



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 ASSEMBLY BILL 266

May 16, 2023 - Introduced by Representatives KRUG, BROOKS, ALLEN, EDMING, MOSES, MURPHY, O'CONNOR, PENTERMAN, SCHRAA, SNYDER, SORTWELL and SPIROS, cosponsored by Senators STROEBEL, QUINN, JAGLER and TESTIN. Referred to Committee on Housing and Real Estate.

1 **AN ACT to repeal** 59.69 (5) (e) 5g., 60.61 (4) (c) 2. and 62.23 (7) (e) 15.; **to**
2 **renumber** 66.10015 (3); **to amend** 59.69 (5e) (e), 60.61 (4e) (e), 62.23 (6) (g),
3 62.23 (6) (h), 62.23 (7) (b), 62.23 (7) (de) 5., 66.10015 (title), 236.13 (5) and 781.10
4 (2) (a); **to repeal and recreate** 59.694 (10), 62.23 (7) (e) 10. and 66.10015 (3)
5 (title); and **to create** 60.65 (6), 66.10015 (1m), 66.10015 (3) (a), 66.10016,
6 781.10, 808.04 (1s) and 809.108 of the statutes; **relating to:** judicial review of
7 local governmental decisions related to certain land development, local
8 approval of residential housing development, and amendment of zoning
9 ordinances.

Analysis by the Legislative Reference Bureau

This bill requires political subdivisions to approve certain permit applications related to residential housing developments that are consistent with certain local requirements and limits the authority of a political subdivision to impose a supermajority requirement for a zoning ordinance amendment. The bill also specifies procedures that apply to judicial review of certain local determinations related to land use.

Under the bill, a political subdivision must approve an application for a permit or administrative approval required to proceed with a residential housing

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development if the application is complete and the development meets the political subdivision's existing requirements that must be satisfied to obtain the permit. The bill also provides that, with limited exceptions, only a simple majority of a quorum of the members-elect of the governing body of a political subdivision is required to amend the political subdivision's zoning ordinance.

Under current law, decisions of political subdivisions related to land use are often judicially reviewed using a common law procedure known as "certiorari" review. In general, under this type of review, a court receives the record created by the political subdivision and performs a limited review to test the validity of the decision. On certiorari review, a court is generally limited to determining whether 1) the political subdivision's decision was within its jurisdiction; 2) the political subdivision acted according to law; 3) the decision was arbitrary, oppressive, or unreasonable; and 4) the evidence presented was such that the political subdivision might reasonably make the decision it did. There is a presumption of correctness and validity to the political subdivision's decision.

The bill specifies certain details regarding the conduct of certiorari review of certain decisions of political subdivisions relating to zoning and residential land use. First, the bill limits the persons who may seek review of these decisions to those that 1) submitted the application for approval; 2) have an ownership interest in the real property that is the subject of the application for an approval; 3) sustain actual damages or will imminently sustain actual damages that are personal to the person and distinct from damages that impact the public generally; or 4) are certain governmental actors. In addition, persons under item 3 must have provided a statement or appeared at a public proceeding and testified before the political subdivision on the approval proposed to be reviewed. Second, the bill requires that the certiorari action be filed within 30 days of the final decision of the political subdivision. Third, the bill specifies that a court must decide the action based only on the record provided by the political subdivision and may only affirm or reverse the decision or remand for further proceedings. Finally, the bill specifies deadlines for various steps in the review process to expedite the court's review and directs the court to give the action preference over other civil actions and proceedings.

Currently, s. 66.10015, stats., includes several definitions. The bill specifies that the definitions that apply to s. 66.10015, stats., do not apply to s. 66.10016, stats., a new provision created in the bill.

Because this bill may increase or decrease, directly or indirectly, the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing in this state, the Department of Administration, as required by law, will prepare a report to be printed as an appendix to this bill.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 **SECTION 1.** 59.69 (5) (e) 5g. of the statutes is repealed.

2 **SECTION 2.** 59.69 (5e) (e) of the statutes is amended to read:

3 59.69 **(5e)** (e) If a county denies a person's conditional use permit application,
4 the person may appeal the decision to the circuit court under the procedures
5 contained in s. ~~59.694 (10)~~ 781.10. Notwithstanding s. 59.694 (4), a county may
6 provide by ordinance that the county's decision on a conditional use permit
7 application is not reviewable by the board of adjustment and may be appealed
8 directly to the circuit court under the procedures contained in s. 781.10.

9 **SECTION 3.** 59.694 (10) of the statutes is repealed and recreated to read:

10 59.694 **(10)** JUDICIAL REVIEW. A decision of the board of adjustment under this
11 section is subject to review by certiorari under s. 781.10.

12 **SECTION 4.** 60.61 (4) (c) 2. of the statutes is repealed.

13 **SECTION 5.** 60.61 (4e) (e) of the statutes is amended to read:

14 60.61 **(4e)** (e) If a town denies a person's conditional use permit application, the
15 person may appeal the decision to the circuit court under the procedures described
16 in s. ~~59.694 (10)~~ 781.10.

17 **SECTION 6.** 60.65 (6) of the statutes is created to read:

18 60.65 **(6)** JUDICIAL REVIEW. A decision of a board of adjustment under this
19 section is subject to review by certiorari under s. 781.10.

20 **SECTION 7.** 62.23 (6) (g) of the statutes is amended to read:

21 62.23 **(6)** (g) Before taking any action authorized in this subsection, the board
22 of appeals or city council shall hold a hearing at which parties in interest and others
23 shall have an opportunity to be heard. At least 15 days before the hearing notice of
24 the time and place of the hearing shall be published as a class 1 notice, under ch. 985.
25 Any such decision under this paragraph shall be subject to review by certiorari

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1 issued by a court of record in the same manner and pursuant to the same provisions
2 as in appeals from the decisions of a board of appeals upon zoning regulations under
3 s. 781.10.

4 **SECTION 8.** 62.23 (6) (h) of the statutes is amended to read:

5 62.23 (6) (h) In any city which that has established an official map as herein
6 ~~authorized~~, no public sewer or other municipal street utility or improvement shall
7 may be constructed in any street, highway, or parkway until such the street,
8 highway, or parkway is ~~duly~~ placed on the official map. No permit for the erection
9 of any building shall may be issued unless a street, highway, or parkway giving
10 access to such the proposed structure has been ~~duly~~ placed on the official map. Where
11 the enforcement of the provisions of this section would entail practical difficulty or
12 unnecessary hardship, and where the circumstances of the case do not require the
13 structure to be related to existing or proposed streets, highways, or parkways, the
14 applicant for such a permit may appeal from the decision of the administrative officer
15 having charge of the issue of permits to the board of appeals in any city which that
16 has established a board having power to make variances or exceptions in zoning
17 regulations, and the same provisions are applied to such appeals under this
18 paragraph and to such boards as are provided in cases of appeals on zoning
19 regulations. The board may in passing on such an appeal under this paragraph make
20 any reasonable exception, and issue the permit subject to conditions that will protect
21 any future street, highway, or parkway layout. Any such decision under this
22 paragraph shall be subject to review by certiorari issued by a court of record in the
23 same manner and pursuant to the same provisions as in appeals from the decision
24 of such board upon zoning regulations under s. 781.10. In any city in which there is
25 no such board of appeals the city council shall have the same powers and be subject

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1 to the same restrictions, and the same method of court review shall be available. For
2 such purpose ~~such~~ of appeal under this paragraph, the council is authorized to act
3 as a discretionary administrative or quasi-judicial body. When so acting it shall not
4 sit as a legislative body, but in a separate meeting and with separate minutes kept.

5 **SECTION 9.** 62.23 (7) (b) of the statutes is amended to read:

6 62.23 (7) (b) *Districts.* For any and all of said purposes the council may divide
7 the city into districts of such number, shape, and area as may be deemed best suited
8 to carry out the purposes of this section; and within such districts it may regulate and
9 restrict the erection, construction, reconstruction, alteration or use of buildings,
10 structures or land. All such regulations shall be uniform for each class or kind of
11 buildings and for the use of land throughout each district, but the regulations in one
12 district may differ from those in other districts. No ordinance enacted or regulation
13 adopted under this subsection may prohibit forestry operations that are in
14 accordance with generally accepted forestry management practices, as defined
15 under s. 823.075 (1) (d). The council may establish mixed-use districts that contain
16 any combination of uses, such as industrial, commercial, public, or residential uses,
17 in a compact urban form. The council may with the consent of the owners establish
18 special districts, to be called planned development districts, with regulations in each,
19 which in addition to those provided in par. (c), will over a period of time tend to
20 promote the maximum benefit from coordinated area site planning, and diversified
21 location of structures and which may have mixed compatible uses. Such regulations
22 shall provide for a safe and efficient system for pedestrian and vehicular traffic,
23 attractive recreation and landscaped open spaces, economic design and location of
24 public and private utilities and community facilities and ~~insure~~ ensure adequate
25 standards of construction and planning. Such regulations may also provide for the

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1 development of the land in such districts with one or more principal structures and
2 related accessory uses, and in planned development districts and mixed-use
3 districts the regulations need not be uniform.

