HB 1292

Attachment D

DOUGLAS COUNTY
COLORADO

House Bill 10- 1292 is intended to clarify a statute that was recently interpreted by a Douglas County judge contrary to previous case law and legislative history - potentially having problematic impact on all Counties if not clarified.

In summary, the Regulatory Impairment of Property Rights Act (RIPRA), passed in 1999, was intended to apply only to local government takings – money, nor land can be taken by local government as a condition of land-use approval unless it can be proven that there is a nexus for land use approval. A subsection of this law states specifically that "no local government shall impose a discretionary standard upon a land-use approval."

Case law and legislative history strongly suggest the subsection is not a stand-alone section, yet intended to be paired with the overall takings law.

A Douglas County judge recently applied this subsection as a stand-alone section as a means to challenge any local land-use decision.

In Douglas County, a rural landowner, using heavy equipment and labor supplied by a local developer, performed major grading operations on his property in order to create medium-sized reservoirs to be filled from Cherry Creek. Such an operation requires a special use permit from County Zoning, as well as a grading permit from County Engineering. The land owner applied for neither.

When County inspectors became aware of the reservoirs, they placed a stop work order on the property and required the landowner to apply for permits. The landowner declared that the County regulations did not apply to him and took his case to court.

Ordinarily, such a garden-variety challenge to a zoning regulation is reviewed under Colorado Rule of Civil Procedure 106. Under Rule 106, the aggrieved person files a petition with the court. The court then orders the local government to produce all of its records and transcripts of any hearings that lead up to the requirement, and the court reviews the case. There is no discovery and no attorney fee awards. Resolution is efficient, usually within 60 days.

In this case, in addition to his Rule 106 action, the landowner filed a claim under RIPRA, asserting that subsection (2) (unlike subsection (1)) was not limited to cases where the local government requires money or land dedications in exchange for a land-use approval.

Consequently, rather than an efficient and inexpensive resolution under Rule 106, the litigation has dragged on for more than 2½ years, during which time the landowner's attorneys claim to have generated (and demanded that Douglas County pay) in excess of $300,000 in attorneys fees by reviewing over 700,000 pages of county regulations and land use applications and by subjecting government officials to days of deposition, in an effort to find any inconsistency that might support their claim that County regulations impose a "discretionary standard" in violation of RIPRA.

So long as RIPRA is viewed by attorneys as a viable fee-generating alternative to a Rule 106 action, they will have no incentive to seek efficient resolution under the non-lucrative Rule 106. Local government will run the risk of spending exorbitant amounts of tax dollars on large attorney fee awards generated by discovery and courtroom battles that arise from an application of RIPRA that was never intended.

HB10-1292 is intended to clarify the intent of the law.