
HOUSE BILL 2348

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By Representatives Rust, Wolfe, R. Fisher, Ogden, Scheuerman,
Dickerson, Chopp, Conway, Voloria, Mason, Costa and Linville

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Operations.

1 AN ACT Relating to creating a process to mediate disputes between
2 governments and landowners over the denial or conditioning of
3 development permits; and adding a new chapter to Title 64 RCW.

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

5 NEW SECTION. **Sec. 1.** The purpose of this chapter is to establish
6 a process to mediate disputes between property owners and governmental
7 entities over the denial or conditioning of development permits
8 applicable to the property owners' real property.

9 NEW SECTION. **Sec. 2.** Unless the context clearly requires
10 otherwise, the definitions in this section apply throughout this
11 chapter.

12 (1) "Application" means a request filed to commence the mediation
13 process under this chapter.

14 (2) "Development permit" means a quasi-judicial approval or
15 authorization by a governmental entity that permits, or permits with
16 conditions, development activity on a specified parcel or parcels of
17 land that is consistent with applicable zoning or land use controls.

18 A "development permit" includes a building permit, shoreline

1 substantial development permit, plat or preliminary plat approval,
2 short plat approval, binding site plan approval, condominium approval,
3 hydraulics permit, forest practices permit, conditional or special use
4 authorization, variance, reclamation permit, waste disposal permit, on-
5 site sewage disposal permit, or permit for air contaminate sources. A
6 "development permit" does not include a rezone or amendment to a
7 comprehensive plan.

8 (3) "Governmental entity" means a state agency or local government.

9 (4) "Local government" means any county, city, town, special
10 district, municipal corporation, or quasi-municipal corporation.

11 (5) "Property owner" means the record landowner of real property,
12 although when real property is being purchased by a real estate
13 contract, the purchaser shall be considered to be the owner of the real
14 property if the contract is recorded.

15 (6) "State agency" means any agency, department, commission, or
16 division of the state, including a state elected official who is a
17 member of the executive department.

18 NEW SECTION. **Sec. 3.** Any property owner may avail himself or
19 herself of the mediation process provided under this chapter if the
20 property owner believes that the denial of a development permit, or the
21 conditioning of a development permit, applicable to his or her real
22 property is unreasonable or unfairly burdens the use of his or her real
23 property. A complete application to commence the mediation process
24 under this chapter must be filed with the head of the state agency or
25 governing body of the local government that denied or conditioned the
26 disputed development permit within thirty days after the development
27 permit was denied or approved with conditions. The application shall
28 be in writing and shall:

29 (1) Describe the permit that was denied or conditioned, including,
30 where applicable, an identification number;

31 (2) Attach a copy of the application that was denied or
32 conditionally approved;

33 (3) Include the address or a property description of the real
34 property;

35 (4) Briefly describe the property owner's proposed use of his or
36 her property that would be authorized by the development permit; and

1 (5) Include the printed name, address, and signature of the
2 property owner, and a telephone number where the property owner may be
3 contacted.

4 By filing an application under this chapter, the property owner
5 consents to grant the special master and the parties reasonable access
6 to his or her real property that is subject to the denied or
7 conditioned development permit, with advance notice at a time and in a
8 manner acceptable to the property owner.

9 NEW SECTION. **Sec. 4.** The governmental entity with which such an
10 application is timely filed must serve a copy of the application by
11 United States mail or by hand delivery to: (1) The owner of any real
12 property contiguous to the affected property, as indicated on the
13 county treasurer's tax rolls; and (2) any substantially affected party
14 who submitted oral or written testimony of a substantive nature to the
15 governmental entity on the proposed development permit, whether in
16 support of the development permit, in opposition to the development
17 permit, or otherwise.

18 NEW SECTION. **Sec. 5.** Within ten days of receiving a timely filed
19 and complete application, the governmental entity and applicant
20 property owner shall agree upon the appointment of a special master to
21 mediate the dispute. If agreement is not reached on the appointment of
22 a special master, either the applicant property owner or governmental
23 entity may petition the local dispute resolution center established
24 under chapter 7.75 RCW, if such a center exists in the community, to
25 appoint a special master to mediate the dispute.

26 A special master should possess experience and expertise in
27 mediation and at least one of the following disciplines and a working
28 familiarity with the other disciplines: Land use and environmental
29 permitting, land planning, land economics, local and state government
30 organization and powers, and the laws governing these subjects.

