Part 8
District Court Review

17-27a-801 No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.

(1) No person may challenge in district court a county's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

(2)

(a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final.

(b)

(i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Section 13-43-204 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the property rights ombudsman issues a written statement under Subsection 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

(iii) A request for arbitration filed with the property rights ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3)

(a) The courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this chapter is valid; and

(ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

(b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

(c) A final decision of a land use authority or an appeal authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

(4) The provisions of Subsection (2)(a) apply from the date on which the county takes final action on a land use application for any adversely affected third party, if the county conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice of the pending decision.

(5) If the county has complied with Section 17-27a-205, a challenge to the enactment of a land use ordinance or general plan may not be filed with the district court more than 30 days after the enactment.

(6) The petition is barred unless it is filed within 30 days after land use authority or the appeal authority's decision is final.
(7)
(a) The land use authority or appeal authority, as the case may be, shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Subsection (7).
(8)
(a)
(i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be.
(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that it was improperly excluded.
(b) If there is no record, the court may call witnesses and take evidence.
(9)
(a) The filing of a petition does not stay the decision of the land use authority or appeal authority, as the case may be.
(b)
(i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may petition the appeal authority to stay its decision.
(ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed pending district court review if the appeal authority finds it to be in the best interest of the county.
(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an injunction staying the appeal authority's decision.

Amended by Chapter 306, 2007 General Session
Amended by Chapter 363, 2007 General Session

17-27a-802 Enforcement.
(1)
(a) A county or any adversely affected owner of real estate within the county in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:
(i) injunctions, mandamus, abatement, or any other appropriate actions; or
(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.
(b) A county need only establish the violation to obtain the injunction.
(2)
(a) A county may enforce the county's ordinance by withholding a building permit.
(b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a county without approval of a building permit.
(c) The county may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

(d) A county may not deny an applicant a building permit because the applicant has not completed an infrastructure improvement:
(i) that is not essential to meet the requirements for the issuance of a building permit under the building code and fire code; and
(ii) for which the county has accepted an infrastructure improvement assurance for infrastructure improvements for the development.

Amended by Chapter 327, 2015 General Session

17-27a-803 Penalties -- Notice.

(1) The county may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter.
(2) Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter is punishable as a class C misdemeanor upon conviction either:
(a) as a class C misdemeanor; or
(b) by imposing the appropriate civil penalty adopted under the authority of this section.
(3) Prior to imposing upon an owner of record a civil penalty established by ordinance under authority of this chapter, a county shall provide:
(a) written notice, by mail or hand delivery, of each ordinance violation to the address of the:
(i) owner of record on file in the office of the county recorder; or
(ii) person designated, in writing, by the owner of record as the owner's agent for the purpose of receiving notice of an ordinance violation;
(b) the owner of record a reasonable opportunity to cure a noticed violation; and
(c) a schedule of the civil penalties that may be imposed upon the expiration of a time certain.

Amended by Chapter 218, 2012 General Session