

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 10-0858.01 Bob Lackner

HOUSE BILL 10-1292

HOUSE SPONSORSHIP

Murray, Schafer S.

SENATE SPONSORSHIP

Harvey,

House Committees
Local Government

Senate Committees
Local Government and Energy

A BILL FOR AN ACT

101 **CONCERNING A CLARIFICATION OF THE CONDITIONS ON LAND-USE**
102 **APPROVALS THAT MAY BE IMPOSED BY LOCAL GOVERNMENTS**
103 **UNDER STATUTORY PROVISIONS GOVERNING THE REGULATORY**
104 **IMPAIRMENT OF PROPERTY RIGHTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In connection with conditions that may be imposed on land-use approvals by local governments under statutory provisions governing the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 3, 2010

HOUSE
Amended 2nd Reading
March 1, 2010

regulatory impairment of property rights, the bill addresses the construction of the requirement prohibiting a local government from imposing any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner. The bill clarifies that the phrase "any discretionary condition" refers back to the constitutionally based conditions found in a previous provision and, accordingly, does not create an independent cause of action under the statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that:

4 (a) In 1999, the general assembly enacted statutory provisions
5 governing the regulatory impairment of property rights, codified in part
6 2 of article 20 of title 29, Colorado Revised Statutes, and hereafter
7 referred to as "RIPRA".

8 (b) Among other provisions, the legislative declaration in RIPRA
9 states in section 29-20-201 (3), Colorado Revised Statutes, that "[t]he
10 general assembly intends, through the adoption of section 29-20-203, to
11 codify certain constitutionally-based standards that have been established
12 and applied by the courts".

13 (c) Section 29-20-203, Colorado Revised Statutes, contains
14 conditions on land-use approvals. In accordance with constitutionally
15 based standards that have been established and applied by the courts,
16 section 29-20-203 (1), Colorado Revised Statutes, prohibits a local
17 government from requiring a land developer to make a payment or
18 dedication in exchange for a land-use approval unless:

19 (I) "[T]here is an essential nexus between the dedication or
20 payment and a legitimate local government interest"; and

1 (II) "[T]he dedication or payment is roughly proportional both in
2 nature and extent to the impact of the proposed use or development of
3 such property".

4 (d) In addition to the conditions specified in sub-paragraphs (I)
5 and (II) of paragraph (c) of this subsection (1), section 29-20-203 (1),
6 Colorado Revised Statutes, also prohibits a local government from
7 imposing "any discretionary condition upon a land-use approval unless
8 the condition is based upon duly adopted standards that are sufficiently
9 specific to ensure that the condition is imposed in a rational and
10 consistent manner". Although this latter requirement is codified in
11 section 29-20-203 (2), Colorado Revised Statutes, when the general
12 assembly enacted RIPRA it intended that the language in said subsection
13 (2) refer back to the conditions specified in said subsection (1) and did
14 not intend to create an independent cause of action. Specifically, when
15 the general assembly enacted RIPRA, it intended that the phrase "any
16 discretionary condition" in said subsection (2) refer back to the two
17 conditions explicitly stated in said subsection (1), which are the nexus and
18 rough proportionality requirements. Accordingly, the general assembly
19 intended that, in specifying requirements for local governments in
20 granting land-use approvals, a local government would be prohibited
21 from applying the requirements contained in said subsection (2) unless
22 the imposition of such requirements also satisfied the threshold
23 requirements of said subsection (1). The general assembly intended that
24 the threshold conditions that would be placed upon land-use approvals
25 would be the constitutionally based standards established and applied by
26 the courts that are codified in section 29-20-203 (1), Colorado Revised
27 Statutes.

1 (e) At least one district court in the state has construed section
2 29-20-203 (2), Colorado Revised Statutes, to mean that "any"
3 discretionary condition upon a land-use approval would trigger the
4 operation of RIPRA. In so doing, this court has construed the statute in
5 a way that creates an independent cause of action under section
6 29-20-203 (2), Colorado Revised Statutes. To interpret said subsection
7 (2) as creating an independent condition justifying its own cause of action
8 would expand the scope of RIPRA far beyond that intended by the
9 general assembly. Not only is this construction inconsistent with the
10 general assembly's legislative intent in passing RIPRA, but it also exposes
11 local governments to substantial liability for conditions placed upon
12 land-use approvals that are not constitutionally based and applied and is,
13 therefore, beyond the scope of the manner in which the general assembly
14 intended RIPRA to work.

15 (2) By the enactment of House Bill 10-1292, enacted in 2010, the
16 general assembly intends to clarify and reaffirm the original
17 understanding of the conditions that may be placed upon land-use
18 approvals by local governments under RIPRA.

19 **SECTION 2.** 29-20-203, Colorado Revised Statutes, is amended
20 to read:

21 **29-20-203. Conditions on land-use approvals.** (1) In imposing
22 conditions upon the granting of land-use approvals, no local government
23 shall require an owner of private property to dedicate real property to the
24 public, or pay money or provide services to a public entity in an amount
25 that is determined on an individual and discretionary basis, unless there
26 is an essential nexus between the dedication or payment and a legitimate
27 local government interest, and the dedication or payment is roughly

1 proportional both in nature and extent to the impact of the proposed use
2 or development of such property. This section shall not apply to any
3 legislatively formulated assessment, fee, or charge that is imposed on a
4 broad class of property owners by a local government.

5 (2) (a) No local government shall impose any discretionary
6 condition upon a land-use approval UNDER THE REQUIREMENTS OF
7 SUBSECTION (1) OF THIS SECTION unless the condition is based upon duly
8 adopted standards that are sufficiently specific to ensure that the condition
9 is imposed in a rational and consistent manner.

10 (b) THE CLARIFICATION IN PARAGRAPH (a) OF THIS SUBSECTION (2)
11 THAT CONNECTS THE CONDITION IN SAID PARAGRAPH (a) TO THE
12 CONDITIONS SPECIFIED IN SUBSECTION (1) OF THIS SECTION SHALL APPLY
13 TO CIVIL ACTIONS COMMENCED ON OR AFTER NOVEMBER 1, 2007.

14 **SECTION 3. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.