

28 ~~other public way, ground, place, property, or structure, the legislative body shall submit the~~
29 ~~proposal to the planning commission for its review and recommendations.]~~

30 ~~[(b) If the legislative body approves any of the items contained in Subsection (a), it~~
31 ~~shall also amend the general plan.]~~

32 Section 2. Section **10-9-1001** is amended to read:

33 **10-9-1001. Appeals.**

34 (1) No person may challenge in district court a municipality's land use decisions made
35 under this chapter or under the regulation made under authority of this chapter until that person
36 has exhausted his administrative remedies.

37 (2) (a) Any person adversely affected by any decision made in the exercise of or in
38 violation of the provisions of this chapter may file a petition for review of the decision with the
39 district court within 30 days after the local decision is rendered.

40 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
41 property owner files a request for arbitration of a constitutional taking issue with the private
42 property ombudsman under Section 63-34-13 until 30 days after:

43 (A) the arbitrator issues a final award; or

44 (B) the private property ombudsman issues a written statement under Subsection
45 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

46 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
47 taking issues that are the subject of the request for arbitration filed with the private property
48 ombudsman by a property owner.

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

51 (3) The courts shall:

52 (a) presume that land use decisions and regulations are valid; and

53 (b) determine only whether or not the decision is arbitrary, capricious, or illegal.

54 Section 3. Section **17-27-305** is amended to read:

55 **17-27-305. Effect of the plan on public uses.**

56 ~~[(+)]~~ After the legislative body has adopted a general plan or any amendments to the
57 general plan, no street, park, or other public way, ground, place, or space, no publicly owned
58 building or structure, and no public utility, whether publicly or privately owned, may be

59 constructed or authorized until and unless:

60 ~~[(a)]~~ (1) it conforms to the plan; ~~[or]~~ and

61 ~~[(b)]~~ (2) following three days notice and an opportunity for public comment, it has
62 been considered ~~[by the planning commission]~~ and ~~[, after receiving the advice of the planning~~
63 ~~commission,]~~ approved by the legislative body ~~[as an amendment to the general plan].~~

64 ~~[(2)(a) Before accepting, widening, removing, extending, relocating, narrowing,~~
65 ~~vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or~~
66 ~~other public way, ground, place, property, or structure, the legislative body shall submit the~~
67 ~~proposal to the planning commission for its review and recommendations.]~~

68 ~~[(b) If the legislative body approves any of the items contained in Subsection (a), it~~
69 ~~shall also amend the general plan.]~~

70 Section 4. Section **17-27-1001** is amended to read:

71 **17-27-1001. Appeals.**

72 (1) No person may challenge in district court a county's land use decisions made under
73 this chapter or under the regulation made under authority of this chapter until that person has
74 exhausted all administrative remedies.

75 (2) (a) Any person adversely affected by any decision made in the exercise of or in
76 violation of the provisions of this chapter may file a petition for review of the decision with the
77 district court within 30 days after the local decision is rendered.

78 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
79 property owner files a request for arbitration of a constitutional taking issue with the private
80 property ombudsman under Section 63-34-13 until 30 days after:

81 (A) the arbitrator issues a final award; or

82 (B) the private property ombudsman issues a written statement under Subsection
83 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

84 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
85 taking issues that are the subject of the request for arbitration filed with the private property
86 ombudsman by a property owner.

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

89 (3) (a) The courts shall:

- 90 (i) presume that land use decisions and regulations are valid; and
91 (ii) determine only whether or not the decision is arbitrary, capricious, or illegal.
92 (b) A determination of illegality requires a determination that the decision violates a
93 statute, ordinance, or existing law.

Legislative Review Note
as of 1-9-03 5:11 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0122

Planning Commission Review of Changes to Public Uses

11-Feb-03

4:33 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst