

PROPOSED COMMITTEE AMENDMENT TO LD 775

Text in place of Concept Draft
Presented by Representative Barry Hobbins

An Act to Streamline Judicial Review of Certain Land Use Decisions

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA c. 376 is enacted to read:

CHAPTER 376

DIRECT JUDICIAL LAND USE REVIEW

§ 11021. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Final municipal reviewing authority. “Final municipal reviewing authority” means the municipal body or entity authorized to issue the municipal approval of a significant municipal land use decision.

2. Independent claim. “Independent claim” means a cause of action under the common law of the state or state statute that asserts a basis for relief from governmental administrative action that is independent of direct review of administrative action.

3. Project. “Project” means a land use development.

4. Significant municipal land use decision. “Significant municipal land use decision” means final action on an application for development of a project that is either:

A. Submitted to the municipal reviewing authority under a municipal site plan ordinance or other municipal ordinance adopted under Title 30-A, chapter 187, subchapter 3, or pursuant to authority under Title 38, chapter 3, sections 488(16) or 489-A, but only if the project consists of:

- (1) One or more buildings which occupy a total ground area in excess of 10,000 square feet or contain a total floor area in excess of 40,000 square feet; or
- (2) A total ground area occupied by buildings, parking lots, roads, paved areas, wharves and other areas to be stripped or graded and not revegetated in excess of three (3) acres; or

B. Final action on an application submitted to the municipal reviewing authority under an ordinance adopted under Title 30-A, chapter 187, subchapter 4, or pursuant to

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authority under Title 38, chapter 3, sections 488(16) or 489-A, but only if the project consists of ten (10) or more lots.

§ 11022. Direct review by the law court

1. Exclusive law court jurisdiction. The Maine Supreme Court sitting as the law court has exclusive jurisdiction over appeals and requests for judicial review of significant municipal land use decisions, as well as any appeals and requests for judicial review that arise out of the same proceedings, by the final municipal reviewing authority or the refusal or failure of a municipal reviewing authority to issue a final significant municipal land use decision as defined in Section 110121.

2. Procedure. The following procedures apply to judicial review of a final significant municipal land use decision or a refusal or failure to issue a significant municipal land use decision as defined in Section 11021:

A. Any person who is aggrieved by and has participated at the municipal level in a significant municipal land use decision or a refusal or failure to issue a significant municipal land use decision is entitled to judicial review thereof in the law court in the manner guided by this subchapter.

B. Where a law or rule regulating the taking of an appeal from the Superior Court in a civil action uses the terms “the court,” “the clerk,” “the clerk of the courts,” or a similar term, they shall for the purposes of an appeal mean the municipal body issuing the decision on appeal.

C. The notice of appeal shall be filed in the law court within thirty (30) days of the significant municipal land use decision. If the review sought is from an agency's failure or refusal to act, the notice of appeal shall be filed within six (6) months of the expiration of the time within which the action should reasonably have occurred. The notice of appeal shall be accompanied by a copy of the decision, order or ruling complained of, if any, together with a brief statement of the nature of the proceeding before the municipal reviewing authority.

D. Any party to the appeal may prepare and file with the law court the record of the proceedings of the municipal reviewing authority being reviewed, which shall be filed at the same time or prior to the appellant's brief. If no other party has filed the record of the proceedings of the municipal reviewing authority prior to the filing of the appellant's brief, it shall be the appellant's responsibility to ensure its preparation and filing.

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E. The parties shall meet in advance of the time for filing the appellant's brief to agree on the record to be filed. Where agreement cannot be reached, any dispute as to the whole record shall be submitted to the court. The record shall include the application or other documents that initiated the municipal review, the decision and findings of fact that are appealed from, and a copy of the relevant section or sections from the applicable municipal ordinance or ordinances, including those that establish the authority of the municipal review authority to act on the matter subject to appeal. Copies of sections of the Maine Revised Statutes shall not be included in the record. The record may include any other documents or evidence before the governmental agency and a transcript or other record of any hearings.

F. No evidence beyond that contained in the record of the proceedings before the municipal reviewing authority may be introduced before the court.

3. Manner and scope of review. Review of a final significant land use decision must be in accord with the following parameters.

