Senate Engrossed House Bill

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE BILL 2116

AN ACT

AMENDING SECTION 9-462.04, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-462.04, Arizona Revised Statutes, is amended to read:

9-462.04. Public hearing required; definition

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. Notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen days before the hearing in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to be legible from the public right-of-way and in at least ten public places in the municipality. A posted notice shall be printed so that the following are visible from a distance of one hundred feet: the word "zoning", the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.

2. In proceedings involving rezoning of land ~~which~~ THAT abuts other municipalities or unincorporated areas of the county or a combination thereof, copies of the notice of public hearing shall be transmitted to the planning agency of ~~such~~ THE governmental unit abutting such land. In proceedings involving rezoning of land that is located within the territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the municipality shall send copies of the notice of public hearing by first class mail to the military airport. In addition to notice by publication, a municipality may give notice of the hearing in ~~such~~ ANY other manner ~~as it may deem~~ THAT THE MUNICIPALITY DEEMS necessary or desirable.

3. In proceedings that are not initiated by the property owner involving rezoning of land ~~which~~ THAT may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

4. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by paragraph 5 OF THIS SUBSECTION:

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

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

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

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

(e) An increase or reduction in permitted uses.

5. In proceedings governed by paragraph 4 OF THIS SUBSECTION, the municipality shall provide notice to real property owners pursuant to at least one of the following notification procedures:

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

(b) If the municipality issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include notice of ~~such~~ THE changes with such utility bills or other mailings.

(c) The municipality shall publish ~~such~~ THE changes ~~prior to~~ BEFORE the first hearing on such changes in a newspaper of general circulation in the municipality. The changes shall be published in a "display ad" covering not less than one-eighth of a full page.

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

7. Notwithstanding the notice requirements ~~set forth~~ in paragraph 4 OF THIS SUBSECTION, the failure of any person or entity to receive notice ~~shall~~ DOES not constitute grounds for any court to invalidate the actions of a municipality for which the notice was given.

B. If the matter to be considered applies to territory in a high noise or accident potential zone as defined in section 28-8461, the notice prescribed in subsection A of this section shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

C. After the hearing, the planning commission or hearing officer shall render a decision in the form of a written recommendation to the governing body. The recommendation shall include the reasons for the recommendation and be transmitted to the governing body in such form and manner as may be specified by the governing body.

D. If the planning commission or hearing officer has held a public hearing, the governing body may adopt the recommendations of the planning commission or hearing officer without holding a second public hearing if there is no objection, request for public hearing or other protest. The governing body shall hold a public hearing if requested by the party

aggrieved or any member of the public or of the governing body, or, in any case, if ~~no~~ A public hearing has NOT been held by the planning commission or hearing officer. In municipalities with territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the governing body shall hold a public hearing if, after notice is transmitted to the military airport pursuant to subsection A of this section and before the public hearing, the military airport provides comments or analysis concerning the compatibility of the proposed rezoning with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse impact on public health and safety, and the governing body shall consider and analyze the comments or analysis before making a final determination. Notice of the time and place of the hearing shall be given in the time and manner provided for the giving of notice of the hearing by the planning commission as specified in subsection A of this section. ~~In addition~~ A municipality may give ADDITIONAL notice of the hearing in ~~such~~ ANY other manner as ~~it may deem~~ THE MUNICIPALITY DEEMS necessary or desirable.

E. A municipality may enact an ordinance authorizing county zoning to continue in effect until municipal zoning is applied to land previously zoned by the county and annexed by the municipality, but in no event for longer than six months after the annexation.

F. A municipality is not required to adopt a general plan ~~prior to~~ BEFORE the adoption of a zoning ordinance.

G. If there is no planning commission or hearing officer, the governing body of the municipality shall perform the functions assigned to the planning commission or hearing officer.

H. If the owners of twenty ~~per cent~~ PERCENT or more ~~either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or any side thereof extending one hundred fifty feet therefrom, or of those directly opposite thereto extending one hundred fifty feet from the street frontage of the opposite lots,~~ OF THE PROPERTY BY AREA AND NUMBER OF LOTS, TRACTS AND CONDOMINIUM UNITS WITHIN THE ZONING AREA OF THE AFFECTED PROPERTY file a protest in writing against a proposed amendment, ~~it~~ THE CHANGE shall not become effective except by the favorable vote of three-fourths of all members of the governing body of the municipality. If any members of the governing body are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the governing body, provided that such required number of votes shall in no event be less than a majority of the full membership of the legally established governing body. FOR THE PURPOSES OF THIS SUBSECTION, THE VOTE SHALL BE ROUNDED TO THE NEAREST WHOLE NUMBER.

I. In applying an open space element or a growth element of a general plan, a parcel of land shall not be rezoned for open space,

recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing.

J. Notwithstanding ~~the provisions~~ of section 19-142, subsection B, a decision by the governing body involving rezoning of land ~~which~~ THAT is not owned by the municipality and ~~which~~ THAT changes the zoning classification of such land may not be enacted as an emergency measure and ~~such~~ THE change shall not be effective for at least thirty days after final approval of the change in classification by the governing body.

K. FOR THE PURPOSES OF THIS SECTION, "ZONING AREA" MEANS BOTH OF THE FOLLOWING:

1. THE AREA WITHIN ONE HUNDRED FIFTY FEET, INCLUDING ALL RIGHTS-OF-WAY, OF THE AFFECTED PROPERTY SUBJECT TO THE PROPOSED AMENDMENT OR CHANGE.

2. THE AREA OF THE PROPOSED AMENDMENT OR CHANGE.