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HOUSE BILL 2311

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State of Washington                      63rd Legislature                      2014 Regular Session

By Representatives Pollet and Tarleton

Read first time 01/15/14. Referred to Committee on Local Government.

1            AN ACT Relating to notice requirements for land use applications  
2 and decisions; amending RCW 36.70C.040 and 58.17.040; adding a new  
3 section to chapter 36.70C RCW; and adding new sections to chapter 58.17  
4 RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 36.70C RCW  
7 to read as follows:

8            The legislature finds that land use decisions concerning  
9 preliminary short plats of short subdivisions or boundary line  
10 adjustments can adversely affect adjacent landowners' and residents'  
11 property interests, neighborhood designs, and environmental values. To  
12 protect these interests and values, the legislature recognizes that  
13 neighbors and community organizations may need to file timely  
14 challenges to land use decisions, and to do so, they must receive  
15 timely and appropriate notice of the land use decisions.

16            The legislature finds also that due process requires notice to be  
17 given to adjacent landowners and residents of land use decisions  
18 related to the preliminary short plat approval of a short subdivision  
19 or the approval of a boundary line adjustment. Notice is necessary to

1 ensure that adjacent landowners and residents have the opportunity to  
2 file challenges or assert their property interests. The legislature  
3 intends that the statute of limitations set forth in this chapter for  
4 challenging land use decisions does not begin to run until notice of a  
5 land use decision is provided to adjacent landowners and residents in  
6 accordance with sections 4 and 5 of this act.

7 **Sec. 2.** RCW 36.70C.040 and 1995 c 347 s 705 are each amended to  
8 read as follows:

9 (1) Proceedings for review under this chapter shall be commenced by  
10 filing a land use petition in superior court.

11 (2) A land use petition is barred, and the court may not grant  
12 review, unless the petition is timely filed with the court and timely  
13 served on the following persons who shall be parties to the review of  
14 the land use petition:

15 (a) The local jurisdiction, which for purposes of the petition  
16 shall be the jurisdiction's corporate entity and not an individual  
17 decision maker or department;

18 (b) Each of the following persons if the person is not the  
19 petitioner:

20 (i) Each person identified by name and address in the local  
21 jurisdiction's written decision as an applicant for the permit or  
22 approval at issue; and

23 (ii) Each person identified by name and address in the local  
24 jurisdiction's written decision as an owner of the property at issue;

25 (c) If no person is identified in a written decision as provided in  
26 (b) of this subsection, each person identified by name and address as  
27 a taxpayer for the property at issue in the records of the county  
28 assessor, based upon the description of the property in the  
29 application; and

30 (d) Each person named in the written decision who filed an appeal  
31 to a local jurisdiction quasi-judicial decision maker regarding the  
32 land use decision at issue, unless the person has abandoned the appeal  
33 or the person's claims were dismissed before the quasi-judicial  
34 decision was rendered. Persons who later intervened or joined in the  
35 appeal are not required to be made parties under this subsection.

36 (3) The petition is timely if it is filed and served on all parties

1 listed in subsection (2) of this section within twenty-one days of the  
2 issuance of the land use decision.

3 (4) For the purposes of this section, the date on which a land use  
4 decision is issued is:

5 (a) Three days after a written decision is mailed by the local  
6 jurisdiction or, if not mailed, the date on which the local  
7 jurisdiction provides notice that a written decision is publicly  
8 available;

9 (b) If the land use decision is made by ordinance or resolution by  
10 a legislative body sitting in a quasi-judicial capacity, the date the  
11 body passes the ordinance or resolution; ~~((or))~~

12 (c) If the land use decision relates to the preliminary short plat  
13 approval of a short subdivision or the approval of a boundary line  
14 adjustment in a city with a population of five hundred thousand or  
15 more, the date that notice of the decision is effective pursuant to  
16 section 4 or 5 of this act; or

17 (d) If ~~((neither (a) nor (b) of this subsection applies)) (a), (b),~~  
18 and (c) of this subsection do not apply, the date the decision is  
19 entered into the public record.

20 (5) Service on the local jurisdiction must be by delivery of a copy  
21 of the petition to the persons identified by or pursuant to RCW  
22 4.28.080 to receive service of process. Service on other parties must  
23 be in accordance with the superior court civil rules or by first-class  
24 mail to:

25 (a) The address stated in the written decision of the local  
26 jurisdiction for each person made a party under subsection (2)(b) of  
27 this section;

28 (b) The address stated in the records of the county assessor for  
29 each person made a party under subsection (2)(c) of this section; and

30 (c) The address stated in the appeal to the quasi-judicial decision  
31 maker for each person made a party under subsection (2)(d) of this  
32 section.

33 (6) Service by mail is effective on the date of mailing and proof  
34 of service shall be by affidavit or declaration under penalty of  
35 perjury.

