

State of Wisconsin



2023 Assembly Bill 266

Date of enactment: **June 22, 2023**
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2023 WISCONSIN ACT 16

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

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

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 of the statutes is repealed.

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

59.69 (5e) (e) If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10) (a), or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in s. 59.694 (10) (b). Notwithstanding s. 59.694 (4), a county may provide by ordinance that the county's decision on a conditional use permit application is not reviewable by the board of adjustment and may be appealed directly to the circuit court under the procedures contained in s. 59.694 (10).

SECTION 3e. 59.694 (10) of the statutes is renumbered 59.694 (10) (a).

SECTION 3g. 59.694 (10) (b) of the statutes is created to read:

59.694 (10) (b) Notwithstanding par. (a), a decision of the board of adjustment on an application for an

approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

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 of the statutes is repealed.

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

60.61 (4e) (e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 59.694 (10) (a), or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in s. 59.694 (10) (b).

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

60.65 (6) JUDICIAL REVIEW. A decision of a board of adjustment under this section is subject to review under the procedures described in s. 59.694 (10) (a), or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in s. 59.694 (10) (b).

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

62.23 (6) (g) Before taking any action authorized in this subsection, the board of appeals or city council shall hold a hearing at which parties in interest and others shall

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

have an opportunity to be heard. At least 15 days before the hearing notice of the time and place of the hearing shall be published as a class 1 notice, under ch. 985. Any ~~such decision under this paragraph~~ shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations pursuant to sub. (7) (e) 10. a., ~~except that if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), the decision shall be subject to review under the procedures contained in s. 781.10.~~

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

62.23 (6) (h) In any city ~~which that~~ has established an official map as ~~herein authorized,~~ no public sewer or other municipal street utility or improvement shall ~~may~~ be constructed in any street, highway, or parkway until ~~such the~~ street, highway, or parkway is ~~duly~~ placed on the official map. No permit for the erection of any building shall ~~may~~ be issued unless a street, highway, or parkway giving access to ~~such the~~ proposed structure has been ~~duly~~ placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways, or parkways, the applicant for ~~such a~~ permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city ~~which that~~ has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to ~~such appeals under this paragraph~~ and to ~~such boards as are provided in cases of appeals on zoning regulations. The board may in passing on such an appeal under this paragraph make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway, or parkway layout. Any such decision under this paragraph shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations sub. (7) (e) 10. a., except that if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), the decision shall be subject to review under the procedures contained in s. 781.10.~~ In any city in which there is no ~~such board of appeals the city council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For such purpose such of appeal under this paragraph, the council is authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.~~

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

62.23 (7) (b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d). The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, ~~and~~ diversified location of structures and ~~which may have~~ mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and ~~insure~~ ensure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.

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

62.23 (7) (de) 5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10. a., or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in par. (e) 10. b.

SECTION 11e. 62.23 (7) (e) 10. of the statutes is renumbered 62.23 (7) (e) 10. a.

SECTION 11g. 62.23 (7) (e) 10. b. of the statutes is created to read:

62.23 (7) (e) 10. b. Notwithstanding subd. 10. a., a decision of the board of appeals on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

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

66.10015 (title) Limitation on development regulation authority and down zoning.

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

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

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

66.10015 (3) (title) ZONING ORDINANCE AMENDMENTS.

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

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

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

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

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

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

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

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

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

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

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

SECTION 19e. 236.13 (5) of the statutes is renumbered 236.13 (5) (a) and amended to read:

236.13 (5) (a) Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23 (7) (e) 10. a, 14. and 15., within 30 days of notification of the rejection of the plat.

For the purpose of ~~such an~~ an appeal under this paragraph, the term “board of appeals” means an “approving authority”. Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable, or discriminatory.

SECTION 19g. 236.13 (5) (b) of the statutes is created to read:

236.13 (5) (b) Notwithstanding par. (a), a decision of an approving authority on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

SECTION 20. 781.10 of the statutes is created to read: **781.10 Certiorari review of certain local decisions. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

1. The person who submitted the application for an approval.

2. A person that has an ownership interest in the real property that is the subject of the application for an approval.

3. A person that, as a result of the final decision on the application for an approval, sustains actual damages or will imminently sustain actual damages that are personal to the person and distinct from damages that impact the public generally. A person under this subdivision may not seek review under this section unless, prior to the final decision on the approval, the person provided a statement in writing on the approval to the political subdivision or agency of the political subdivision or appeared and provided an oral statement at a public proceeding held by the political subdivision or agency of the political subdivision at which the approval was considered.

4. A person, other than an individual, that satisfies all of the following conditions:

a. The person has as a member, partner, or stockholder at least one person described under subd. 1., 2., or 3.

b. The person was not organized or incorporated in response to the application.

5. A local governmental unit, as defined in s. 66.0131 (1) (a).

6. To the extent authorized by law, a state agency, as defined in s. 20.931 (1) (c), that is aggrieved by the final decision on the application for approval.

(d) 1. The person seeking review under this section shall file pleadings, which shall be served in the manner provided in ch. 801 for service in civil actions. The pleadings shall specify facts demonstrating that the person has standing under par. (c) and shall identify the specific errors the person claims justify the requested relief. The political subdivision shall have 45 days to file an answer or other responsive pleading to the complaint. The political subdivision shall transmit the record under s. 781.03 (1) no later than 30 days after an answer or other responsive pleading is filed.

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

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

4. The court shall decide the action under this paragraph upon the return made by the political subdivision. The court may reverse or affirm the determination brought up for review or remand to the political subdivision for further proceedings consistent with the court's decision or take any other action that the court deems appropriate in the interests of justice that is consistent with judicial review of an action in certiorari. The court shall issue a decision in writing no later than 60 days after the deadline under subd. 2.

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

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

781.10 (2) (a) ~~-A- Except as provided in s. 66.10016 (4), a final decision of a political subdivision or an agency of a political subdivision on an application for an~~

approval may be reviewed only by an action for certiorari as provided under this section.

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

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

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

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

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

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

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

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

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

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

SECTION 24. Initial applicability.

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

SECTION 25. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The renumbering of s. 66.10015 (3), the amendment of s. 781.10 (2) (a), the repeal and recreation of s. 66.10015 (3) (title), and the creation of ss. 66.10015 (1m) and (3) (a) and 66.10016 take effect on January 1, 2025.