



# Staff Report

PLANNING DIVISION

DEPARTMENT of COMMUNITY and NEIGHBORHOODS

**To:** Salt Lake City Planning Commission  
**From:** Amy Thompson – Senior Planner  
(801) 535-7281 or amy.thompson@slcgov.com  
**Date:** May 8, 2019 (published May 1, 2019)  
**Re:** PLNPCM2019-00237 Text Amendment: Appeals of Historic Landmark Commission Decisions

## ZONING ORDINANCE TEXT AMENDMENT

**REQUEST:** A request by Mayor Jackie Biskupski to amend sections of the Zoning Ordinance that relate to the appeals process for decisions made by the Historic Landmark Commission. The purpose of these amendments is to update the zoning ordinance so that it is consistent with bill H.B. 315 that was passed by the Utah State Legislature in 2019. The proposed changes will also make the appeals process for decisions made by the Historic Landmark Commission consistent with how other appeals of administrative decisions are processed. The proposed text amendments will affect sections 21A.06 and 21A.16 of the zoning ordinance and may include changes to other sections as necessary. The changes would apply citywide.

**RECOMMENDATION:** Planning Staff recommends that the Planning Commission forward a positive recommendation to the City Council regarding the amendments to sections 21A.06 and 21A.16 as proposed.

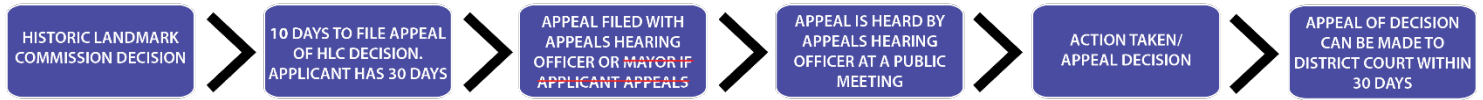
### BACKGROUND AND TEXT AMENDMENT DESCRIPTION:

The proposed text amendment is related to H.B. 315 “Land Use and Development Amendments” that repeals provisions adopted to the State Code in 2017 that requires municipalities to establish or designate a historic preservation appeal authority.

During the 2017 General Session of the Utah State Legislature, H.B. 30 “Historic Preservation Amendments” was passed. The bill modified the appeal process for decisions made by the Historic Landmark Commission. In order to be compliant with State Code, the changes made by this bill were adopted by Salt Lake City in 2018 with ordinance 48-18. The 2017 bill did the following:

- Required Salt Lake City to establish or designate a Historic Preservation Appeal Authority that is made up of the City’s governing body. The mayor is considered the governing body for appeals of Historic Landmark Commission decisions due to our form of government and because Historic Landmark Commission decisions are administrative.
- Allows an applicant to choose to appeal to either the Historic Preservation Appeal Authority or the land use appeal authority (the City’s Appeals Hearing Officer). If a neighbor, property owner or any other person other than the applicant files an appeal, the land use appeal authority hears and decides on the appeal.
- Applicants appealing a decision made by the Historic Landmark Commission will have 30 days to file an appeal (the previous appeal period for applicants was 10 days). Any other person adversely affected by the decision, still has 10 days to file an appeal.

The proposed text amendment removes the Historic Preservation Appeal Authority as a decision making body for appeals of Historic Landmark Commission decisions. With the proposed changes, all appeals of a decision made by the Historic Landmark Commission would be reviewed and decided on by the Appeals Hearing Officer, which is more consistent with how other administrative land use appeals are processed. The chart below outlines the appeals process. The proposed changes to the process are shown with a red strikethrough.



The proposed text amendments to Title 21A.06 and 21A.16 are included with this staff report for review (Attachment C).

#### **NEXT STEPS:**

At the April 4, 2019 Historic Landmark Commission meeting, the commission was informed of the proposed text amendments during the Director's Report. The recommendation of the Planning Commission will be forwarded to the City Council for a decision.

In addition to the proposed text amendments related to appeals of Historic Landmark Commission decisions, the petition initiation letter in Attachment A includes requests to reorganize the H Historic Preservation Overlay District subchapter, and outline a new process for the adoption of historic building surveys as they relate to properties located in the Historic Preservation Overlay zoning district. These additional requests are being processed under a different petition number (PLNPCM2019-00265) and will be presented at a future public hearing to the Historic Landmark Commission and the Planning Commission for review and a recommendation to City Council.

