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Sample Proposition 207 Waiver Form and Claims Checklist

Introduction:

In the wake of the United State Supreme Court ruling in *Kelo v. City of New London*, 545 U.S. 469 (2005), Arizona voters passed Proposition 207 -- Private Property Rights Protection Act (Prop 207), which the Governor signed into law on December 4, 2006. Prop 207 creates new statutes at A.R.S. §§ 12-1131 through 12-1138. A.R.S. § 12-1131, 12-1132, and 12-1133 deal with eminent domain. A.R.S. §§ 12-1134 through 12-1138 deal with "regulatory takings," which include government land use and zoning regulations.

Arizona Revised Statutes § 12-1134 permits an owner of property to file a claim with a municipality if the owner's existing rights to use, sell, divide, or possess the property are diminished in value by a municipality's enactment or applicability of a land use action that reduces the fair market value of the property. Under this statute, the owner is entitled to just compensation for the reduction in fair market value of the property.

Attached are two documents that may be useful for you in implementing Prop 207—a form waiver of Prop 207 rights and a checklist that may serve as a guideline for information a municipality may request to process a Prop 207 claim. **THESE DOCUMENTS ARE GUIDELINES ONLY. THE MUNICIPALITY SHOULD ALWAYS SEEK THE ADVICE AND INPUT OF THE CITY OR TOWN ATTORNEY BEFORE USING THE ATTACHED DOCUMENTS.**

In reviewing the attached waiver and guidelines, please note that a property owner is not required to file a land use application before filing a Prop 207 claim. A.R.S. § 12-1134(D). Further, the municipality may not deny any land use application or zoning request if the property owner does not first file a waiver. A property owner has due process rights in **filing** any application with

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the municipality. The municipality may consider whether the owner has filed a Prop 207 waiver when considering the land use application.

Waiver

A municipality may request a waiver of a property owner's Prop 207 claim especially if the owner applies for any of the numerous land use actions within a municipality's jurisdiction, i.e. rezoning, zoning change, use permit, preliminary development plan, general plan amendment, variance, site plan, subdivision, or ordinance. The waiver is specific to the property owner and to the action requested.

A Prop 207 waiver will allow municipalities to proceed with a land owner's land use application without fear of Prop 207 liability from the land owner at some future time. By signing the waiver, the property owner acknowledges that a Prop 207 claim may exist but that the property owner voluntarily relinquishes that claim and agrees to the municipality's conditions regarding the subject property in exchange for the requested land use.

A basic waiver form is attached. The municipality may want to insert "Whereas" clauses and recitals to make the waiver more formal. A municipality may want to draft the waiver into a development agreement. The attached waiver is merely a guide and the municipality should seek the advice of its attorney on how to proceed.

Claims Checklist

Although A.R. S. § 12-1134 (E) requires that the property owner state a specific amount for just compensation, merely requesting an amount of "just compensation" isn't sufficient for a municipality to determine whether to pay the amount and continue with land use regulation or enforcement or to just waive the land use regulation.

A municipality may require certain information in a Prop 207 claim. Arizona case law regarding claims statutes requires that a party supply information sufficient to allow the municipality to investigate its potential for liability. The case law serves as a basic guide in determining what information is necessary for a claim.

The municipality would have to know if the person has standing (actually owns the land), if the person filing the claim on behalf of another has authority to do so, if the municipality land regulation laws actually affect the property (as opposed to a county, state, or federal law affect the property), if any other claims have been filed with other agencies, if the restrictions on land use are actually a result of law or from another source such as CC & Rs, etc. Most of this information is to protect the municipality from fraudulent “written demands.”

The information requested in the checklist allows the municipality to determine whether to pay the amount and continue with the land use regulation or to just waive the land use regulation.

Conclusion

The attached waiver and checklist serve as basic guideline on how to proceed with the impact of Prop 207 on municipalities. The municipality may need to request more information from a property owner, although the information should be directly related to the municipality’s ability to assess a Prop 207 claim. As the municipalities develop more experience in this area, the waiver and checklist forms may change.

Please feel free to send comments and questions regarding Prop 207, the waiver, and the checklist to the League at (602) 258-5786.