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68th Montana Legislature

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TO: Local Government Committee Members
FROM: Julie Johnson, Staff Attorney
RE: Housing Litigation Update
DATE: May 13, 2024

Montanans Against Irresponsible Densification, LLC v. State:

I. District Court (DV-23-1248C)

Montanans Against Irresponsible Densification, or MAID, filed suit against the State challenging the constitutionality of the following pieces of legislation passed in the 2023 session:

- [Senate Bill 382](#), the Montana Land Use Planning Act, which requires a municipality with a population at or exceeding 5,000 located within a county with a population at or exceeding 70,000 to comply with the Act.
- [Senate Bill 245](#), which requires cities of 7,000 residents or more to allow apartment-style housing in most areas set aside as commercial zones.
- [Senate Bill 323](#), which requires cities to allow duplex housing on any home lot in cities with 5,000 residents or more.
- [Senate Bill 528](#), which requires cities to adopt regulations allowing more construction of accessory dwelling units, or secondary housing structures that share parcels with larger homes.

In their Complaint, the Plaintiffs sought the following relief:

A declaratory judgment that the provisions of SBs 323, 528, 245 and 382:

- may not be used by any person or governmental entity to invalidate or displace covenants that are more restrictive than those developed by Montana’s municipal governments.
 - are facially unconstitutional in violation of Montana’s constitutional provisions regarding rights of public participation and rights “to know”;
 - That any attempt by municipalities to develop an ordinance pursuant to SB 323, SB 528, SB 245 and SB 382 is unconstitutional because they deny Plaintiffs their rights to equal protection of the law;
 - That any attempt by municipalities to develop an ordinance pursuant to SB 323, SB 528, SB 245 and SB 382 is unconstitutional because they deny Plaintiffs their rights to due process of law.
2. A permanent injunction, enjoining the State of Montana and its municipalities from implementing SB 323, SB 528, SB 245 and SB 382.
 3. A preliminary injunction, preliminarily enjoining the State of Montana and its municipalities from implementing SB 323 and SB 528, both of which are scheduled to take effect January 1, 2024, and preliminarily enjoining SB 245 which purported to go into effect on passage, and purports to be retroactive.
 4. An order awarding Plaintiffs their costs and attorneys’ fees.

On December 29, 2023, following a show cause hearing the day before, the District Court issued a preliminary injunction enjoining the implementation of SB 323 (legalizing duplexes) and SB 528 (legalizing accessory dwelling units) on residential land across the state. The District Court ruled that these two laws would do "irreparable" damage to residents of single-family neighborhoods. The ruling on the preliminary injunction on SB 323 (legalizing duplexes) and SB 528 (legalizing accessory dwelling units) has been appealed to the Montana Supreme Court, which is discussed in Section II.

On April 3, 2024, the Gallatin County District Court granted the State's request to stay the District Court proceedings pending the appeal of the preliminary injunction before the Montana Supreme Court.

II. Montana Supreme Court (DA 24-0039)

The State appealed the preliminary injunction to the Montana Supreme Court on January 17, 2024. The State requested and received an extension of time to file its opening brief. It does not appear that the State has filed an opening brief to date.

In the meantime, a third party called Shelter Whitefish filed a motion with the Supreme Court to intervene in the appeal. The State did not object to the motion to intervene, however, the Plaintiffs did. While the Supreme Court denied the motion to allow the Shelter Whitefish to intervene, it granted Shelter Whitefish the opportunity to file an *amicus* (friend of the court) brief. Shelter Whitefish describes itself as the "leading voice for pro-housing policy and the now-challenged bills."

Along with Shelter Whitefish, four other parties have filed an amicus brief with the Supreme Court:

- Land Use Consultants (in support of the Plaintiff)
- Citizens for a Better Flathead (in support of the Plaintiff)
- Better Bozeman Coalition (in support of the Plaintiff)
- Institute for Justice (in support of the State)

It is unknown whether other entities may seek to file amicus briefs. I will continue to update the committee as this case proceeds through the Montana Supreme Court.