



Policy Statement

Property Rights / Takings

LEGISLATIVE IDENTITY
COMMITTEE NO. 11
DATE 2/18/11
BILL NO. SB 344

Background:

Article II, Section 29 of the Montana Constitution addresses "takings" by stating, in part, that "[p]rivate property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner."

Additionally, the Fifth Amendment to the U.S. Constitution reads, in part, "...nor shall private property be taken for public use, without just compensation."

The U.S. Supreme Court, with the Montana Courts generally following, has established four rules identifying situations that amount to a taking of property:

1. Where the landowner has been denied "all economically viable use" of the land;
2. Where the regulation forced the landowner to allow someone else to enter onto the property, not related to a land use application review;
3. Where the regulation imposes a burden or cost on the landowner that does not bear a "reasonable relationship" to the impacts of the project on the community; and
4. Where the government can equally accomplish a valid public purpose through regulation or through a requirement of dedicating property, government should use the least intrusive regulation.

As the area of "takings" evolved in the US and State court system, so has the "police power". The concept of police power is the right of the government to interfere with private activity (or the use of private property) for the protection of the public health, safety and welfare. The takings decisions issued by the US and Montana courts have set limits on the extent of the police power regulation and allowed both takings and police power to evolve together.

The Legislature has become increasingly interested in takings when it has viewed Court decisions as granting too much power to local governments. Recently, some legislators have put forth proposals to compensate landowners for reductions in value due to regulations. This would substantially increase costs to local government, and in turn taxpayers, effectively paralyzing local governments from fulfilling their responsibilities of protecting the public health, safety and welfare. Police powers, typically through zoning or subdivision regulations, do limit the use of property, which provides certainty for neighboring owners. However, they also provide for ways that property can be benefited in value through upzoning or construction of new infrastructure near a property. The local government does not get a direct payment from the property owner when this benefit is provided.

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Position:

The Montana Association of Planners supports the evolving law in Montana that recognizes the importance of the police power to protect the public health, safety and welfare and the limitations imposed on that power by the Montana and U.S. Constitutions.

1. MAP supports private property rights as guaranteed by the Montana and U.S. Constitutions and the land use regulations that protect those rights for the benefit of all property owners.
2. MAP generally opposes "takings" legislation that expands the "takings" doctrines established by the Montana and U.S. Supreme Courts that are detrimental to the ability of local governments to protect their citizens through the police powers.
3. MAP believes that all regulations should be supported by a locally adopted Growth Policy that addresses economic, social, environmental and other issues affecting landowners, taxpayers and residents as well as the larger community.

Legislative Direction:

The Montana Association of Planners does not see the need for new legislation to address takings or property rights. MAP supports the protection of private property rights through existing statute and case law.