

REFERENCE TITLE: rezoning; majority vote

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1357

Introduced by
Senator Pierce S

AN ACT

AMENDING SECTION 11-829, ARIZONA REVISED STATUTES; RELATING TO PLANNING AND ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-829, Arizona Revised Statutes, is amended to
3 read:

4 11-829. Amendment of ordinance or change of zoning district
5 boundaries; definition

6 A. A property owner or authorized agent of a property owner desiring
7 an amendment or change in the zoning ordinance changing the zoning district
8 boundaries within an area previously zoned shall file an application for the
9 amendment or change. All zoning and rezoning ordinances, regulations or
10 specific plans adopted under this article shall be consistent with and
11 conform to the adopted county plan. In the case of uncertainty in
12 constructing or applying the conformity of any part of a proposed rezoning
13 ordinance to the adopted county plan, the ordinance shall be construed in a
14 manner that will further the implementation of, and not be contrary to, the
15 goals, policies and applicable elements of the county plan. A rezoning
16 ordinance conforms with the county plan if it proposes land uses, densities
17 or intensities within the range of identified uses, densities and intensities
18 of the county plan.

19 B. The board of supervisors shall adopt by ordinance a citizen review
20 process that applies to all rezoning and specific plan applications that
21 require a public hearing. The citizen review process shall include at least
22 the following requirements:

23 1. Adjacent landowners and other potentially affected citizens will be
24 notified of the application.

25 2. The county will inform adjacent landowners and other potentially
26 affected citizens of the substance of the proposed rezoning.

27 3. Adjacent landowners and other potentially affected citizens will be
28 provided an opportunity to express any issues or concerns that they may have
29 with the proposed rezoning before the public hearing.

30 C. Upon receipt of the application the board shall submit it to the
31 commission for a report. Prior to reporting to the board, the commission
32 shall hold at least one public hearing thereon after giving at least fifteen
33 days' notice thereof by one publication in a newspaper of general circulation
34 in the county seat and by posting of the area included in the proposed
35 change. If the matter to be considered applies to territory in a high noise
36 or accident potential zone as defined in section 28-8461, the notice shall
37 include a general statement that the matter applies to property located in
38 the high noise or accident potential zone. In case of a rezoning, the
39 posting shall be in no less than two places with at least one notice for each
40 quarter mile of frontage along perimeter public rights-of-way so that the
41 notices are visible from the nearest public right-of-way. The commission
42 shall also send notice by first class mail to each real property owner as
43 shown on the last assessment of the property within three hundred feet of the
44 proposed amendment or change and each county and municipality which is
45 contiguous to the area of the amendment or change. In proceedings involving

1 rezoning of land that is located within territory in the vicinity of a
 2 military airport or ancillary military facility as defined in section
 3 28-8461, the commission shall send copies of the notice of public hearing by
 4 first class mail to the military airport. The notice sent by mail shall
 5 include, at a minimum, the date, time and place of the hearing on the
 6 proposed amendment or change including a general explanation of the matter to
 7 be considered, ~~AND~~ a general description of the area of the proposed
 8 amendment or change. ~~, how the real property owners within the zoning area~~
 9 ~~may file approvals or protests of the proposed rezoning, and notification~~
 10 ~~that if twenty per cent of the property owners by area and number within the~~
 11 ~~zoning area file protests, an affirmative vote of three-fourths of all~~
 12 ~~members of the board will be required to approve the rezoning.~~ The following
 13 specific notice provisions also apply:

14 1. In proceedings that are initiated by the commission involving
 15 rezoning, notice by first class mail shall be sent to each real property
 16 owner, as shown on the last assessment of the property, of the area to be
 17 rezoned and all property owners, as shown on the last assessment of the
 18 property, within three hundred feet of the property to be rezoned.

19 2. In proceedings involving one or more of the following proposed
 20 changes or related series of changes in the standards governing land uses,
 21 notice shall be provided in the manner prescribed by paragraph 3 of this
 22 subsection:

23 (a) A ten per cent or more increase or decrease in the number of
 24 square feet or units that may be developed.

25 (b) A ten per cent or more increase or reduction in the allowable
 26 height of buildings.

27 (c) An increase or reduction in the allowable number of stories of
 28 buildings.

29 (d) A ten per cent or more increase or decrease in setback or open
 30 space requirements.

31 (e) An increase or reduction in permitted uses.

32 3. In proceedings governed by paragraph 2 of this subsection, the
 33 county shall provide notice to real property owners pursuant to at least one
 34 of the following notification procedures:

35 (a) Notice shall be sent by first class mail to each real property
 36 owner, as shown on the last assessment, whose real property is directly
 37 affected by the changes.