4 **SECTION 10.** 62.23 (7) (de) 5. of the statutes is amended to read:

5 62.23 (7) (de) 5. If a city denies a person's conditional use permit application,
6 the person may appeal the decision to the circuit court under the procedures
7 contained in ~~par. (e) 10.~~ s. 781.10.

8 **SECTION 11.** 62.23 (7) (e) 10. of the statutes is repealed and recreated to read:

9 62.23 (7) (e) 10. A decision under this paragraph is subject to review by
10 certiorari under s. 781.10.

11 **SECTION 12.** 62.23 (7) (e) 15. of the statutes is repealed.

12 **SECTION 13.** 66.10015 (title) of the statutes is amended to read:

13 **66.10015 (title) Limitation on development regulation authority and**
14 **down-zoning.**

15 **SECTION 14.** 66.10015 (1m) of the statutes is created to read:

16 66.10015 (1m) APPLICABILITY OF DEFINITIONS. The definitions under sub. (1) do
17 not apply to s. 66.10016.

18 **SECTION 15.** 66.10015 (3) (title) of the statutes is repealed and recreated to
19 read:

20 66.10015 (3) (title) ZONING ORDINANCE AMENDMENTS.

21 **SECTION 16.** 66.10015 (3) of the statutes is renumbered 66.10015 (3) (b).

22 **SECTION 17.** 66.10015 (3) (a) of the statutes is created to read:

23 66.10015 (3) (a) Except as provided in par. (b) and ss. 59.69 (5) (e) 5m., 60.61
24 (4) (c) 3., and 62.23 (7) (d) 2m., the enactment of a zoning amendment shall be
25 approved by a simple majority of a quorum of the members-elect.

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1 **SECTION 18.** 66.10016 of the statutes is created to read:

2 **66.10016 Permits for residential housing developments.** (1) In this
3 section:

4 (a) “Permit” means any permit or administrative approval required to proceed
5 with a residential housing development. “Permit” does not include a change to an
6 existing ordinance or zoning classification of land or an approval of a conditional use
7 as defined under s. 59.69 (5e) (a) 1., 60.61 (4e) (a) 1., or 62.23 (7) (de) 1. a.

8 (b) “Political subdivision” means a city, village, town, or county.

9 (c) “Residential housing development” means a development for single-family
10 or multi-family housing for sale or rent.

11 (2) The definitions under s. 66.10015 (1) do not apply to this section.

12 (3) If a person submits a complete application for a permit related to a
13 residential housing development meeting all existing requirements that must be
14 satisfied to obtain the permit at the time the application is filed, the political
15 subdivision shall grant the application. An application is deemed complete under
16 this subsection if it complies with form and content requirements. An application
17 is filed under this subsection on the date that the political subdivision receives the
18 application.

19 (4) A person aggrieved by a political subdivision’s failure to approve an
20 application under sub. (3) may seek relief through an action for mandamus as
21 provided in ch. 783. If the court finds that the political subdivision improperly failed
22 to approve the application under sub. (3), the court shall issue a writ of mandamus
23 ordering the political subdivision to approve the application. For purposes of any
24 mandamus claim filed under this subsection, substantial damages or injury shall be
25 assumed.

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1 **SECTION 19.** 236.13 (5) of the statutes is amended to read:

2 236.13 (5) Any person aggrieved by an objection to a plat or a failure to approve
3 a plat may appeal therefrom as provided in s. ~~62.23 (7) (e) 10., 14. and 15.,~~ within 30
4 days of notification of the rejection of the plat. For the purpose of such appeal the
5 term “board of appeals” means an “approving authority”. Where the failure to
6 approve is based on an unsatisfied objection, the agency making the objection shall
7 be made a party to the action. The court shall direct that the plat be approved if it
8 finds that the action of the approving authority or objecting agency is arbitrary,
9 unreasonable or discriminatory 781.10.

10 **SECTION 20.** 781.10 of the statutes is created to read:

11 **781.10 Certiorari review of certain local decisions. (1) DEFINITIONS.** In
12 this section:

13 (a) “Approval” means a permit or authorization for building, zoning, driveway,
14 stormwater, or other activity related to residential development.

15 (b) “Political subdivision” means a city, village, town, or county or a board of
16 appeals or board of adjustment.

17 (c) “Residential development” means the development or redevelopment of
18 land or buildings for the primary purpose of providing housing.

19 **(2) JUDICIAL REVIEW.** (a) A final decision of a political subdivision or an agency
20 of a political subdivision on an application for an approval may be reviewed only by
21 an action for certiorari as provided under this section.

22 (b) No action under this section may be filed more than 30 days after the final
23 decision by a political subdivision or agency of a political subdivision on an
24 application for an approval.

