


I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN
2014 (SECOND) Regular Session

Bill No. 314-32 (CS)

Introduced by

Aline A. Yamashita, PhD 

AN ACT TO ADD A NEW CHAPTER 81 TO TITLE 21, GUAM
CODE ANNOTATED RELATIVE TO CREATING A
STREAMLINED AND EXPEDITED PROCESS FOR REZONING
REAL PROPERTY FOR CONSTRUCTING SMALL PROJECTS BY
PARTIALLY PRIVATIZING THE PROCESS.

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1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Chapter 81 is hereby added to Title 21, Guam Code Annotated,
3 to read as follows:

4 **“CHAPTER 81**

5 **Small Project Rezoning Act**

6 §81101. Legislative Findings and Intent.

7 §81102. Title.

8 §81103. Definitions.

1 §81104. Jurisdiction.

2 §81105. Application.

3 §81106. Notice Requirements.

4 §81107. Objections or Concerns.

5 §81108. Public Hearings.

6 §81109. Resolution of Objections or Concerns

7 §81110. Chief Planner Review.

8 §81111. Guam Land Use Commission Review.

9 §81112. Disposition of Application.

10 §81113. Limitation on Use.

11 §81114. Extensions of Deadlines.

12 §81115. Fees.

13 **§81101. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds that

14 there is a current bottleneck at the Guam Land Use Commission requiring in many

15 cases several years for any developer seeking a change of zoning designation for

16 their intended project site. This lengthy process is very expensive and

1 unpredictable and applies equally to large and to small projects. There is in effect
2 a “one size fits all” process that applies equally to small developments as well as
3 large developments. The current process is best suited for large development
4 projects and discourages small scale development projects that are essential to
5 providing products and services in the villages and outside the densely developed
6 areas of Tamuning and Tumon. This problem has had a disproportionately
7 negative effect on small landowners and small scale developers and residents
8 outside the densely developed parts of the island.

9 *I Liheslatura* further finds this one size fits all approach further misallocates
10 scarce resources of the Department of Land Management, the Guam Land Use
11 Commission and the various government of Guam agencies which are required to
12 submit comments on every development proposal seeking a zone change. These
13 scarce resources would be better used if they are concentrated on extensively and
14 timely reviewing large projects while small projects should be reviewed and
15 submitted by Professional Architects and Professional Engineers in a streamlined
16 and efficient process. This can be achieved by partially privatizing the zone
17 change process for small projects.

18 *I Liheslatura* also finds this bottleneck has had broader negative
19 consequences for our community by stifling sustainable development activity by
20 reducing job creation, reducing tax collections and the tax base and has forced

1 numerous small landowners and small scale developers to seek legislative
2 intervention to obtain zone changes. This has resulted in the allocation of
3 legislative resources to address this significant problem and which resources are
4 better used for other purposes.

5 *I Liheslatura* intends for these reasons to provide policy to create a
6 streamlined zone change approval process that allows the Guam Land Use
7 Commission, the Department of Land Management and other government of Guam
8 agencies to concentrate their scare resources and efforts to ensure the timely
9 review large developments which will have a significant impact on our
10 infrastructure and quality of life while allowing small scale development to
11 proceed through the zone change process under the supervision of a Professional
12 Architect or Professional Engineer with oversight by the Chief Planner of the
13 Department of Land Management and the Guam Land Use Commission.

14 **§ 81102. Title.** This Chapter shall be known, and may be cited as the
15 “Small Project Rezoning Act.”

16 **§81103. Definitions.** For purposes of this Chapter, and unless otherwise
17 specified, the following words or phrases are defined to mean:

1 (a) "Adjoining Lot" or "Adjoining Lots" means a parcel of real property with a
2 separate lot description which shares a boundary with the property for which an
3 Application for Small Project Rezone has been filed.

4 (b) "Agreement to Resolve Objections or Concerns" means a written agreement
5 between the Small Developer and any person or entity, which can include the
6 Chief Planner, which resolves any Objections or Concerns to the Application for
7 Small Project Rezone and which terms shall be binding on the parties and may be
8 recorded at Department of Land Management and shall be a covenant running with
9 the land. Any such agreement which is not recorded at the Department of Land
10 Management shall not be a covenant running with the land but may nevertheless be
11 enforceable by the parties to it according to its terms.

