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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

<p>CAROL GEROVAC,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>GALLATIN COUNTY; GALLATIN COUNTY AIRPORT AUTHORITY; ABC CORPORATIONS; and DOES 1- 10,</p> <p style="text-align: right;">Defendants.</p>	<p>Dept. No. <u>1</u></p> <p>Cause No. <u>DV- 12- 860 A</u></p> <p style="text-align: center;">COMPLAINT & JURY DEMAND</p> <p style="text-align: center;"><i>(2) Summons Issued</i></p>
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18 COMES NOW the Plaintiff, Carol Gerovac ("Gerovac"), by and through her
19 counsel of record, William K. VanCanagan and J.R. Casillas, of the law firm of
20 Datsopoulos, MacDonald & Lind, P.C., and for her Complaint against the above-named
21 Defendants, states and alleges as follows:

22 1. Gerovac is an individual residing at 22821 Frontage Road, Belgrade,
23 Gallatin County, Montana 59714-8532 ("Property"). Gerovac has lived at this address
24 since 1995.
25

1 2. Defendant, Gallatin County ("County"), is and was at all times relevant
2 hereto a body politic and corporate duly formed and acting under the laws of the State
3 of Montana with a principal place of business located at 311 West Main Street,
4 Bozeman, Gallatin County, Montana 59715.
5

6 3. Defendant, Gallatin County Airport Authority ("GCAA") (hereinafter
7 referred to collectively with the County as "Defendants"), is a Committee and division
8 of Gallatin County which consists of a five-member board appointed by the County
9 Commissioners to serve five-year terms. The charge of this board is for the planning,
10 establishment, development, construction, enlargement, improvement, maintenance,
11 equipment, operation, regulation, protection, and policing of the airport.
12

13 4. The GCAA board is currently comprised of the following members: 1)
14 Carl Lehrkind, IV; 2) Ted Mathis; 3) Kevin Kelleher; 4) Kendall Switzer; and, 5) John
15 McKenna.
16

17 5. Jurisdiction and venue are proper in this Court.
18

19 6. Gerovac is unsophisticated with regard to the legalities associated with
20 business and real estate transactions.
21

22 7. Defendants, through the GCAA, control the activities of the Bozeman
23 Yellowstone International Airport a/k/a Gallatin Field Airport ("Airport"), located at
24 850 Gallatin Field Road, Belgrade, Gallatin County, Montana 59714.
25

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1 8. The activities of the Airport, in addition to routine business operations,
2 include land acquisition and additions in the surrounding geographic area.

3
4 9. In or around September 2003, the GCAA developed a master plan, which
5 included an Airport Influenced Area Map delineating the noise contours of the
6 Influence Area of Influence Noise.

7 10. A portion of Gerovac's property was located in District B of the Airport
8 Influenced Area Map, which is for decibel levels of 65 YDNL.

9
10 11. Between approximately 2004 and 2006, the City of Belgrade developed a
11 master plan regarding zoning. Letters were sent out to affected parties and Gerovac
12 attended various zoning meetings.

13 12. Other than the letters regarding zoning, Gerovac at no time during the
14 establishment of the decibel levels was provided any notice of the designation of the
15 Airport affected as prescribed by Montana law.

16
17 13. In or around 2003, the GCAA offered to purchase Gerovac's property for
18 \$460,000.00, which is equivalent to \$2,700.00 per acre.

19
20 14. Gerovac rejected the offer, despite the GCAA attempting to convince her
21 to execute a contract granting the Airport an air easement over her property free of
22 charge. Gerovac refused to execute the contract.

23 15. The same year, the GCAA purchased three other properties for \$5,829.49,
24 \$10,500.00 and \$52,000.00 per acre.
25

1 16. In or around August 2008, Gerovac had her property appraised by
2 Christopher C. Seeve for \$5,655,000.00. This is equivalent to \$33,185.00 per acre,
3 more than ten times the value offered by the GCAA.
4

5 17. In or around July 2009, the flight pattern of the airplanes changed from
6 continuing straight out for a considerable distance to turning early which resulted in
7 direct, low elevation flying over Gerovac's property, including her residence and
8 hayfields where her milk cows were frequently disturbed.
9

10 18. In or around August 2009, Gerovac went in person to the Airport and
11 spoke with Airport Director, Brian Sprenger, about the disruption of the new flight
12 pattern and the resulting damage to her property and person.
13

14 19. In or around August 2009, Gerovac hired legal counsel to place Defendants
15 on written notice of her legal claims.
16

17 20. Beginning in or around April 2010, Gerovac's legal counsel sent a letter to
18 the GCAA that placed Defendants on notice of her claims and offered to sell her
19 property for \$5,089,500.00.
20

21 21. In or around May 2010, Defendants represented that they were interested
22 in and intended to enter into negotiations and ultimately purchase Gerovac's property.
23 Gerovac reasonably relied upon these representations and agreed to move forward in
24 negotiations. Negotiations began through Gerovac's legal counsel and later transitioned
25 to her realtor, Dennis Hardin.

