of thousands of dollars. The owner would have suffered a partial taking, for the full value of the land was not taken. Only 95-98% of the value was taken. But the harm was egregious. Officials have dodged having to pay for such partial takings by massaging the just compensation clause. A clarification is in order.

Land use regulations often result in substantial diminution in the value of land. Presently these losses are privately borne. If the issuing agencies were required to compensate, as the present Constitution requires of explicit takings, people whose lands and other property is taken would not be harmed, and taxpayers could better evaluate the importance of the regulations they favor. Taxpayers actually do vote tax increases for such public purposes as open space, an outcome seen in Gallatin County in recent years. Though this system is an imperfect instrument, it is far more respectful of the landowning neighbors than mere takings through zoning. It illustrates that taxpayers will pay for open space, that valid public purposes need not languish.

The State Department of Highways has a protocol for compensating landowners any time they seize land for their purposes. This is well-established. They diligently appraise the land. They certify the public nature of their project. They promptly and fully pay owners. This is because the principle of just compensation for governmental takings for public purposes is perfectly enunciated in the Constitution.

On the other hand, zoning officials feel no such burden. Their actions seem cost-less to them and the constituents that prompt them. When the Constitution requires compensation for partial takings, costs will be apparent, and appetites dulled.

I urge you to pass this bill out of committee, so that it may be passed by both houses and then judged by the electors of Montana.

Sincerely,



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*I am indebted to Richard Epstein for a few passages of the above testimony. I drew from his book, "Takings: Private Property and the Power of Eminent Domain".