12 (c) "Application for Small Project Rezone" or "ASPR"" means an application
13 submitted to the Chief Planner to rezone a particular parcel of real property to a
14 zoning designation allowed herein. This application shall contain at least the
15 following information: 1) The Small Developer's evidence of ownership, a lease
16 agreement or other legal authority providing the Small Developer with the legal
17 right to seek a rezoning of the affected property; 2) The lot description and lot map
18 of the affected property; 3) A description of the project and the layout of the Small
19 Project on the affected property, 4) The basis on which the Small Developer
20 believes that the application is for a Small Project; 5) A description of the

1 supporting infrastructure and a statement by the Professional that it is adequate to
2 support the Small Project or that adequate infrastructure will be constructed by the
3 Small Developer including a description of the infrastructure the Small Developer
4 intends to construct to meet the needs of the Small Project; 6) A list of the names
5 of all owners of any Adjoining Lot and their corresponding lot number and
6 address; 7) The current zoning designation of the affect parcel and the zoning
7 designation sought; and 8) A declaration under oath that the Small Developer, its
8 subsidiaries and/or affiliates, have not filed and do not intend to file another ASPR
9 within one hundred and eighty (180) days or a brief description of any other ASPR
10 which has been or will be filed within this period.

11 (d) "ACR" means the Application Review Committee within the Department of
12 Land Management, Government of Guam, or any other similar committee
13 established by the Department of Land Management to review zone change
14 applications.

15 (e) "C" zone means a commercial zone designation as established in 21 G.C.A §
16 61201 with permitted uses and conditional uses described in 21 G.C.A § 61307.

17 (f) "Chief Planner" means the Chief Planner at the Department of Land
18 Management, Planning Division, Government of Guam.

- 1 (g) "Declaration of Compliance" means a declaration under oath made by the
2 Professional Engineer certifying that all notices required by the Notice of
3 Application have been given and to which is attached a true and correct copy of the
4 Record of Objections or Concerns and each Resolution of Objections or Concerns.
- 5 (h) "DLM" means the Department of Land Management, Government of Guam.
- 6 (i) "GLUC" means the Guam Land Use Commission, Government of Guam.
- 7 (j) "H" means a resort hotel zone as described in 21 G.C.A. § 61311.
- 8 (k) "Notice of the Application" means to provide a copy of the ASPR to the
9 following parties: 1) Owners of all Adjoining Lots by personal service or service
10 by registered mail with return receipt; 2) Department of Agriculture; 3) Guam
11 Environmental Protection Agency; 3) Department of Parks and Recreation; 4)
12 Department of Public Works; 5) Guam Waterworks Authority; 6) Guam Power
13 Authority; 7) The Mayor of the Municipality in which the rezoning is sought; 8)
14 Posting a copy of the ASPR on an exterior wall at the Mayor's office in the
15 municipality where the rezoning is sought; and 9) Publish for two (2) consecutive
16 days in a newspaper of general circulation the following information: a) That an
17 ASPR has been filed for a particular lot number in a particular municipality; b) The
18 description of all Adjoining Lots with the lot number and name of the owner; c)
19 The current zoning designation of the affected lot and the zoning sought; d) A

1 description of the project; e) A statement that any persons may, within thirty (30)
2 days stating the deadline date, comment or object to the Professional Engineer who
3 filed the ASPR at a stated phone number and address and that a failure to comment
4 or object within this time frame will be construed as no objection to the ASPR; and
5 f) And that a copy of the ASPR may be obtained without charge from the
6 Professional Engineer.

7 (l) "Notice of Approval Deemed by Law" or "Approval Deemed by Law" means
8 approval of the request for rezoning as described in the ASPR subject to any
9 Agreement to Resolve Objections or Concerns deemed to occur by the terms of
10 this Act without affirmative action of the Chief Planner or the GLUC and which
11 notice shall contain the property affected described by lot number, municipality
12 and total area, the previous zoning designation, the new zoning designation, a
13 description of the project and a description of any Agreement to Resolve
14 Objections or Concerns and its recordation number if it is recorded at DLM or a
15 notice thereof.

16 (m) "Professional Engineer" means a professional engineer licensed on Guam
17 filing an ASPR.