25 (c) An action under this section may be filed only by any of the following:

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- 1 1. The person who submitted the application for an approval.
- 2 2. A person that has an ownership interest in the real property that is the
3 subject of the application for an approval.
- 4 3. A person that, as a result of the final decision on the application for an
5 approval, sustains actual damages or will imminently sustain actual damages that
6 are personal to the person and distinct from damages that impact the public
7 generally. A person under this subdivision may not seek review under this section
8 unless, prior to the final decision on the approval, the person provided a statement
9 in writing on the approval to the political subdivision or agency of the political
10 subdivision or appeared and provided an oral statement at a public proceeding held
11 by the political subdivision or agency of the political subdivision at which the
12 approval was considered.
- 13 4. A person, other than an individual, that satisfies all of the following
14 conditions:
- 15 a. The person has as a member, partner, or stockholder at least one person
16 described under subd. 1., 2., or 3.
- 17 b. The person was not organized or incorporated in response to the application.
- 18 5. A local governmental unit, as defined in s. 66.0131 (1) (a).
- 19 6. To the extent authorized by law, a state agency, as defined in s. 20.931 (1) (c),
20 that is aggrieved by the final decision on the application for approval.
- 21 (d) 1. The person seeking review under this section shall file pleadings, which
22 shall be served in the manner provided in ch. 801 for service in civil actions. The
23 pleadings shall specify facts demonstrating that the person has standing under par.
24 (c) and shall identify the specific errors the person claims justify the requested relief.
25 The political subdivision shall have 45 days to file an answer or other responsive

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1 pleading to the complaint. The political subdivision shall transmit the record under
2 s. 781.03 (1) no later than 30 days after an answer or other responsive pleading is
3 filed.

4 2. The court shall require that any additional pleadings and any motions and
5 supporting papers be filed no later than 90 days after the expiration of the latest
6 deadline under subd. 1. for filing answers or other responsive pleadings. The court
7 may supplement the record on review only upon motion of a party for good cause.

8 3. The court shall give the action under this paragraph preference over all other
9 civil actions and proceedings.

10 4. The court shall decide the action under this paragraph upon the return made
11 by the political subdivision. The court may reverse or affirm the determination
12 brought up for review or remand to the political subdivision for further proceedings
13 consistent with the court's decision. The court shall issue a decision in writing no
14 later than 60 days after the deadline under subd. 2.

15 5. Any appeal of a decision issued under subd. 4. shall be taken within the time
16 period specified in s. 808.04 (1s).

17 **SECTION 21.** 781.10 (2) (a) of the statutes, as created by 2023 Wisconsin Act
18 (this act), is amended to read:

19 781.10 (2) (a) ~~A- Except as provided in s. 66.10016 (4), a~~ final decision of a
20 political subdivision or an agency of a political subdivision on an application for an
21 approval may be reviewed only by an action for certiorari as provided under this
22 section.

23 **SECTION 22.** 808.04 (1s) of the statutes is created to read:

24 808.04 (1s) An appeal under s. 781.10 (2) (d) 5. shall be initiated within 30 days
25 after the date of entry of the judgment or order appealed from.

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1 **SECTION 23.** 809.108 of the statutes is created to read:

2 **809.108 Appeals in proceedings related to political subdivision**
3 **approvals. (1) APPLICABILITY.** This section applies to the appeal of a judgment or
4 order under s. 781.10 (2) (d) 5. and supersedes all inconsistent provisions of this
5 chapter.

6 **(2) INITIATING AN APPEAL.** A party may initiate an appeal under this section by
7 filing a notice of appeal with the clerk of the circuit court in which the judgment or
8 order appealed from was entered and shall specify in the notice of appeal the
9 judgment or order appealed from.

10 **(3) APPEAL PROCEDURE.** Subsequent proceedings in an appeal under this section
11 are governed by the procedures for civil appeals under this subchapter and the
12 procedures under subch. VI, except as follows:

13 (a) The appellant shall file a brief within 30 days after the filing of the record
14 on appeal.

15 (b) The respondent shall file a brief within 30 days after the service of the
16 appellant's brief.

17 (c) The appellant shall file within 15 days after the service of the respondent's
18 brief a reply brief or statement that a reply brief will not be filed.

19 **(4) DECISION.** The court of appeals shall give preference to an appeal under this
20 section and shall take the appeal in an order that ensures that the court of appeals
21 issues a decision no later than 90 days after the deadline under sub. (3) (c).

22 **SECTION 24. Initial applicability.**

23 (1) This act first applies to a final decision, including a final decision on an
24 approval, as defined in s. 781.10 (1) (a), made by a political subdivision, as defined
25 in s. 781.10 (1) (b), on the effective date of this subsection.