36 **Sec. 3.** RCW 58.17.040 and 2004 c 239 s 1 are each amended to read  
37 as follows:

1 The provisions of this chapter shall not apply to:

2 (1) Cemeteries and other burial plots while used for that purpose;

3 (2) Divisions of land into lots or tracts each of which is one-one  
4 hundred twenty-eighth of a section of land or larger, or five acres or  
5 larger if the land is not capable of description as a fraction of a  
6 section of land, unless the governing authority of the city, town, or  
7 county in which the land is situated shall have adopted a subdivision  
8 ordinance requiring plat approval of such divisions: PROVIDED, That  
9 for purposes of computing the size of any lot under this item which  
10 borders on a street or road, the lot size shall be expanded to include  
11 that area which would be bounded by the center line of the road or  
12 street and the side lot lines of the lot running perpendicular to such  
13 center line;

14 (3) Divisions made by testamentary provisions, or the laws of  
15 descent;

16 (4) Divisions of land into lots or tracts classified for industrial  
17 or commercial use when the city, town, or county has approved a binding  
18 site plan for the use of the land in accordance with local regulations;

19 (5) A division for the purpose of lease when no residential  
20 structure other than mobile homes or travel trailers are permitted to  
21 be placed upon the land when the city, town, or county has approved a  
22 binding site plan for the use of the land in accordance with local  
23 regulations;

24 ~~(6) ((A division made for the purpose of alteration by adjusting  
25 boundary lines, between platted or unplatted lots or both, which does  
26 not create any additional lot, tract, parcel, site, or division nor  
27 create any lot, tract, parcel, site, or division which contains  
28 insufficient area and dimension to meet minimum requirements for width  
29 and area for a building site;~~

30 ~~(7))~~) Divisions of land into lots or tracts if: (a) Such division  
31 is the result of subjecting a portion of a parcel or tract of land to  
32 either chapter 64.32 or 64.34 RCW subsequent to the recording of a  
33 binding site plan for all such land; (b) the improvements constructed  
34 or to be constructed thereon are required by the provisions of the  
35 binding site plan to be included in one or more condominiums or owned  
36 by an association or other legal entity in which the owners of units  
37 therein or their owners' associations have a membership or other legal  
38 or beneficial interest; (c) a city, town, or county has approved the

1 binding site plan for all such land; (d) such approved binding site  
2 plan is recorded in the county or counties in which such land is  
3 located; and (e) the binding site plan contains thereon the following  
4 statement: "All development and use of the land described herein shall  
5 be in accordance with this binding site plan, as it may be amended with  
6 the approval of the city, town, or county having jurisdiction over the  
7 development of such land, and in accordance with such other  
8 governmental permits, approvals, regulations, requirements, and  
9 restrictions that may be imposed upon such land and the development and  
10 use thereof. Upon completion, the improvements on the land shall be  
11 included in one or more condominiums or owned by an association or  
12 other legal entity in which the owners of units therein or their  
13 owners' associations have a membership or other legal or beneficial  
14 interest. This binding site plan shall be binding upon all now or  
15 hereafter having any interest in the land described herein." The  
16 binding site plan may, but need not, depict or describe the boundaries  
17 of the lots or tracts resulting from subjecting a portion of the land  
18 to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to  
19 have been approved if the site plan was approved by a city, town, or  
20 county: (i) In connection with the final approval of a subdivision  
21 plat or planned unit development with respect to all of such land; or  
22 (ii) in connection with the issuance of building permits or final  
23 certificates of occupancy with respect to all of such land; or (iii) if  
24 not approved pursuant to (i) and (ii) of this subsection (~~((7))~~)  
25 (6)(e), then pursuant to such other procedures as such city, town, or  
26 county may have established for the approval of a binding site plan;

27 ~~((8))~~ (7) A division for the purpose of leasing land for  
28 facilities providing personal wireless services while used for that  
29 purpose. "Personal wireless services" means any federally licensed  
30 personal wireless service. "Facilities" means unstaffed facilities  
31 that are used for the transmission or reception, or both, of wireless  
32 communication services including, but not necessarily limited to,  
33 antenna arrays, transmission cables, equipment shelters, and support  
34 structures; and

35 ~~((9))~~ (8) A division of land into lots or tracts of less than  
36 three acres that is recorded in accordance with chapter 58.09 RCW and  
37 is used or to be used for the purpose of establishing a site for  
38 construction and operation of consumer-owned or investor-owned electric

