

HB 232 Land Use Amendments
Representative Mike Schultz
February 27, 2017

In enacting HB232, it is the intent of the legislature to clarify provisions of the Land Use Development and Management Act (LUDMA) and codify important common law decisions to better align local land use practice with existing law. Specifically, it is the legislature's intent to clarify that land use laws must be plainly written and properly enacted to restrict private property rights. Further, it is the legislature's intent to reaffirm that local jurisdictions have broad discretion to enact land use laws that are consistent with LUDMA and to emphasize that, in contrast, jurisdictions have far less discretion with respect to how they interpret or administer their land use laws.

1. Plain Language Standard Codified

Most people are unaware of the common law rule that each property owner has the right to use their property as they see fit, unless the law plainly and clearly restricts that use. This bill clarifies that local land use restrictions must be properly enacted and *plainly written* to overcome the common law right of use. The legislature intends this bill to end the local land use practice of enforcing unwritten laws or broadly enforcing unclear provisions in their land use codes.

2. Local Land Use Regulations Must Be Properly Enacted

The bill revises the term "land use ordinance" to a more inclusive term, "land use regulation," to emphasize that all of the local rules and regulations that limit property rights must be enacted properly before they may be enforced. Some jurisdictions have allowed staff to adopt requirements, standards and other regulation without a public hearing, Planning Commission review or any formal and transparent process. This bill requires local jurisdictions to enact all land use regulations in the same manner as all land use laws.

3. Administrative vs. Legislative Discretion

The bill confirms that local jurisdictions have broad discretion to *enact* the land use regulations that are consistent with state and federal law and that courts should defer to local legislative discretion when they enact land use regulations.

In contrast, the bill is intended to clarify that local jurisdictions have little discretion with respect to how they *apply or administer* the regulations they enact. Some courts have been reluctant to review local administrative decisions under an objective "correctness" standard. Some jurisdictions believe the courts will defer to their interpretation of otherwise vague regulations. Local jurisdictions should understand that they are subject to full judicial review of their land use administration.