38 (b) If the county issues utility bills or other mass mailings that
 39 periodically include notices or other informational or advertising materials,
 40 the county shall include notice of such changes with such utility bills or
 41 other mailings.

42 (c) The county shall publish such changes prior to the first hearing
 43 on such changes in a newspaper of general circulation in the county. The
 44 changes shall be published in a display advertisement covering not less than
 45 one-eighth of a full page.

1 4. If notice is provided pursuant to paragraph 3, subdivision (b) or
2 (c) of this subsection, the county shall also send notice by first class mail
3 to persons who register their names and addresses with the county as being
4 interested in receiving such notice. The county may charge a fee not to
5 exceed five dollars per year for providing this service and may adopt
6 procedures to implement this paragraph.

7 5. Notwithstanding the notice requirements set forth in paragraph 2 of
8 this subsection, the failure of any person or entity to receive notice shall
9 not constitute grounds for any court to invalidate the actions of a county
10 for which the notice was given.

11 D. If the planning commission or hearing officer has held a public
12 hearing, the board may adopt the recommendations of the planning commission
13 or hearing officer through use of a consent calendar without holding a second
14 public hearing if there is no objection, request for public hearing or other
15 protest. If there is an objection, a request for public hearing or a
16 protest, the board shall hold a public hearing thereon at least fifteen days'
17 notice of which shall be given by one publication in a newspaper of general
18 circulation in the county seat and by posting the area included in the
19 proposed change. In counties with territory in the vicinity of a military
20 airport or ancillary military facility as defined in section 28-8461, the
21 board shall hold a public hearing if, after notice is mailed to the military
22 airport pursuant to subsection C of this section and before the public
23 hearing, the military airport provides comments or analysis concerning the
24 compatibility of the proposed rezoning with the high noise or accident
25 potential generated by military airport or ancillary military facility
26 operations that may have an adverse impact on public health and safety, and
27 the board shall consider and analyze the comments or analysis before making a
28 final determination. After holding the hearing the board may adopt the
29 amendment **BY A MAJORITY VOTE OF THE BOARD.** ~~, but if twenty per cent of the~~
30 ~~owners of property by area and number within the zoning area file a protest~~
31 ~~to the proposed change, the change shall not be made except by a~~
32 ~~three fourths vote of all members of the board. If any members of the board~~
33 ~~are unable to vote on the question because of a conflict of interest, the~~
34 ~~required number of votes for the passage of the question is three fourths of~~
35 ~~the remaining membership of the board, except that the required number of~~
36 ~~votes in no event shall be less than a majority of the full membership of the~~
37 ~~board. In calculating the owners by area, only that portion of a lot or~~
38 ~~parcel of record situated within three hundred feet of the property to be~~
39 ~~rezoned shall be included. In calculating the owners by number or area,~~
40 ~~county property and public rights-of-way shall not be included.~~

41 E. The planning commission, on its own motion, may propose an
42 amendment to the zoning ordinance and, after holding a public hearing as
43 required by this chapter, may transmit the proposal to the board which shall
44 thereupon proceed as set forth in this chapter for any other amendment.

1 F. Notwithstanding title 19, chapter 1, article 4, a decision by the
 2 governing body involving rezoning of land which is not owned by the county
 3 and which changes the zoning classification of such land or which changes the
 4 zoning standards of such land as set forth in subsection C, paragraph 2 of
 5 this section may not be enacted as an emergency measure and such a change
 6 shall not be effective for at least thirty days after final approval of the
 7 change in classification by the board. Unless a resident files a written
 8 objection with the board of supervisors, the rezoning may be enacted as an
 9 emergency measure that becomes effective immediately by a four-fifths
 10 majority vote of the board for those counties with five or more supervisors
 11 or a two-thirds majority vote of the board for those counties with ~~less~~ FEWER
 12 than five supervisors.

13 G. The legislature finds that a rezoning of land that changes the
 14 zoning classification of the land or that restricts the use or reduces the
 15 value of the land is a matter of statewide concern. Such a change in zoning
 16 that is initiated by the governing body or zoning body shall not be made
 17 without the express written consent of the property owner. In applying an
 18 open space element or a growth element of a county plan, a parcel of land
 19 shall not be rezoned for open space, recreation, conservation or agriculture
 20 unless the owner of the land consents to the rezoning in writing. For the
 21 purposes of this subsection, rezoning does not include the creation or
 22 expansion of overlay zones solely for the purpose of implementing airport
 23 safety and protection. Rezoning also does not include the redesignation of
 24 areas of the county to which the residential provisions of the county
 25 building codes apply or do not apply. The county shall not adopt any change
 26 in a zoning classification to circumvent the purpose of this subsection.

27 H. For the purposes of this section, "zoning area" means the area
 28 within three hundred feet of the proposed amendment or change.