
Local Government Committee

HB 1781

Brief Description: Amending the land use petition act.

Sponsors: Representatives Pollet, Fitzgibbon, Hansen, Doglio, Dolan and Riccelli.

Brief Summary of Bill

- Amends provision of the Land Use Petition Act including the purpose statement, timelines for filing a petition, consideration of when an appealable decision has been issued, and notice requirements for issued decisions.

Hearing Date: 2/15/19

Staff: Robbi Kesler (786-7153).

Background:

A number of state laws permit or require counties and cities to establish land use regulations or control land use activities. In 1995 the Land Use Petition Act (LUPA), was established to create a standardized process for direct judicial review of land use decisions.

A land use decision is defined as a final determination, by the local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

- an application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding business licenses;
- an interpretive or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

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- the enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property; excluding instances where a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction.

A land use decision is issued:

- three days after a written decision is mailed by the local jurisdiction; if not mailed the date when the local jurisdiction provides notice that the decision is publicly available;
- if the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or
- the date the decision is entered into the public record.

A LUPA petition must be filed, in superior court, within 21 days of the issuance of a land use decision; if jurisdictions allow or require a motion for reconsideration and a timely motion for reconsideration has been filed, the land use decision occurs on the date it is entered on the decision.

The petition must be served on:

- the local jurisdiction;
- each person identified by name and address in the land use decision;
- each person identified by name and address as an owner of the property at issue;
- each person identified by name and address as a taxpayer for the property at issue, if no person is identified in the written decision; and
- each person named in the written decision who filed an appeal to the local jurisdiction quasi-judicial decision maker, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered.

LUPA requires an initial hearing on jurisdiction and preliminary matters to be held no sooner than 35 days and later than 50 days after the petition has been served on the parties. Provisions are made for a stay of the decision, for paying costs of preparing the record, and for supplementing the record in exceptional circumstances.

Summary of Bill:

The LUPA purpose statement is amended to include a declaration that appeals of land use decisions may be highly technical, involve parties that may have little or no experience in land use appeals, and occur on short timelines. In recognition of this, the requirements of LUPA will be liberally interpreted to promote justice and facilitate the decisions of cases based on merit. Cases and issues will not be determined on the basis of compliance or noncompliance with LUPA.

Interpretive or declaratory decisions regarding the application decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property must be in writing and state that it is a final decision appealable under LUPA.

If the petitioner establishes that good cause exists for not exhausting the administrative appeal remedy, including lack of notice or inadequate notice, the petitioner is not precluded from seeking judicial review of the decision.

A person identified by name and address as a taxpayer for the property at issue, if no person is identified in the written decision, is no longer required to be served a petition.

For purposes of serving a petition, the address stated in the records of the county assessor for each person that is considered a party, may not be used.

The timeline to file a petition is extended to 30 days, from 21 days, within the days of issuance of the land use decision. The 30-day limitation period will not begin unless the decision is in writing and includes the name and address of the applicant, the owner of the property at issue, each party of record, and any person who filed a quasi judicial appeal and did not abandon that appeal. If the decision is not in writing or fails to include that information, timeliness of the petition shall be determined by the use of the judicial laches doctrine; a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party.

The bill adds provisions to the standard of when a decision is considered issued. When a written decision is mailed by the local jurisdiction, it must be mailed to the applicant and parties of record to be considered issued. If the decision is not mailed, it will be considered issued when the local jurisdiction provides notice to the applicant and all parties of record. In cases where the decision is considered issued when it becomes publicly available, the full decision must be available. A "party of record" includes anyone who submitted written comments with their name and address before the decision was final.

When there are no parties of record, the decision is considered issued three days after the decision is:

- mailed by the local jurisdiction;
- posted in a conspicuous manner on the jurisdiction's website; and
- mailed to all property owners within urban growth areas 500 feet of the subject property and to all property owners outside of an urban growth area within one quarter mile of the subject property.

The local jurisdiction shall also promptly provide the notice upon finalization of the land use decision, provide notice to any neighborhood organization formally recognized by the local jurisdiction, and any community council whose territory includes the property at issue.

The bill removes language related to when a decision is issued in instances of land use decisions made by ordinance or resolution.

Appropriation: None.

Fiscal Note: Requested on February 7, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.