
Judiciary Committee

HB 2226

Title: An act relating to a court's application of equitable principles in land use cases.

Brief Description: Regarding judicial application of equitable principles in land use cases.

Sponsors: Representatives Simpson and Williams.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides that, under the Land Use Petition Act, a court is not required to apply the common law doctrine of balancing the equities if doing so would reward a land use applicant for proceeding under an unlawful land use decision.
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Hearing Date: 2/26/07

Staff: Trudes Tango (786-7384).

Background:

The Land Use Petition Act

The Land Use Petition Act (LUPA) was enacted to provide uniform, expedited judicial review of land use decisions made by counties, cities, and unincorporated towns. Land use decisions subject to judicial review under the LUPA are limited to: (a) applications for project permits or approvals that are required before real property can be improved, developed, modified, sold, transferred, or used; (b) interpretations regarding the application of specific requirements to specific property; and (c) enforcement by local jurisdictions of ordinances relating to particular real property.

Land use decisions that do not fall under the LUPA are approvals to use, vacate, or transfer streets, parks and other similar types of public property, approvals for area-wide rezones and annexations, and applications for business licenses. In addition, the LUPA does not apply to land use decisions that are subject to review by a legislatively-created quasi-judicial body, such as the Shorelines Hearings Board, the Environmental and Land Use Hearings Board, and the Growth Management Hearings Board.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person seeking review of a land use decision must file a petition in superior court and serve all parties within 21 days of the issuance of the land use decision. The parties must follow certain procedures within specified time frames that are meant to expedite the judicial process. Generally, the court sets a hearing within a few months of the filing of the petition. The court may affirm or reverse the land use decision or remand it for modification or further proceedings.

Relief may be granted based on the following grounds:(a) the body or officer that made the land use decision followed an unlawful procedure or failed to follow a required procedure; (b) the land use decision is erroneous in its interpretation or application of the law; (c) the land use decision is not supported by evidence; (d) the land use decision is outside the authority or jurisdiction of the body or officer making the decision; or (e) the land use decision violates the petitioner's constitutional rights.

Balancing the equities

The common law doctrine of balancing the equities sometimes appears in cases in which a plaintiff seeks injunctive relief (a court order prohibiting the defendant from doing a specified act or commanding the defendant to undo some wrong or injury done to the plaintiff). Washington courts have considered the doctrine of balancing the equities in cases dealing with real property, such as where one party builds a structure that encroaches upon the other party's land or where a builder begins construction without proper approval or in violation of restrictive covenants.

Under the doctrine, the court, when considering whether to grant an injunction requiring the removal of a structure, weighs the hardship an injunction would cause the defendant/builder against the hardship that the plaintiffs would suffer if the injunction were denied.

Courts have held that the balancing of the equities doctrine is reserved for the innocent builder who proceeds without any knowledge of problems associated with the construction. "If a party takes a calculated risk by proceeding, despite notice that doing so violates the property rights of others, that party forfeits the right to a balancing of the equities." *Green v. Normandy Park*, 2007 Wash. App. LEXIS 171 (February 5, 2007). In *Green*, which was not a LUPA case, the property owners began building a house and garage without first getting approval from the neighborhood association and in violation of the neighborhood's restrictive covenants. The trial court issued an injunction against the owner/builders requiring demolition of the construction. The trial court found that the owner/builders had clear notice that they were building their house and garage in violation of the covenants and were warned before construction began that they were required to comply with the covenants and submit their building plans to the association. The Washington Court of Appeals affirmed that portion of the trial court's ruling.

Summary of Bill:

A new section is added to LUPA, explicitly stating that a court is not required to apply the common law doctrine of balancing the equities if doing so would reward a land use applicant for proceeding under an unlawful land use decision. An applicant for a land use permit or approval who proceeds with construction after the permit or approval has been challenged under LUPA but before the court issues its decision does so at the applicant's own risk.

Appropriation: None.

Fiscal Note: Not requested.

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