1 utility facilities. For purposes of this subsection, "electric utility  
2 facilities" means unstaffed facilities, except for the presence of  
3 security personnel, that are used for or in connection with or to  
4 facilitate the transmission, distribution, sale, or furnishing of  
5 electricity including, but not limited to, electric power substations.  
6 This subsection does not exempt a division of land from the zoning and  
7 permitting laws and regulations of cities, towns, counties, and  
8 municipal corporations. Furthermore, this subsection only applies to  
9 electric utility facilities that will be placed into service to meet  
10 the electrical needs of a utility's existing and new customers. New  
11 customers are defined as electric service locations not already in  
12 existence as of the date that electric utility facilities subject to  
13 the provisions of this subsection are planned and constructed.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 58.17 RCW  
15 to read as follows:

16 (1) Except as provided otherwise by this section, this chapter does  
17 not apply to a division made for the purpose of alteration by adjusting  
18 boundary lines, between platted or unplatted lots or both, that does  
19 not create any additional lot, tract, parcel, site, or division nor  
20 create any lot, tract, parcel, site, or division that contains  
21 insufficient area and dimension to meet minimum requirements for width  
22 and area for a building site.

23 (2) Upon receipt of a complete application for approval of a  
24 boundary line adjustment in a city with a population of five hundred  
25 thousand or more, the officer charged with administration of  
26 regulations pertaining to boundary line adjustments must provide notice  
27 of the application to all adjacent landowners and residents and an  
28 opportunity to submit comments.

29 (3) If a boundary line adjustment in a city with a population of  
30 five hundred thousand or more is approved, the officer charged with  
31 administration of regulations pertaining to boundary line adjustments  
32 must provide notice of the decision to all adjacent landowners and  
33 residents.

34 (4) The legislative body of a city with a population of five  
35 hundred thousand or more must adopt regulations and procedures for  
36 providing notice in accordance with this section.

37 (a) At a minimum, the required notice must be:

1 (i) Mailed to each adjacent landowner and resident at the mailing  
2 address on record with the city or county, or if no mailing address is  
3 on record, the physical address of the adjacent property; and

4 (ii) Posted on the property subject to the proposed boundary line  
5 adjustment in a manner reasonably calculated to provide notice to all  
6 adjacent landowners and residents.

7 (b) Notice is effective three days after being mailed to all  
8 adjacent landowners and residents, or on the date notice is posted on  
9 the property subject to the proposed boundary line adjustment,  
10 whichever is later.

11 (5) For purposes of this section, "adjacent landowners and  
12 residents" means owners, as shown by the records of the county  
13 assessor, residents, and persons who are both owners and residents of  
14 real property located within three hundred feet of any portion of the  
15 boundary of the property subject to the proposed boundary line  
16 adjustment. If the owner of the real property proposed to be adjusted  
17 owns another parcel or parcels of real property, that lie adjacent to  
18 the real property proposed to be adjusted, notice under this section  
19 must be given to the owners and residents of real property located  
20 within three hundred feet of any portion of the boundaries of such  
21 adjacently located parcels owned by the owner of the real property  
22 subject to the proposed boundary line adjustment.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 58.17 RCW  
24 to read as follows:

25 (1) Upon receipt of a complete application for preliminary short  
26 plat approval of a short subdivision in a city with a population of  
27 five hundred thousand or more, the officer charged with administration  
28 of regulations pertaining to short plats and short subdivisions must  
29 provide notice of the application to all adjacent landowners and  
30 residents and an opportunity to submit comments.

31 (2) If a preliminary short plat of a short subdivision in a city  
32 with a population of five hundred thousand or more is approved, the  
33 officer charged with administration of regulations pertaining to short  
34 plats and short subdivisions must provide notice of the decision to all  
35 adjacent landowners and residents.

36 (3) The legislative body of a city with a population of five

1 hundred thousand or more must adopt regulations and procedures for  
2 providing notice in accordance with this section.

3 (a) At a minimum, the required notice must be:

4 (i) Mailed to each adjacent landowner and resident at the mailing  
5 address on record with the city or county, or if no mailing address is  
6 on record, the physical address of the adjacent property; and

7 (ii) Posted on the property proposed to be subdivided in a manner  
8 reasonably calculated to provide notice to all adjacent landowners and  
9 residents.

10 (b) Notice is effective three days after being mailed to all  
11 adjacent landowners and residents, or on the date notice is posted on  
12 the property proposed to be subdivided, whichever is later.

13 (4) For purposes of this section, "adjacent landowners and  
14 residents" means owners, as shown by the records of the county  
15 assessor, residents, and persons who are both owners and residents of  
16 real property located within three hundred feet of any portion of the  
17 boundary of the proposed short subdivision. If the owner of the real  
18 property proposed to be subdivided owns another parcel or parcels of  
19 real property, that lie adjacent to the real property proposed to be  
20 subdivided, notice under this section must be given to the owners and  
21 residents of real property located within three hundred feet of any  
22 portion of the boundaries of such adjacently located parcels owned by  
23 the owner of the real property proposed to be subdivided.

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