A. Unless otherwise ordered by the law court:

(1) All parties to a review of a significant municipal land use decision shall file briefs.

(2) The appellant shall file the appellant's brief within 40 days after the date on which the notice of appeal is filed. Any other party shall file that party's brief within 30 days after service of the appellant's brief, and the appellant may file a reply brief within 14 days after last service of the brief of any other party. However, no brief shall be filed fewer than 6 calendar days before the date set for oral argument. On a showing of good cause, the law court may increase or decrease the time limits prescribed in this subsection. If the appellant fails to comply with section 11022(2)(D) or this subsection, the law court may dismiss the action for want of prosecution.

(2) All appeals shall be in order for oral argument 20 days after the date on which the responding party's brief is due or filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the law court shall schedule oral argument for the first appropriate date after an appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.

B. Except where otherwise provided by statute or constitutional right, review must be by the law court without a jury.

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C. The law court may not substitute its judgment for that of the municipal reviewing authority on questions of fact.

D. The law court may:

(1) Affirm the decision of the agency;

(2) Remand the case for further proceedings, findings of fact or conclusions of law or direct the agency to hold such proceedings or take such action as the court deems necessary; or

(3) Reverse or modify the decision if the administrative findings, inferences, conclusions or decisions are:

i. In violation of constitutional or statutory provision;

ii. In excess of statutory authority of the municipal reviewing authority;

iii. Made upon unlawful procedure;

iv. Affected by bias or error or law;

v. Unsupported by substantial evidence on the whole record; or

vi. Arbitrary or capricious or characterized by abuse of discretion.

§ 11023. Independent claims

1. Assignment to a single justice. If an independent claim is joined to an administrative appeal governed by this Chapter, the Chief Justice of the Supreme Judicial Court shall assign a Justice or Active Retired Justice of the Supreme Judicial Court to determine how the appeal and independent claim should go forward in the most efficacious manner.

2. Threshold review. In determining how to proceed with an appeal joined with an independent claim, the assigned Justice or Active Retired Justice shall first determine whether the independent claim states a claim upon which relief can be granted independently of the administrative appeal.

3. Resolution of independent claims. If the assigned Justice or Active Retired Justice determines that an independent claim has been stated upon which relief can be granted, the Justice or Active Retired Justice shall separate the independent claim and transfer that claim for expedited review by the Superior Court while the administrative appeal proceeds in the law court, unless the assigned Justice or Active Retired Justice finds that the administrative appeal cannot in the interest of justice proceed until the independent claim has been adjudicated. If the

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assigned Justice or Active Retired Justice determines that an independent claim does not state a claim upon which relief can be granted independently of the administrative appeal, the assigned Justice or Active Retired Justice shall dismiss the independent claim and the administrative appeal shall proceed in the law court.

§ 11024. Consolidation

Consolidation of related appeals. Upon the motion of any party to an appeal of a significant municipal land use decision pending before the law court, the law court in its discretion may transfer any administrative appeal pending in Superior Court relating to the project at issue in the appeal pending before the law court and consolidate, directly review, and resolve the transferred appeal with the appeal pending before the law court.

SUMMARY

This bill establishes a streamlined judicial review process of significant municipal land use permitting decisions to facilitate economic development and reduce overall costs and the time associated with obtaining municipal permits for developments. A significant municipal land use decision is defined as projects that occupy more than 10,000 square feet of ground area or 40,000 square feet of total floor area, or more than 3 acres of total ground area. This bill provides that appeals of significant municipal land use decisions would be made directly to the Supreme Judicial Court sitting as the law court.

If an independent claim has also been filed in Superior Court, the Chief Justice of the Supreme Judicial Court may assign a Justice or an Active Retired Justice to review the independent claim to determine whether the independent claim states a claim upon which relief can be granted. If it is determined that the independent claim is meritorious, the claim would be transferred to Superior Court while the administrative appeal would continue at the Supreme Judicial Court unless its disposition is dependent upon the resolution of the independent claim.

The bill also allows the law court to consolidate other related appeals pending before the Superior Court.

The judicial process outlined in this bill would establish a more streamlined judicial review process of significant municipal land use decisions to facilitate economic development and reduce overall costs and time associated with obtaining municipal permits for developments.