31 NEW SECTION. **Sec. 6.** Before filing an application under this
32 chapter, the property owner must have exhausted all nonjudicial
33 administrative appeals if the appeals take no longer than one hundred
34 twenty days. Once nonjudicial administrative appeals have been
35 exhausted and the denial or conditioning of the development permit is
36 final, or within one hundred twenty days after the denial or

1 conditioning of the development permit if administrative appeals have
2 not been concluded, the property owner may file an application under
3 this chapter. The filing of an application under this chapter tolls
4 the time for seeking judicial review of the denial or conditioning of
5 a development permit until the special master's recommendation is acted
6 upon by the governmental entity. Election by the property owner to
7 file for judicial review of a denial or conditioning of a development
8 permit prior to filing an appeal under this chapter waives any right to
9 a special master proceeding under this chapter, except as provided
10 under section 15 of this act.

11 NEW SECTION. **Sec. 7.** Within twenty-one days of receiving notice
12 of the filing of an application, the owner of any real property that is
13 contiguous to the real property that is subject to an application under
14 this chapter, and any substantially affected person as described under
15 section 4 of this act, may request to participate in the proceedings of
16 the special master, but shall not be granted party or intervenor
17 status. Such persons may participate by indicating their opposition to
18 or support of the development permit, or proposing or commenting on
19 possible alternatives or adjustments to conditions that would be
20 required under the development permit.

21 NEW SECTION. **Sec. 8.** The applicant property owner and the
22 governmental entity shall make efforts to assure the presence at any
23 hearing by the special master those persons qualified by training or
24 expertise necessary to address issues raised by the application, or by
25 the special master, and alternatives or adjustments to the conditions
26 that may be required under the development permit. The special master
27 may subpoena any nonparty witnesses in the state whom the special
28 master believes will aid in the disposition of the matter.

29 NEW SECTION. **Sec. 9.** Fifteen days following the filing of a
30 petition under this chapter, the governmental entity that denied or
31 conditioned the development permit shall file a written response to the
32 application with the special master and provide a copy of the response
33 to the applicant and any other party who is allowed to participate in
34 the deliberations, as provided under section 7 of this act. The
35 response shall set forth in reasonable detail the position of the
36 governmental entity regarding matters alleged by the applicant and

1 include a brief statement explaining the public purposes of the action
2 it took on the development permit.

3 NEW SECTION. **Sec. 10.** (1) A special master may require the
4 applicant property owner to provide additional information beyond that
5 supplied in the application that is necessary to mediate the dispute.

6 (2) A special master may conduct a hearing on whether the request
7 for relief should be dismissed for failing to include the information
8 required under section 3 of this act or if the requested permit would
9 authorize activities that are not consistent with applicable zoning or
10 land use controls. If the special master dismisses the case, the
11 special master shall allow the applicant property owner to amend his or
12 her application and refile the application. Failure to file an
13 adequate amended application within the time specified shall result in
14 a dismissal with prejudice as to this proceeding.

15 (3) The special master shall hold a hearing on the development
16 permit within forty-five days after being designated under section 5 of
17 this act, unless a different date is agreed to by the applicant
18 property owner and governmental entity. The hearing must be held in
19 the county in which the property is located.

20 At least thirty days prior to the hearing, the special master shall
21 provide written notice of the time, date, and location of the hearing
22 to the applicant property owner, governmental entity, and other persons
23 who are allowed to participate in the deliberations, as provided under
24 section 7 of this act.

25 NEW SECTION. **Sec. 11.** The hearing shall be informal, open to the
26 public, and does not require the use of an attorney. The hearing must
27 operate at the direction and under the supervision of the special
28 master. The object of the hearing is to focus attention on the impact
29 of the denial or conditioning of the development permit and to explore
30 alternatives and other regulatory efforts by governmental entities in
31 order to recommend relief, where appropriate, to the applicant.

32 In conducting the hearing, the special master may hear from all
33 parties and witnesses necessary to understand the matter. The special
34 master shall weigh all information offered at the hearing.

35 The first responsibility of the special master is to facilitate a
36 mutually acceptable resolution of the conflict between the applicant
37 property owner and governmental entity that denied or conditioned the

1 development permit by recommending some modification of the applicant's
2 request for the development permit or modification of conditions that
3 are imposed. Accordingly, the special master shall act as a
4 facilitator or mediator between the applicant property owner and
5 governmental entity in an effort to effect a mutually acceptable
6 resolution. The applicant property owner and governmental entity shall
7 be represented at the mediation by persons with authority to bind their
8 respective parties to a solution, or by persons with the authority to
9 recommend a solution directly to the governing body or persons with the
10 authority to bind their respective parties to a solution.

11 NEW SECTION. **Sec. 12.** (1) If a mutually acceptable resolution is
12 not reached by the parties after the special master's attempt at
13 mediation, the special master shall make a recommendation on the denial
14 or conditioning of the development permit.

