

Be it enacted by the People of the State of Colorado:

Section 15 of article II of the constitution of the state of Colorado is amended to read:

Section 15. Taking property for public use – compensation, how ascertained

(A) Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

(B) IF A PUBLIC ENTITY ENACTS OR ENFORCES ONE OR MORE LAND USE REGULATIONS THAT DIMINISH THE FAIR MARKET VALUE OF ANY PORTION OF PRIVATE REAL PROPERTY BY TWENTY PERCENT OR MORE, THEN THE PUBLIC ENTITY SHALL PROVIDE JUST COMPENSATION TO THE OWNER OF THE AFFECTED PORTION OF REAL PROPERTY.

(1) IN ORDER TO PROVIDE JUST COMPENSATION TO AN OWNER, A PUBLIC ENTITY MAY EITHER:

(A) PAY THE OWNER THE FAIR MARKET VALUE OF THE TOTAL AMOUNT OF DIMINUTION CAUSED BY ENFORCEMENT OF THE LAND USE REGULATION; OR

(B) SUSPEND ENFORCEMENT OF THE LAND USE REGULATION AS IT AFFECTS THE OWNER.

(2) THIS SECTION SHALL NOT APPLY TO LAND USE REGULATIONS THAT:

(A) ARE ENACTED AFTER 1970, BUT (1) PRIOR TO THE OWNER'S ACQUISITION OF THE PROPERTY, OR (2) PRIOR TO THE ACQUISITION OF THE PROPERTY BY AN OWNER'S FAMILY MEMBER, WHICHEVER OCCURS FIRST; OR

(B) ARE NECESSARY TO RESTRICT OR PROHIBIT ACTIVITIES HISTORICALLY RECOGNIZED AS NUISANCES UNDER COMMON LAW, TO PROTECT THE PUBLIC HEALTH AND SAFETY, OR TO COMPLY WITH FEDERAL LAW, WHICH EXCEPTIONS SHALL BE NARROWLY CONSTRUED AND SHALL BE PROVEN BY THE PUBLIC ENTITY BY CLEAR AND CONVINCING EVIDENCE; OR

- (C) RESULT FROM A DECISION BY A PUBLIC ENTITY OR COURT TO CONFORM WITH THIS SECTION.
- (3) IN ORDER TO OBTAIN JUST COMPENSATION FROM A PUBLIC ENTITY UNDER THIS SECTION, AN OWNER OF PRIVATE REAL PROPERTY MAY BRING AN ACTION IN DISTRICT COURT IN THE DISTRICT WHERE THE REAL PROPERTY IS LOCATED.
- (A) THE OWNER SHALL PROVIDE WRITTEN DEMAND FOR COMPENSATION TO THE PUBLIC ENTITY AT LEAST 180 DAYS PRIOR TO COMMENCING ANY COURT ACTION. THE DEMAND SHALL IDENTIFY THE LAND USE REGULATION, AFFECTED LAND, AND AMOUNT OF DIMINUTION.
 - (B) WRITTEN DEMAND SHALL BE MADE WITHIN FIVE YEARS OF: THE EFFECTIVE DATE OF THIS ACT; OR THE ENACTMENT OF THE LAND USE REGULATION; OR THE DATE THE PUBLIC ENTITY APPLIES THE LAND USE REGULATION AS AN APPROVAL CRITERIA TO AN APPLICATION SUBMITTED BY THE OWNER, WHICHEVER OCCURS LATER.
 - (C) THE OWNER SHALL COMMENCE LEGAL ACTION WITHIN TWO YEARS AFTER MAKING WRITTEN DEMAND.
 - (D) WITHIN 180 DAYS AFTER THE WRITTEN DEMAND, THE PUBLIC ENTITY SHALL EITHER PROVIDE JUST COMPENSATION OR SUBMIT TO THE OWNER A STATEMENT THAT IDENTIFIES ALLOWABLE USES OF THE AFFECTED PROPERTY UNDER THE LAND USE REGULATION. THE OWNER'S CLAIM FOR REVIEW SHALL BECOME RIPE FOR JUDICIAL REVIEW 180 DAYS AFTER THE WRITTEN DEMAND.
 - (E) THE OWNER SHALL ESTABLISH A DIMINUTION IN FAIR MARKET VALUE BY A PREPONDERANCE OF THE EVIDENCE. THE OWNER MAY SUBMIT EVIDENCE IN ADDITION TO EVIDENCE SUBMITTED TO A PUBLIC ENTITY OR ADMINISTRATIVE BODY PRIOR TO INSTITUTING COURT ACTION. THE OWNER NEED NOT COMPLETE ANY ADMINISTRATIVE PROCEDURES BEFORE INSTITUTING COURT ACTION.
 - (F) THE OWNER SHALL BE ENTITLED TO REASONABLE COSTS AND ATTORNEY FEES INCURRED IN OBTAINING JUST COMPENSATION, TO INCLUDE JUST COMPENSATION OBTAINED WITHOUT FINAL COURT ACTION. THE COURT SHALL AWARD MONETARY COMPENSATION.