1 22. In or around December 2010, the GCAA approved the hiring of an
2 appraiser to appraise Gerovac's property.

3
4 23. In or around July 2011, the appraisal was completed and Gerovac's
5 property was valued at \$2,150,000.00.

6 24. Subsequent GCAA minutes reveal that it would consider purchasing
7 Gerovac's property if it received discretionary funding. This motion was opposed by
8 board member Carl Lehrkind, IV, who stated "it's the wrong amount at the wrong
9 time."
10

11 25. Around this time, after willfully delaying negotiations for more than one
12 year, the GCAA, to Gerovac's surprise and disappointment, informed her via email to
13 her realtor that it did not wish to purchase her property.
14

15 26. On or about September 8, 2011, the GCAA received \$2 million in the form
16 of a discretionary spending grant.

17 27. In or around May 2012, the GCAA approved the hiring of an appraiser to
18 appraise property owned by board member Carl Lehrkind, IV, for acquisition despite
19 the fact that the Airport already owned an air easement over it.
20

21 **COUNT 1 – Inverse Condemnation**

22 28. Each and every paragraph set forth in this Complaint is incorporated herein
23 by reference.
24

25 //

1 29. Defendants, in seeking to acquire Gerovac's property for public use, failed
2 to pay compensation or institute eminent domain proceedings.

3
4 30. Defendants' actions and omissions in increasing operations at the Airport,
5 including the change in flight pattern directly over Gerovac's property, continue to
6 substantially interfere with her practical use and enjoyment of the same.

7 31. Defendants' actions amounted to a taking and/or diminished the value of
8 Gerovac's property to her great detriment.

9
10 32. Defendants' actions and omissions involve the acquisition of property and
11 property rights for which Defendants are obligated to pay compensation.

12 33. Gerovac, at all times relevant, had ownership of and an ownership interest
13 in the property and rights taken.

14 34. Defendants took the property in exercise of its powers of eminent domain.

15 35. The property was taken for a public purpose.

16 36. Gerovac did not consent to the use or taking of her property without just
17 compensation.
18

19
20 37. Defendants' acts and omissions violated due process and are contrary to
21 the United States Constitution, Montana Constitution and Montana law.

22 38. Defendants' acts and omissions are the proximate cause of damages to
23 Gerovac.

24 //

25

COUNT 2 – Nuisance

1
2 39. Each and every paragraph set forth in this Complaint is incorporated herein
3
4 by reference.

5 40. Defendants' ongoing acts and omissions, including increased airport
6 operations and the change in flight pattern directly over Gerovac's property, are
7 indecent and offensive to the senses.

8 41. Defendants' ongoing acts and omissions unreasonably interfere with
9 Gerovac's comfortable enjoyment of life and property.

10 42. Defendants' substantial and unreasonable interference with Gerovac's use
11 and enjoyment of property to which she enjoys the sole right of use and enjoyment
12 constitutes a nuisance.
13

14 43. Gerovac's complaint concerning Defendants' nuisance is ordinary and
15 reasonable.
16

17 44. Defendants' nuisance has and will continue to proximately and directly
18 cause damages to Gerovac and her property.
19

COUNT 3 – Trespass

20 45. Each and every paragraph set forth in this Complaint is incorporated herein
21 by reference.
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24 //

1 46. Defendants, on numerous occasions, have and continue to intentionally
2 enter or remain unlawfully on Gerovac's property, through the airspace above it,
3 without Gerovac's consent or authorization.
4

5 47. Defendants, on numerous occasions, have and continue to intentionally
6 enter or remain unlawfully on Gerovac's property, through the airspace above it,
7 without Gerovac's consent or authorization by setting into motion airplanes to intrude
8 the airspace.
9

10 48. Defendants' numerous and continuous invasions and intrusions of
11 Gerovac's property are unprivileged.