15 The special master shall consider the facts and circumstances set
16 forth in the application, any responses, and any other information
17 produced at the hearing in order to determine whether the action by the
18 governmental entity denying or conditioning the development permit was
19 unreasonable or unfairly burdens the real property. In making such a
20 determination, the special master shall consider:

21 (a) The history of the real property, including when it was
22 purchased, the purchase price, its location, the nature of the title,
23 the composition of the property, and how it was used prior to the
24 request for the development permit;

25 (b) The history of development and use of the real property,
26 including what was developed on the property and by whom, if it was
27 divided and how and to whom it was sold, and whether infrastructure and
28 other public improvements or services may have been dedicated to the
29 public by the owner of the property;

30 (c) The history of environmental protection and land use controls
31 and other regulations, including how and when land was classified, how
32 use was proscribed, and what changes in classification have occurred;

33 (d) The present nature and extent of the real property, including
34 its natural and altered characteristics;

35 (e) The reasonable investment-backed expectations of the property
36 owner;

37 (f) Any public purposes sought to be achieved by the denial or
38 conditioning of the development permit and whether there are

1 alternative conditions that would achieve the public purpose and allow
2 for reduced conditions;

3 (g) Direct and cumulative impacts on other property owners,
4 residents, and the public arising from the development activity for
5 which a development permit was sought;

6 (h) Conditions placed on development permits requesting similar
7 authorizations; and

8 (i) Any other information determined relevant by the special
9 master.

10 (2) Nothing in subsection (1) of this section prohibits the
11 applicant property owner and governmental entity from entering into an
12 agreement on denial or conditioning of the development permit prior to,
13 or after, the special master enters a recommendation.

14 NEW SECTION. **Sec. 13.** The special master's recommendation is a
15 public record, but actions or statements of all participants to the
16 special master proceeding are evidence of an offer to compromise and
17 are inadmissible in any proceeding, whether judicial or administrative.

18 NEW SECTION. **Sec. 14.** (1) Within twenty-one days after receipt of
19 the special master's recommendation, the governmental entity
20 responsible for the denial or conditioning of the development permit
21 shall:

22 (a) Accept the recommendation of the special master as submitted
23 and proceed to implement the recommendation following rules and
24 procedures applicable to the development permit, except that the
25 applicant is not required to duplicate the previous processes in which
26 he or she participated in order to effectuate the modification,
27 variance, or special exception, and any related conditions;

28 (b) Modify the recommendation of the special master and proceed to
29 implement the modified recommendation following rules and procedures
30 applicable to the development permit, except that the applicant is not
31 required to duplicate the previous processes in which he or she
32 participated in order to effectuate the modification, variance, or
33 special exception, and any related conditions; or

34 (c) Reject the recommendation of the special master.

35 (2) Failure to act on a recommendation within forty-five days of
36 its receipt shall be deemed to be a rejection of the recommendation,

1 unless the period is extended by agreement of the applicant property
2 owner and governmental entity.

3 (3) If the governmental entity responsible for the denial or
4 conditioning accepts the special master's recommendation or modifies
5 the recommendation, and the applicant property owner rejects the
6 acceptance or modification, or if the governmental entity rejects the
7 special master's recommendation, the governmental entity must issue,
8 within thirty days, a written description of the possible use or uses
9 available on the real property subject to the requested development
10 permit.

11 NEW SECTION. **Sec. 15.** The process established in this chapter may
12 not continue longer than one hundred sixty-five days after the filing
13 of an application, unless the applicant property owner and the
14 governmental entity responsible for denying or conditioning the
15 development permit agree on an extension.

16 The process established by this chapter is not itself, nor does it
17 create, a judicial cause of action. Once the governmental entity acts
18 on the special master's recommendation, the applicant property owner
19 may elect to file a law suit as otherwise authorized in a court of
20 competent jurisdiction. Invoking the process under this section is not
21 a condition precedent to filing a civil action as otherwise authorized.

22 The process established by this chapter may be used to mediate
23 disputes in pending judicial proceedings, with the agreement of the
24 parties to the judicial proceedings, and subject to the approval of the
25 court in which the judicial proceedings are pending.

26 NEW SECTION. **Sec. 16.** Each local government, and each state
27 agency, is authorized to establish procedural guidelines governing the
28 conduct of proceedings authorized by this chapter, which must include,
29 but are not limited to, payment of special master fees and expenses,
30 including the costs of providing notice and effecting service, which
31 shall be borne equally by the governmental entity and property owner.

32 NEW SECTION. **Sec. 17.** This chapter shall be liberally construed to
33 effect its obvious purposes and intent, and governmental entities shall
34 direct available resources and authorities to effect fully the obvious
35 purposes and intent of this chapter in mediating disputes.
36 Governmental entities are encouraged to expedite notice and time-

1 related provisions to implement resolution of disputes under this
2 chapter.

3 The provisions of this chapter are cumulative, and do not supplant
4 other methods agreed to by the parties and lawfully available for
5 arbitration, mediation, or other forms of alternative dispute
6 resolution.

7 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act shall
8 constitute a new chapter in Title 64 RCW.

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