Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 283

HOUSE BILL 2349

AN ACT

AMENDING SECTION 48-3615.01, ARIZONA REVISED STATUTES; RELATING TO COUNTY FLOOD CONTROL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 48-3615.01, Arizona Revised Statutes, is amended to read:

48-3615.01. Notice of violation; hearing; final decision; civil penalty; injunctive relief

A. If the chief engineer finds that a person has engaged or is engaging in development in the floodplain without a floodplain use permit, has engaged or is engaging in any development that is not in compliance with an active floodplain use permit or has damaged or interfered with facilities that are authorized pursuant to this chapter without written authorization of the board of directors, the chief engineer shall issue a notice of violation to the owner, occupant or manager of the real property on which the development is located or to the person who has damaged or interfered with the facilities. The notice of violation shall identify the violations observed and order the violator to cease and desist any ongoing activity that is not in compliance with the regulations adopted pursuant to this chapter or cease and desist any damage or interference that is not authorized by the board. The notice of violation shall include the date~~,~~ AND time ~~and place where the person responding to the notice of violation may appear to show cause why the notice of violation should be vacated~~ BY WHICH THE PERSON MUST MAIL OR DELIVER A RESPONSE TO THE NOTICE OF VIOLATION.

B. On receipt of the notice of violation, the person may:

1. Admit the allegations by ~~doing either of the following:~~

~~(a) Appearing in person, by attorney or by another designated representative at a time and location given in the notice of violation.~~

~~(b)~~ mailing or delivering to the chief engineer a form provided with the notice of violation or a written statement signed by the person in which the person admits the allegations, agrees to acquire any required permit and agrees to remedy the violation, damage or interference in accordance with the terms determined by the chief engineer.

2. Deny the allegations by ~~doing either of the following:~~

~~(a) Appearing in person, by attorney or by another designated representative at the time and location given in the notice of violation.~~

~~(b)~~ mailing or delivering to the chief engineer a form provided with the notice of violation or a written statement signed by the person denying the allegations and requesting a hearing on the matter. AT THE SAME TIME AND WITH THE SAME FORM AND IF THE FORM CONTAINS THE REQUEST BY THE PERSON FOR A STAY, THE CHIEF ENGINEER SHALL ISSUE A STAY OF ANY CEASE AND DESIST ORDER UNLESS THERE IS A THREAT TO THE PUBLIC HEALTH OR SAFETY OR TO ANOTHER PERSON'S PROPERTY RIGHTS.

C. On request for a hearing, the hearing officer shall set a date, time and place for a hearing and serve a notice of hearing on the person alleged to be in violation and provide a notice of the hearing to the chief engineer. Service of notice shall be by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to

effect actual notice on the alleged violator, the chief engineer and every other party to the action.

D. The hearing officer shall be appointed by the board of directors and may be an employee of the district. THE NOTICE OF VIOLATION SHALL SERVE AS THE COMPLAINT AND THE REQUEST FOR HEARING SHALL SERVE AS THE ANSWER. Decisions of the hearing officer or by the board of hearing review shall be available to any party to the hearing. The board of directors shall adopt written rules of procedure for the hearing and review of hearings. These rules shall be adopted in the same manner as floodplain ordinances.

E. At the hearing, a representative of the district shall present evidence of the violation described in the notice of hearing. The county attorney may present evidence on behalf of the district. The noticed party or attorney or other designated representative shall be given the opportunity to present evidence at the hearing. After completion of the hearing, the hearing officer shall issue a written finding and a recommendation for the appropriate measures to be taken to abate or ameliorate any harm or damage arising from the violation and for the imposition of any civil penalties attributed to the violation.

F. The hearing officer's written finding shall be submitted to the chief engineer and the noticed party within thirty days after the date of the hearing. On receipt of the hearing officer's findings, determination and recommendation, the chief engineer shall issue a final decision and order. The chief engineer's final decision and order may be in any form as adopted by the board of directors pursuant to its authority under this chapter and may include a determination of violation, an order directing that measures be taken to abate or ameliorate any harm or damage arising from the violation and the imposition of a civil penalty. By agreement with the person in violation, the chief engineer may order a nonmonetary penalty that serves the purposes of the district.

G. IN A COUNTY WITH A POPULATION OF LESS THAN ONE HUNDRED SEVENTY-FIVE THOUSAND PERSONS, THE DISTRICT MAY ADOPT A PROCEDURE IN WHICH THE HEARING OFFICER ISSUES A WRITTEN FINDING AND A FINAL DECISION AND ORDER. THE HEARING OFFICER'S FINAL DECISION AND ORDER MAY BE IN ANY FORM AS ADOPTED BY THE BOARD OF DIRECTORS PURSUANT TO ITS AUTHORITY UNDER THIS CHAPTER AND MAY INCLUDE A DETERMINATION OF VIOLATION, AN ORDER DIRECTING THAT MEASURES BE TAKEN TO ABATE OR AMELIORATE ANY HARM OR DAMAGE ARISING FROM THE VIOLATION AND THE IMPOSITION OF A CIVIL PENALTY. ON RECOMMENDATION OF THE CHIEF ENGINEER AND WITH THE AGREEMENT OF THE PERSON IN VIOLATION, THE HEARING OFFICER MAY ORDER A NONMONETARY PENALTY THAT SERVES THE STATUTORY PURPOSES OF THE DISTRICT.

~~G.~~ H. On written request of any party who is subject to the decision and order of the chief engineer OR HEARING OFFICER pursuant to this section, the board of hearing review may review any decision and order of the chief engineer OR HEARING OFFICER. The written request for review shall be delivered to the clerk of the board of directors within fifteen days after the date of the final decision and order. The written request shall identify

specifically the section or sections of the chief engineer's OR HEARING OFFICER'S final order that is requested to be reviewed by the board of hearing review.

~~H.~~ I. The board of hearing review shall set a time and date to hear the matter requested for review. The hearing shall be conducted based on the information presented to the chief engineer OR HEARING OFFICER in issuing the final decision and order or, in an appeal from a determination of a violation by a hearing officer, the record before the hearing officer. The information presented to the chief engineer OR HEARING OFFICER in issuing the final decision and order shall be made available to all parties on request. Based on the record before the board of hearing review, the board may deny, approve or modify the order of the chief engineer or the order of the hearing officer. The board shall issue a written order of its decision, including findings of fact and conclusions of law, and shall submit its final written order on the matter to the chief engineer within thirty days after completion of the hearing.

~~I.~~ J. If the person alleged to be in violation continues the violation after the chief engineer OR HEARING OFFICER has issued a final decision and order or after the board of hearing review has completed its review pursuant to this section, the chief engineer may apply for a temporary restraining order or preliminary or permanent injunction from the superior court according to the Arizona rules of civil procedure. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator. The remedies prescribed by this section are cumulative and do not prevent the district from seeking injunctive relief at any time.

~~J.~~ K. The chief engineer may designate another person to carry out the chief engineer's powers and duties prescribed by this section and that designee is authorized to take all actions prescribed by this section in place of the chief engineer.

APPROVED BY THE GOVERNOR APRIL 13, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2015.

Passed the House February 17, 2015

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

Passed the Senate March 30, 2015

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____day of

_____

at _____o'clock_____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

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HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

March 31, 2015,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

Jim Drake
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

31st day of March, 2015,

at 3:16 o'clock P. M.

Secretary to the Governor

Approved this 13th day of

April, 20____,

at 10:14 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14th day of April, 2015,

at 10:30 o'clock A M.

Secretary of State

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