12 49. Defendants intended to invade and intrude upon Gerovac's property
13 without her consent or authorization.
14

15 50. Gerovac sustained and will continue to sustain damages as a direct and
16 proximate result of Defendants' trespass onto her property.

17 51. Gerovac's damages include both monetary and nominal damages.
18

19 **COUNT 4 – Negligent Infliction of Emotional Distress**

20 52. Each and every paragraph set forth in this Complaint is incorporated herein
21 by reference.

22 53. Defendants negligently engaged in ongoing conduct thereby proximately
23 causing Gerovac to sustain mental anguish and emotional distress.
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1 54. The mental and emotional distress sustained by Gerovac due to
2 Defendants' acts and omissions is highly offensive to Gerovac and would be highly
3 offensive to any reasonable person.
4

5 55. At all times relevant, Defendants knew or should have known that their
6 conduct would cause Gerovac to sustain emotional distress.

7 56. At all times relevant, it was reasonably foreseeable to Defendants that their
8 conduct would cause Gerovac or any reasonable person to sustain emotional distress.
9

10 57. As a direct and proximate consequence of Defendants' acts and omissions,
11 Gerovac has sustained, and will continue to sustain in the future, mental distress, mental
12 suffering, outrage, shame, humiliation, embarrassment and other harms that any person
13 of ordinary sensibilities would suffer under like circumstances.
14

15 58. Defendants' acts and omissions are beyond all bounds of decency,
16 atrocious and of a kind utterly intolerable in a civilized society.
17

18 59. Defendants acted in a manner which is wholly indifferent to the likely and
19 foreseeable impact of their conduct.
20

21 **COUNT 5 – Violation of Mont.Const. Art. 2, § 29**

22 60. Each and every paragraph set forth in this Complaint is incorporated herein
23 by reference.
24

25 61. Gerovac is the rightful and lawful owner of the subject property and is
entitled to protection under Art. 2, § 29 of the Montana Constitution.

1 62. Defendants violated this section by taking and damaging her property for
2 public use without just compensation.

3
4 63. As a direct and proximate consequence, Gerovac was damaged.

5 **COUNT 6 – Violation of Mont.Const. Art. 2, § 3**

6 63. Each and every paragraph set forth in this Complaint is incorporated herein
7 by reference.

8 64. Gerovac was born free and has certain inalienable rights, including the
9 right to a clean and healthful environment and to acquire, possess and protect her
10 property.
11

12 65. Defendants violated this section by unduly imposing on those rights.

13 66. As a direct and proximate consequence, Gerovac was damaged.
14

15 **COUNT 7 – Injunctive Relief**

16 67. Each and every paragraph set forth in this Complaint is incorporated herein
17 by reference.

18 68. Monetary damages will not afford Gerovac adequate relief.

19 69. Gerovac is likely to succeed on the merits of her claims.
20

21 70. Gerovac will suffer irreparable injury absent the issuance of an injunction
22 preventing Defendants from allowing airplanes to depart from or arrive at the Airport
23 through flight paths above and/or in the vicinity of Gerovac's property.
24

25 //

1 71. The injury to Gerovac outweighs whatever damage the proposed injunction
2 may cause Defendants.

3
4 72. The balance of equities favors Gerovac.

5 73. The injunction, if issued, would not be adverse to the public interest.

6 **WHEREFORE**, having fully set forth her Complaint against Defendants,
7 Gerovac prays for the following relief:

8 1. Damages in an amount to be determined at trial, including compensatory
9 damages for the loss of Gerovac's rights and diminution in value of her property;

10 2. An injunction preventing Defendants from allowing airplanes to depart
11 from or arrive at the Airport through flight paths above and/or in the vicinity of
12 Gerovac's property;

13 3. General damages in an amount to be proven at trial;

14 4. Gerovac's costs of suit and reasonable attorney fees; and,

15 5. For such other and further relief as this Honorable Court deems just and
16 proper.
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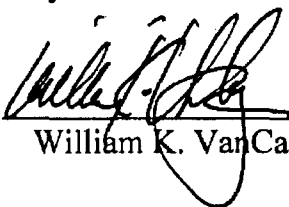
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JURY DEMAND

Gerovac demands a jury trial on all issues so triable.

DATED this 7th day of November, 2012.

DATSOPOULOS, MacDONALD & LIND, P.C.
Attorneys for Plaintiff

By: 

William K. VanCanagan

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