

## **Article 5.10: Appeals of Dedications, Exactions and Zoning Regulations, Reconsideration of Certain Decisions, and Claims for Diminution in Value**

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### **Sections:**

- 5.1001 Purpose and Applicability
- 5.1002 Appeals of Required Dedications and Exactions and of Zoning Regulations Pursuant to ARS § 9-500.12 and 9-500.13
- 5.1003 Reconsideration of Certain Town Council Decisions
- 5.1004 Claim for Diminution in Value Pursuant to A.R.S. § 12-1134

### **5.1001 Purpose and Applicability**

This article sets forth procedures for:

- A. Appeals of dedication requirements, exactions or zoning regulations pursuant to Section 5.1002: Appeals of Required Dedications and Exactions and of Zoning Regulations Pursuant to ARS § 9-500.12 and 9-500.13.
- B. Reconsideration of Town Council actions related to certain Federal and state statutes, pursuant to Section 5.1003: Reconsideration of Certain Town Council Decisions.
- C. Filing and processing claims for diminution in value pursuant to A.R.S. §12-1134.

### **5.1002 Appeals of Required Dedications and Exactions and of Zoning Regulations Pursuant to ARS § 9-500.12 and 9-500.13**

- A. **Appeals.** Appeals of a required dedication or exaction filed pursuant to ARS § 9-500.12 and of a zoning regulation alleged to create a taking pursuant to ARS § 9-500.13 shall comply with the procedures of this Section and ARS § 9-500.12G.
  - 1. *Fee.* No fee shall be charged for the appeal.
  - 2. *Filing of Appeal.* Appeals shall only be filed by a property owner. Appeals shall be filed on a form established by the Director within 30 days of the date of the final action imposing the dedication or exaction or adopting or amending the zoning regulation. The Town shall notify the property owner of the right to appeal pursuant to this Section and provide a description of the appeal procedure on a Notice of Decision for the zoning.

- B. **Notice of Hearing.** The property owner shall be given at least 10 days written notice of the time and place of the hearing by certified mail. The property owner may agree to a shorter time for such notice.
- C. **Hearing.** The hearing shall not be a public hearing. Prior to the hearing, the Town shall submit a takings report to the Zoning Hearing Officer. The hearing shall be held not later than 30 days after the appeal is filed.
- D. **Appeals Filed Pursuant to ARS § 9-500.12.** An appeal of a required dedication or exaction as a condition of approval for the use, improvement, or development of real property shall comply with this Subsection D. No appeal of a dedication or exaction may be filed under this Subsection if the dedication or exaction is imposed by a legislative act of the Town Council that does not give discretion to a town official or town department to determine the nature or extent of the dedication or exaction.
  - 1. **Findings.** In determining whether a dedication or exaction is in violation of the law, the Town has the burden to establish that:
    - a. There is an essential nexus between the dedication or exaction and a legitimate governmental interest of the Town; and
    - b. The required dedication or exaction is roughly proportional to the impact of the proposed use.
  - 2. **Decision.** If the Zoning Hearing Officer finds that the Town has not met its burden as described in Section 5.1002D.1: Findings, the Zoning Hearing Officer may modify or delete the dedication or exaction requirement. If the Zoning Hearing Officer finds that the Town has met its burden, the Zoning Hearing Officer may affirm the dedication or exaction requirement. The Zoning Hearing Officer shall decide the appeal within 5 working days after the appeal is heard.
- E. **Appeals Filed Pursuant to ARS § 9-500.13.** An appeal of the adoption or amendment of a zoning regulation by the Town Council alleged to create a taking shall comply with this section.
  - 1. **Findings.** In determining whether an adopted or amended zoning regulation creates a taking of property in violation of ARS § 9-500.13, the Town has the burden to establish that the zoning regulation does not create a taking. The Zoning Hearing Officer shall consider whether the zoning regulation would deny all economic use of the property. In determining whether the action would deny the owner all economic use of the property, the Zoning Hearing Officer shall consider the following factors:

