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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 – Overview

DATE: January 10, 2024

Montanans Against Irresponsible Densification, LLC v. State (DV-23-1248C):

Montanans Against Irresponsible Densification, or MAID, has 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.

MAID describes itself as a group of members from various Montana cities who live in neighborhoods “characterized by single-family homes, attractive well-maintained yards, and quiet streets.” MAID argues that the new housing laws, aim to impose “top-down ‘densification’” that will force them to live in more densely populated areas with larger buildings, more traffic and “any number of other changes that spur uninterrupted development under the guise of affordable housing.”

MAID also argues that the zoning bills represent an intrusion by the Legislature into municipal government’s traditional control over development policy and that the land

use planning act violates the Montana Constitution's right of participation, which requires government entities to provide the public with "reasonable opportunity for citizen participation" in decision making.

The Plaintiffs are seeking 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 case is ongoing.