
HOUSE BILL 2272

State of Washington 59th Legislature 2005 Regular Session

By Representatives Condotta, Armstrong, Hinkle, Roach, Newhouse, Sump, Curtis, Shabro, Kretz, Kristiansen, Anderson, Dunn and Holmquist

Read first time 03/02/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to just compensation for reductions to property
2 values; and adding a new chapter to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Agency" means the state of Washington, any of its political
7 subdivisions, including any city, town, or county, and any other public
8 body exercising regulatory authority or control over the use of real
9 property in the state.

10 (2) "Fair market value" means the most recent property assessment
11 as shown on the tax rolls, or the highest and best use of the property
12 as determined by the county assessor, whichever is higher;

13 (3) "Family member" includes the wife, husband, son, daughter,
14 mother, father, brother, brother-in-law, sister, sister-in-law, son-in-
15 law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece,
16 nephew, stepparent, stepchild, grandparent, or grandchild of the owner
17 of the property, an estate of any of the foregoing family members, or
18 a legal entity owned by any one or combination of these family members
19 or the owner of the property.

1 (4) "Owner" is the present owner of the property, or any interest
2 therein.

3 (5) "Regulation" means any ordinance, resolution, or other rule or
4 regulation adopted pursuant to the authority provided by state or local
5 law, which imposes or alters restrictions, limitations, or conditions
6 on the use of real property. "Regulation" includes, without
7 limitation:

8 (a) Any statute regulating the use of land or any interest therein;

9 (b) Local government comprehensive plans, zoning ordinances,
10 subdivision ordinances, and transportation ordinances; and

11 (c) Statutes and administrative rules regulating farming and forest
12 practices.

13 NEW SECTION. **Sec. 2.** (1) If an agency enacts or enforces a new
14 regulation or enforces a regulation enacted prior to the effective date
15 of this act that restricts the use of private real property, or any
16 interest therein, and has the effect of reducing the fair market value
17 of the property, or any interest therein, then the owner of the
18 property shall be paid just compensation.

19 (2) Just compensation shall be equal to the reduction in the fair
20 market value of the affected property interest resulting from enactment
21 or enforcement of the regulation as of the date the owner makes a
22 written demand for compensation under this section.

23 (3) Subsection (1) of this section shall not apply to regulations:

24 (a) Restricting or prohibiting activities commonly and historically
25 recognized as public nuisances under common law. This subsection
26 (3)(a) shall be construed narrowly in favor of a finding of
27 compensation under this section;

28 (b) Restricting or prohibiting activities for the protection of
29 public health and safety, such as fire and building codes, health and
30 sanitation regulations, solid or hazardous waste regulations, and
31 pollution control regulations;

32 (c) To the extent the regulation is required to comply with federal
33 law;

34 (d) Restricting or prohibiting the use of a property for the
35 purpose of selling pornography or performing nude dancing. Nothing in
36 this subsection (3)(d) is intended to affect or alter rights provided
37 by the Washington or United States Constitutions; or

1 (e) Enacted prior to the date of acquisition of the property by the
2 owner or a family member of the owner who owned the subject property
3 prior to acquisition or inheritance by the owner, whichever occurred
4 first.

5 (4) Just compensation under subsection (1) of this section shall be
6 due the owner of the property if the regulation continues to be
7 enforced against the property one hundred eighty days after the owner
8 of the property makes written demand for compensation under this
9 section to the agency enacting or enforcing the regulation.

10 (5) For claims arising from regulations enacted prior to the
11 effective date of this act, a written demand for compensation under
12 subsection (4) of this section shall be made within two years of the
13 effective date of this act, or the date the agency applies the
14 regulation as an approval criteria to a land use application submitted
15 by the owner of the property, whichever is later. For claims arising
16 from regulations enacted after the effective date of this act, written
17 demand for compensation under subsection (4) of this section shall be
18 made within two years of the enactment of the regulation, or the date
19 the owner of the property submits a land use application in which the
20 regulation is an approval criteria, whichever is later.

21 (6) If a regulation continues to apply to the subject property more
22 than one hundred eighty days after the present owner of the property
23 has made a written demand for compensation under this section, the
24 present owner of the property, or any interest therein, shall have a
25 cause of action for compensation under this chapter in the court of
26 appropriate jurisdiction in which the real property is located, and the
27 present owner of the real property shall be entitled to reasonable
28 attorney fees, expenses, costs, and other disbursements reasonably
29 incurred to collect the compensation.

30 (7)(a) An agency may adopt or apply procedures for the processing
31 of claims under this section, but in no event shall these procedures
32 act as a prerequisite to the filing of a compensation claim under
33 subsection (6) of this section, nor shall the failure of an owner of
34 property to file an application for a land use permit with the local
35 government serve as grounds for dismissal, abatement, or delay of a
36 compensation claim under subsection (6) of this section.

37 (b) An agency adopting or applying procedures in accordance with
38 this subsection (7) shall not require:

- 1 (i) Payment of administrative costs for the processing of claims;
- 2 (ii) Payment for expanded public services associated with any new
- 3 development; or
- 4 (iii) An administrative or public hearing or appeal process as a
- 5 condition of receiving compensation under this chapter.

6 NEW SECTION. **Sec. 3.** (1) Claims made under this chapter shall be
7 paid from funds, if any, specifically allocated by the legislature,
8 local governmental authority, or the agency for payment of claims under
9 this chapter. Notwithstanding the availability of funds under this
10 section, an agency shall have discretion to use available funds to pay
11 claims or to modify, remove, or not apply a regulation pursuant to
12 section 2(6) of this act. If a claim has not been paid within two
13 years from the date on which it accrues, the owner shall be allowed to
14 use the property as permitted by law at the time the owner acquired
15 full or partial ownership of the property.

16 (2) Notwithstanding any other state statute or the availability of
17 funds under subsection (1) of this section, in lieu of payment of just
18 compensation under this chapter, the agency responsible for enacting or
19 enforcing the regulation may modify, remove, or decide not to apply the
20 regulation to allow the owner to use the property for a use permitted
21 at the time the owner acquired the property.

22 NEW SECTION. **Sec. 4.** The remedy created by this act is in
23 addition to any other remedy under the Washington or United States
24 Constitutions, and is not intended to modify or replace any other
25 remedy.

26 NEW SECTION. **Sec. 5.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
31 a new chapter in Title 64 RCW.

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