- a. Uses Permitted. Evaluation of the range of uses allowed under the General Plan and the Zoning Code.
  - b. Economic Impact Study. Any economic impact study submitted related to the impact of the conditions of an amendment on the property.
2. *Decision.* If the Zoning Hearing Officer finds that the Town has not met its burden as described in Subsection E.1, the Zoning Hearing Officer shall transmit a recommendation to the Town Council and the Town Council may reconsider its prior action. If the Zoning Hearing Officer finds that the Town has met its burden, the Zoning Hearing Officer may affirm the zoning regulation. The Zoning Hearing Officer shall decide the appeal within 5 working days after the appeal is heard.
- F. *Appeal of Decision of Zoning Hearing Officer.* A property owner aggrieved by a decision of the Zoning Hearing Officer to modify or affirm a dedication or exaction requirement or to affirm a zoning regulation may file within 30 days after the decision a complaint in Superior Court, pursuant to ARS § 9-500.12G.

### **5.1003 Reconsideration of Certain Town Council Decisions**

- A. *Request for Reconsideration.* An applicant may request a reconsideration of a Town Council decision on any of the following grounds:
1. An alleged violation of the Fair Housing Act;
  2. An alleged violation of the Americans with Disabilities Act or the Arizonans with Disabilities Act;
  3. An alleged violation of the Religious Land Use and Institutionalized Persons Act or the Arizona Free Exercise of Religion Act; and
  4. An alleged violation of the Telecommunication Act.
- B. *Reconsideration Procedure.*
1. *Time of Filing.* The request for reconsideration shall be filed within 10 days of the Town Council decision.
  2. *Fact Finding Hearing.*
    - a. Prior to reconsideration by the Town Council, the Zoning Hearing Officer shall conduct a fact finding hearing to gather a complete record of all information relevant to the request.

- b. The Zoning Hearing Officer shall have the authority to request all information necessary to compile a complete record pertaining to the request.
  - c. Town officials and the applicant shall fully disclose all information relevant to the fact finding.
  - d. The Zoning Hearing Officer shall prepare a report and recommendation for Town Council consideration within 60 days of the filing of the request.
3. Town Council Reconsideration.
- a. The Town Council shall conduct a public hearing on the request pursuant to the procedures set forth in Section 5.206: Public Hearing Procedures.
  - b. In its deliberation, the Town Council shall consider only the applicant's written request, the findings of fact prepared by the Hearing Officer, and the Zoning Hearing Officer's recommendation. No new evidence shall be submitted.
  - c. The Town Council shall uphold, reverse, or modify their prior decision or remand the matter to the Zoning Hearing Officer to develop additional findings.

#### **5.1004 Claim for Diminution in Value Pursuant to A.R.S. § 12-1134**

- A. **Filing of Claim.** All claims for diminution in value pursuant to A.R.S. § 12-1134 shall be filed with the Town Clerk on a form prescribed by the Town.
- B. **Town Review.** After a claim is filed, Town staff shall review the claim to determine whether the enactment or application of a land use law has diminished the value of the claimant's property. A certified land appraiser, economist, or other qualified expert may be consulted to determine the amount of the diminishment of value, if any.
- C. **Staff Recommendation.** The Director shall prepare a recommendation to the Town Council to deny the claim, pay compensation for diminishment in value or rescind or modify the land use regulation.
- D. **Town Council Determination.** Within 90 days of the filing of the claim, Town Council shall make a determination whether to deny the claim, pay compensation, modify or rescind the land use law or its application to the claimant's property. The Council's determination shall be made in writing and a copy shall be provided to the claimant. Any rescission or modification of the application of a

land use law to an individual property shall be recorded against the property in the office of the Maricopa County Recorder.

- E. ***Satisfaction of Notice of Claims Requirements.*** Filing a claim pursuant to this section shall be deemed to satisfy the requirements set forth in A.R.S. § 12-821.01 for filing an administrative claim against the Town.