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OVERVIEW OF ACT 16

On June 22, 2023, the governor signed 2023 Wis. Act 16 into law. Act 16 is a housing bill that addresses: (1) the procedure for amending zoning ordinances, (2) approval of “permits” for residential housing developments, (3) judicial review of local residential development decisions, and (4) planned development district zoning,

Amending Zoning Ordinances – Wis. Stat. § 66.10015(3)(a)

2017 Wis. Act 243 repealed Wis. Stat. § 62.23(7)(d)2m.a., which required a three-fourths vote by the governing body to approve a proposed zoning amendment when a protest petition was filed. Although the statutory protest petition was eliminated, the League opined that municipalities could still enact local ordinances that established a protest petition process like the former Wis. Stat. § 62.23(7)(d)2m.a., because nothing in the law prohibited such ordinances. Under Act 16, state law now prohibits such a process from being established at the local level. Wisconsin Stat. § 66.10015(3)(a) provides that a zoning amendment only requires approval by a simple majority of a quorum of the members elect. However, a two-thirds vote may still be required for a down zoning ordinance pursuant to Wis. Stat. § 66.10015(3)(b) and for a zoning amendment when an airport protest petition is brought pursuant to Wis. Stat. § 62.23(7)(d)2m.

This new provision does not take effect until January 1, 2025. This delayed effective date is intended to give municipalities time to update any local ordinances that require a now-prohibited super-majority vote for proposed zoning amendments. The League encourages members to start this process now and work with your municipal attorney, if needed, to make any necessary changes.

Approval of Residential Housing Developments – Wis. Stat. § 66.10016

Zoning ordinances are generally used to specify permitted uses, conditional uses, and prohibited uses. A permitted use allows a landowner to use land in the specified manner as a matter of right. Act 16 addresses administrative approvals related to permitted uses for residential housing developments. Act 16 creates Wis. Stat. § 66.10016, which requires municipalities to grant applications for a “permit” related to a “residential housing development” if the permit is complete when submitted and meets all existing requirements that must be satisfied to obtain the permit at the time the application is filed.

“Permit” means any permit or administrative approval required to proceed with a residential housing development. “Permit” does not include a change to an existing zoning ordinance or zoning classification of land or an approval of a conditional use as defined under Wis. Stat. § 62.23(7)(de)1.a. “Residential housing development” means a development for single-family or multi-family housing for sale or rent.

While § 66.10016 is a new statute, it does not require municipalities to do anything they were not previously required to do. Rather, the law emphasizes that once a permitted use for a residential housing development is established, municipalities must grant related permits and administrative approvals when the applications meet all existing requirements the municipality has identified prior to submission. This requirement only

applies in the context of permitted uses and does not apply to legislative decisions (e.g., rezoning requests) or quasi-judicial decisions (e.g., conditional use permit applications).

If a municipality fails to approve a complete permit application that meets all existing requirements when submitted, the aggrieved applicant may seek relief through an action for mandamus. If the court finds the municipality improperly failed to approve the application, the court must issue a writ of mandamus ordering the municipality to approve the application.

Section 66.10016 does not take effect until January 1, 2025. Despite § 66.10016's delayed effective date, municipalities are currently required to grant permit applications for permitted uses when all existing requirements are met. However, municipalities may want to consider reviewing their zoning codes and local ordinances immediately to ensure they are satisfied with the current permitted uses for residential housing developments and related requirements that must be met for approval. The League encourages members to work with their municipal attorney, if needed, to make any necessary changes.

Judicial Review of Residential Development Decisions – Wis. Stat. § 781.10

Act 16 creates Wis. Stat. § 781.10, which establishes a new statutory certiorari review procedure for decisions on applications for a permit or authorization for building, zoning, driveway, stormwater, or other activity related to “residential development.” Under § 781.10, “residential development” means the development or redevelopment of land or buildings for the primary purpose of providing housing.

Section 781.10 limits the pool of parties that have standing to appeal such decisions to:

- (1) The person who submitted the application.
- (2) A person with an ownership interest in the real property that is the subject for an application for an approval.
- (3) A person that, because 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) Certain corporate bodies affiliated with a person under (1), (2), or (3).
- (5) A local governmental unit, as defined in Wis. Stat. § 66.0131(1)(a).
- (6) To the extent authorized by law, a state agency, as defined in Wis. Stat. § 20.931(1)(c), that is aggrieved by the final decision on the application for approval.

Section 781.10 also establishes an expedited timeframe for judicial review. An individual must file a complaint within 30 days of the municipality's final decision. Municipalities will have 45 days to file an answer or other responsive pleading to the complaint and must also transmit the record under Wis. Stat. § 781.03(1) no later than 30 days after an answer or other responsive pleading is filed. The court must require any additional pleadings, motions, and supporting papers to be filed within 90 days after the municipality's deadline to file an answer or other responsive pleading to the complaint. Additionally, the court may only supplement the record on review upon motion of a party for good cause. After the 90-day deadline, the court has 60 days to issue its decision.

Section 781.10 does not take effect until January 1, 2025. Following the effective date, the § 781.10 certiorari review procedure will apply to any complaint filed in response to a decision on an application for a permit or authorization for building, zoning, driveway, stormwater, or other activity related to “residential development.” Due to the expedited timeline for review, municipalities should become familiar with the new procedures now. Municipalities should also ensure there are adequate processes in place for developing full and complete records related to any decision subject to certiorari review under § 781.10, because the court will only supplement the record upon a showing of good cause.

Planned Development Districts – Wis. Stat. § 62.23(7)(b)

A planned development district (PDD), also known as planned unit development, is a type of zoning district designed to encourage the efficient and optimal use of land. Prior to Act 16, Wis. Stat. § 62.23(7)(b) ostensibly required a PDD to promote each of three specific purposes: (1) coordinated area site planning, (2) diversified location of structures, and (3) mixed compatible uses. Requiring a PDD to meet each purpose impaired the flexibility PDDs were intended to provide. Act 16 now clarifies that a PDD may be established even if it does not contain mixed compatible uses.