18 (n) "Public Hearings" means a meeting or set of meetings sponsored by the Mayor
19 of the municipality in which an ASPR has been filed and which the Mayor has

1 provided at least forty-hours (48) hours personal written notice confirmed by
2 declaration under oath to the Professional Engineer and the Chief Planner and
3 which must be attended by the Professional Engineer or the Small Developer and
4 at which the Professional Engineer or Small Developer or the Mayor must record
5 the concerns or objections of participants which must be included in the Record of
6 Objections.

7 (o) "Record of Objections or Concerns" means a detailed record of each concern
8 and objection relating to the ASPR made by any person or entity and which shall
9 include: 1) The name and contact information of the person or entity making an
10 objection or expressing concern with the ASPR, if available; and 2) A detailed
11 description of the nature of the objection or concern.

12 "R1" means a one family dwelling zone as established in 21 G.C.A § 61201 with
13 permitted uses and conditional uses described in 21 G.C.A § 61305.

14 (p) "R2" means a multiple dwelling zone as established in 21 G.C.A § 61201 with
15 permitted uses and conditional uses described in 21 G.C.A § 61306.

16 (q) "Small Developer" means any person or entity filing an SPRA.

17 (r) "Small Project" means: 1) Any commercial facility as described in 21 G.C.A §
18 61307(a) & (b) containing less than fifteen thousand (15,000) square feet of total
19 developed covered building space with not more than two floors (2) floors of

1 height, including the ground floor, seeking a change of zone to C, or; 2) Any
2 apartment or condominium complex with less than seventy five (75) total units
3 with not more than three (3) floors, including the ground floor, seeking a change of
4 zoning designation to R2, or; 3) Any housing development of single family
5 dwellings containing not more than fifty (50) dwelling units seeking a zone change
6 to R1, or; 4) Any hotel/motel and its ancillary facilities containing not more than
7 one hundred and twenty-five (125) rooms, with not more than five (5) stories of
8 height including the ground floor, seeking a zone designation of C, R2, H or any
9 combination thereof, or ; 5) Any combination of the above 1) through 4), inclusive.
10 Any ASPR(s) made within one hundred and eighty (180) days of each other for the
11 same lot number or for any adjoining lot which is owned by the same owner or
12 which will be developed by the same Small Developer or any of its subsidiaries or
13 affiliates shall be considered by the Chief Planner as one application who shall
14 conclusively determine if the projects described in the ASPR(s) qualify as a Small
15 Project hereunder.

16 (s) "SPRA" means the Small Project Rezoning Act which shall be the title of this
17 Act.

18 **§81104. Jurisdiction.** The Small Project Rezoning Act shall apply only to
19 the rezoning of any parcels of real property for a Small Project.

1 **§81105. Application.** A Small Developer, through a Professional Engineer,
2 shall initiate an effort to obtain a change in zone designation under the SPRA by
3 filing an ASPR with the Chief Planner. Within two (2) business days thereafter,
4 the Chief Planner shall provide a copy of the ASPR to the ARC.

5 **§81106. Notice Requirements.** Within thirty (30) days of filing the ASPR,
6 the Professional Engineer shall provide Notice of the Application.

7 **§81107. Objections or Concerns.** Within sixty (60) days of the filing of
8 the ASPR, any person or entity may file or state an objection or concern to the
9 ASPR with the Professional Engineer. The Professional Engineer shall keep a
10 Record of Objections or Concerns.

11 **§81108. Public Hearings.** At any time within sixty (60) days of the filing
12 of the ASPR, the Mayor of the municipality in which the affected property is
13 located may hold Public Hearings. A failure of the Professional Engineer or Small
14 Developer to attend any Public Hearing shall result in the withdrawal of the ASPR.

15 **§81109. Resolution of Objections and Concerns.** The Small Developer,
16 or the Professional Engineer on his, her or its behalf, may enter into discussions
17 and negotiations to reach an Agreement to Resolve Objections or Concerns.

18 **§81110. Chief Planner and ARC Review.** Within one hundred and twenty
19 (120) days but not less than ninety (90) days after the ASPR has been filed, the

1 Professional Engineer shall file a Declaration of Compliance with the Chief
2 Planner. A failure to file the Declaration of Compliance within the prescribed time
3 shall result in the automatic withdrawal of the ASPR.

4 Within forty-five (45) days after the ASPR is initially filed with the Chief
5 Planner, the ARC may provide the Chief Planner with its report. A failure by the
6 ARC to issue said report within this time frame shall be conclusively construed as
7 its consent to the ASPR.