(4) DEFINITIONS

- (A) “FAMILY MEMBER” SHALL INCLUDE: ANY DESCENDANT OR FOREBEAR, BY BIRTH, ADOPTION OR MARRIAGE, OF AN OWNER; AN UNCLE, AUNT, NIECE OR NEPHEW; AN ESTATE BY ANY OF THE FOREGOING, OR A LEGAL ENTITY OWNED BY ANY ONE OR A COMBINATION OF THE OWNER OR THE FOREGOING FAMILY MEMBERS.
- (B) “LAND USE REGULATION” INCLUDES ANY PERMANENT OR TEMPORARY ACTION TAKEN BY A GOVERNMENTAL ENTITY THAT AFFECTS OWNERSHIP OF, OR AN INTEREST IN, REAL PROPERTY. THE TERM INCLUDES ANY LAW, REGULATION, ORDINANCE, RULE, GUIDELINE, ENFORCEMENT ACTION, DEED RESTRICTION, OR OTHER ACTION TAKEN IN CONNECTION TO AN APPLICATION OR PERMIT, TO INCLUDE THE DENIAL OF AN APPLICATION OR PERMIT.
- (C) “OWNER” SHALL INCLUDE THE PRESENT OWNER OF REAL PROPERTY OR ANY INTEREST IN REAL PROPERTY. IT SHALL NOT INCLUDE A PUBLIC ENTITY.
- (D) “PUBLIC ENTITY” INCLUDES ONE OR MORE STATE, REGIONAL OR LOCAL GOVERNMENTS, AGENCIES, BOARDS, DISTRICTS COMMISSIONS, OR ENTITIES THAT INDEPENDENTLY EXERCISE GOVERNMENTAL AUTHORITY.
- (E) “PUBLIC HEALTH AND SAFETY” SHALL REQUIRE EVIDENCE BEYOND A MERE FINDING BY THE PUBLIC ENTITY. A COURT’S FINDING OF “PUBLIC HEALTH AND SAFETY” SHALL BE REVIEWED *DE NOVO*.
- (F) “REAL PROPERTY” MEANS ANY INTEREST IN REAL PROPERTY RECOGNIZED BY THE LAWS OF COLORADO.



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Via Facsimile: 303-866-3855

Mr. Kirk Mlinek, Director
Colorado Legislative Council Staff
Room 029
State Capitol Building
Denver, Colorado 80203

Re: Initiative concerning governmental taking of property

Dear Mr. Mlinek,

I have attached proposed initiative language concerning the governmental taking of property. The two ballot proponents for this measure are:

William G. Mohrman, Jr.
567 Twinning Flats Road
Aspen, CO 81611

Betty S. LaMont
0085 Elliot Way
Meredith, CO 81642

I currently represent both ballot proponents in this matter, so please direct all correspondence or questions to me at the above address. Likewise, please contact me if I may be of further assistance.

Sincerely,

HACKSTAFF GESSLER LLC

Scott E. Gessler