

HOUSE BILL REPORT

HB 2740

As Passed House:
January 28, 2010

Title: An act relating to the definition of land use decision in the land use petition act.

Brief Description: Regarding the definition of land use decision in the land use petition act.

Sponsors: Representatives Seaquist and Angel.

Brief History:

Committee Activity:

Local Government & Housing: 1/18/10, 1/20/10 [DP].

Floor Activity:

Passed House: 1/28/10, 97-0.

Brief Summary of Bill

- Amends the Land Use Petition Act to clarify when the 21-day time limit for the filing of judicial appeals to local land use decisions begins.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 11 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fagan, Miloscia, Short, Springer, Upthegrove, White and Williams.

Staff: Thamas Osborn (786-7129).

Background:

The Land Use Petition Act.

The Land Use Petition Act (LUPA) was enacted in 1995 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:

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- applications for project permits or approvals that are required before real property can be improved, developed, modified, sold, transferred, or used;
- interpretations regarding the application of specific requirements to specific property; and
- 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 legislatively-created quasi-judicial bodies, such as the Shorelines Hearings Board, the Environmental and Land Use Hearings Board, and the Growth Management Hearings Board.

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 timeframes that are meant to expedite the judicial process.

"Land use decision" is defined to mean a final determination by a local jurisdiction's governing body or officer with the highest level of authority to make the decision, including those with the authority to hear appeals at the local, non-judicial level.

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.

Judicial relief may be granted based on any one of the following grounds:

- the decision maker followed an unlawful procedure or failed to follow a required procedure;
- the land use decision is erroneous in its interpretation or application of the law;
- the land use decision is not supported by evidence;
- the land use decision is outside the authority or jurisdiction of the decision maker; or
- the land use decision violates the petitioner's constitutional rights.

Recent Court Cases Pertinent to LUPA Appeals.

In recent years there have been conflicting decisions by the courts of appeal in this state regarding when time limits for the filing of judicial appeals begins to run in cases involving motions for the reconsideration of local administrative decisions.

In *Skinner v. Civil Service Commission of the City of Medina (Skinner)*, Division I of the Washington State Court of Appeals ruled that where the law allows a local, non-judicial motion for reconsideration of an administrative decision, the time limit for the filing of a judicial appeal runs from the date of the final order on the motion for reconsideration rather than from the date of the original administrative decision. *Skinner*, 146 Wn. App. 171, 188 P 3d (2008). This ruling has been appealed to the Washington State Supreme Court, which has agreed to review the case.

Contrary to the ruling in *Skinner*, in 2009 Division II of the Washington State Court of Appeals ruled that under LUPA the 21-day limit for filing a judicial appeal begins to run on the date the order is entered on the original, administrative land use decision, regardless of whether a party has filed a local, non-judicial motion for reconsideration. *Mellish v. Frog Mountain Pet Care*, --- P. 3d ---, 2009 WL 4814955 (2009).

Summary of Bill:

The act clarifies that, under the LUPA, when a motion for reconsideration of a local land use decision has been filed with the local decision-making authority, the date of the "land use decision" is the date of the entry of the decision on the reconsideration motion rather than the date of the original decision.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The purpose of this bill is to reduce the number of the LUPA cases that go to court and to ensure that citizens have access to the LUPA remedies early on in the process without the involvement of courts and lawyers. Under current law a citizen has only 21 days from the date of the final administrative decision in the LUPA process in which to appeal the decision to the courts. This 21-day deadline is extraordinarily short and average citizens are often unable to meet this deadline. If passed, the bill would help eliminate frivolous lawsuits filed early in the process by citizens attempting to avoid the consequences of missing the 21-day deadline. However, some jurisdictions have a local, administrative, LUPA appeals process (i.e., a motion for reconsideration of the initial ruling) that citizens can use to appeal an initial decision without resorting to filing a court case, and can thus avoid the 21-day deadline "trap." This bill would clarify existing law so as to ensure that the 21-day-court-filing deadline begins to run after either the date of the initial ruling or 21 days after the final decision on a motion for consideration, whichever occurs later. In short, in LUPA cases, the bill would allow an administrative appeal to be finalized without the threat that the 21-day deadline imposes.

(In support with concerns) The passage of the LUPA was a mistake, insofar as it creates a process that is largely hidden from public view. Many citizens are effectively deprived of legal remedies due to its lack of public notice requirements. Furthermore, most citizens are altogether unaware of the LUPA process and the limited rights it confers. However, the bill is good insofar as it will ensure the right to a meaningful administrative appeal of an initial LUPA ruling.

(Opposed) None.

Persons Testifying: (In support) Representative Seaquist, prime sponsor; Jill Guernsey and David St. Pierre, Pierce County Prosecutors Office; and Scott Hildebrud, Master Builders of King and Snohomish Counties.

(In support with concerns) Arthur West.

Persons Signed In To Testify But Not Testifying: None.