8 The Chief Planner shall, within thirty (30) days of the filing of the
9 Declaration of Compliance do the following: 1) Determine if all Notice of
10 Application requirements have been met; and 2) Determine if there are any
11 substantial unresolved objections or concerns; and 3) If the Notice of Application
12 requirements have been met and there are no substantial unresolved concerns or
13 objections the ASPR shall be approved by a Notice of Approval signed by the
14 Chief Planner; or 4) If the Chief Planner determines that the Notice of Application
15 requirements have not been met the Chief Planner shall deny the application
16 stating his reasons with particularity; or 5) If there are substantial unresolved
17 comments or concerns regarding the ASPR the Chief Planner shall refer the ASPR
18 to the GLUC for its review.

1 If the Chief Planner does not act within thirty (30) days of the filing of the
2 Declaration of Compliance to approve, deny or refer the ASPR to the GLUC, then
3 the ASPR and zone change requested therein shall be deemed approved resulting
4 in an Approval Deemed by Law.

5 **§81111. Guam Land Use Commission Review.** Any ASPR referred to the
6 GLUC and shall be placed on its agenda for the next available meeting which shall
7 review the application as it would any other zone change request. After reviewing
8 the ASPR, the GLUC may do the following: 1) Approve the application as
9 requested subject to any existing Agreement to Resolve Objections or Concerns; or
10 2) Conditionally approve the application provided the Small Developer enters into
11 an Agreement to Resolve Concerns with the GLUC on terms negotiated between
12 the GLUC and the Small Developer; or 3) Deny the application stating its reasons
13 with particularity. If the GLUC lacks a quorum to review the ASPR for two (2)
14 consecutive meetings, then the ASPR shall be deemed approved and the zone
15 change therein granted subject to any existing Agreement to Resolve Objections or
16 Concerns and shall be an Approval Deemed by Law.

17 **§81112. Disposition of Application.** Any Notice of Approval issued by the
18 Chief Planner or Notice of Action issued by the GLUC approving or conditionally
19 approving any ASPR shall be filed with the Governor of Guam and the Secretary
20 of the Guam Legislature. If the ASPR has been deemed approved under the terms

1 of this Act, then the Professional Engineer or the Small Developer or his attorney
2 shall file a Notice of Approval Deemed by Law with the Governor and with the
3 Guam Legislature. The Governor of Guam and the Guam Legislature shall have
4 thirty (30) days to reject an approved ASPR by enacting a statute to that effect.
5 Provided an ASPR has not been reversed by the Governor of Guam and the Guam
6 Legislature the Small Developer or his representative shall provide the Chief
7 Planner with a copy of the Notice of Approval Deemed by Law and DLM shall
8 thereafter amend the applicable zoning map to reflect the new zoning designation
9 of the affected property.

10 **§81113. Limitations on Use.** Any property rezoned under the SPRA must
11 be used substantially for the purposes and developed substantially in the manner
12 described in the ASPR as determined by the Chief Planner who is authorized to
13 allow minor deviations from the ASPR in writing. All substantial deviations from
14 the uses and development plan described in the ASPR will require a new ASPR.
15 Nothing herein shall prevent a Small Developer from developing less units or a
16 smaller project than requested in the ASPR but in no event may the Small
17 Developer exceed the requests contained in the ASPR.

18 **§81114. Extensions of Deadlines.** Any deadline herein may, before the
19 expiration of the deadline at issue, be extended once in writing by the Chief
20 Planner for not more than thirty (30) days. If the Small Developer fails to complete

1 the Notice of Application or the Declaration of Compliance within the required
2 time or within timely extensions thereof, the ASPR shall be deemed withdrawn
3 requiring a new application.

4 **§81115. Fees.** DLM may implement filing fees for the ASPR, the filing of
5 the Declaration of Compliance, Notice of Approval issued by the Chief Planner
6 and for extensions of any deadlines issued by the Chief Planner, provided said fees
7 are implemented pursuant to applicable provisions of the Administrative
8 Adjudication Act. The lack of such a fee schedule shall not prevent the filing and
9 completion of any ASPR.”

10 **Section 2. Severability.** If any of the provisions of this law or its
11 application to any person or circumstance is found to be invalid or contrary to law,
12 such invalidity shall not affect other provisions or applications of this law which
13 can be given effect without the invalid provisions or application, and to this end the
14 provisions of this law are severable.