#### **ATTACHMENTS:**

- A. [Petition Initiation Letter](#)
- B. [Proposed Text Amendments](#)
- C. [Analysis of Standards](#)
- D. [Public Process and Comments](#)
- E. [H.B. 315 Land Use and Development Amendments \(applicable pages - 1 & 22\)](#)

## **ATTACHMENT A: PETITION INITIATION LETTER**

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# Petition Initiation Request

**Planning Division  
Community & Neighborhoods Department**

To: Mayor Biskupski  
From: Nick Norris, Planning Director  
Date: March 5, 2019  
CC: Patrick Leary, Chief of Staff; Mike Reberg, CAN Director; file  
Re: H Historic Preservation Overlay fine tuning text amendment

This memo is a request for the Mayor's Office to initiate a petition directing the planning division to reorganize the H Historic Preservation Overlay District subchapter in order to make the ordinance easier to use for applicants, property owners and staff. This would reorganize regulations in the overlay so that planning process steps are more clearly ordered and articulated. Any additional needed clarifications in process would be included in this effort.

As part of this amendment, the planning division has identified the need to add a new process outlining how historic surveys are adopted and how the historic landmark commission makes land use decisions about the contributing or noncontributing status of a property. This new process would allow the city to be more transparent and add predictability to the public in terms of how land use regulations within the overlay apply to their property.

Additionally, if the 2019 Utah State Legislature amends the state statute removing the Mayor as the Historic Preservation Appeal Authority, this will be deleted in the zoning ordinance.

As part of the process, the Planning Division will gather input from the public and organizations and hold public hearings with the Historic Landmark Commission, Planning Commission and City Council. Related provisions of Title 21A Zoning may also be amended as part of this petition. Please contact Michaela Oktay at ext. 6003 or [michaela.oktay@slcgov.com](mailto:michaela.oktay@slcgov.com) if you have any questions.

Thank you.

***Concurrence to initiate the zoning text amendment petition as noted above.***

A handwritten signature in blue ink that reads "Jackie Biskupski".

**Jackie Biskupski, Mayor**

A handwritten date in blue ink that reads "March 13, 2019".

**Date**

## **ATTACHMENT B: PROPOSED TEXT AMENDMENTS**

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# Chapter 21A.06

## DECISION MAKING BODIES AND OFFICIALS

21A.06.010: SUMMARY OF AUTHORITY:

21A.06.020: CITY COUNCIL; JURISDICTION AND AUTHORITY:

21A.06.030: PLANNING COMMISSION:

21A.06.040: APPEALS HEARING OFFICER:

21A.06.050: HISTORIC LANDMARK COMMISSION:

21A.06.060: ZONING ADMINISTRATOR:

21A.06.070: DEVELOPMENT REVIEW TEAM (DRT):

21A.06.080: HISTORIC PRESERVATION APPEAL AUTHORITY: RESERVED

21A.06.090: FINES HEARING OFFICER:

### ~~21A.06.080: HISTORIC PRESERVATION APPEAL AUTHORITY:~~

- A. ~~Creation:~~ The position of the Historic Preservation Appeal Authority is created pursuant to the Municipal Land Use, Development, and Management Act, section 10-9a-701 of the Utah Code Annotated. The Mayor is the Historic Preservation Appeal Authority.
- B. ~~Jurisdiction And Authority:~~ The Historic Preservation Appeal Authority shall have the power to hear and decide appeals of administrative decisions made by the Historic Landmark Commission pursuant to the procedures and standards set forth in section ~~21A.34.020~~, "Historic Preservation Overlay District", and chapter 21A.16, "Appeals Of Administrative Decisions", of this title.
- C. ~~Conflict Of Interest:~~ The Historic Preservation Appeal Authority shall not participate in any appeal in which the Historic Preservation Appeal Authority has a conflict of interest prohibited by ~~title 2, chapter 2.44~~ of this Code. (Ord. 48-18, 2018)

# Chapter 21A.16

## APPEALS OF ADMINISTRATIVE DECISIONS

### [21A.16.010: AUTHORITY:](#)

### [21A.16.020: PARTIES ENTITLED TO APPEAL:](#)

### [21A.16.030: PROCEDURE:](#)

### [21A.16.040: APPEAL OF DECISION:](#)

### [21A.16.050: STAY OF DECISION:](#)

#### **21A.16.010: AUTHORITY:**

As described in section [21A.06.040](#) of this title, the Appeals Hearing Officer shall hear and decide appeals alleging an error in any administrative decision made by the Zoning Administrator or the Administrative Hearing Officer in the administration or enforcement of this title, as well as administrative decisions of the Planning Commission. The Appeals Hearing Officer may hear and decide appeals alleging an error in administrative decisions made by the Historic Landmark Commission pursuant to section [21A.16.020](#) of this chapter.

In addition, the Appeals Hearing Officer shall hear and decide applications for variances as per chapter 21A.18 of this title and shall make determinations regarding the existence, expansion or modification of nonconforming uses and noncomplying structures pursuant to the procedures and standards set forth in chapter 21A.38, "Nonconforming Uses And Noncomplying Structures", of this title.

~~As described in section [21A.06.080](#) of this title, the Historic Preservation Appeal Authority may hear and decide appeals alleging an error in administrative decisions of the Historic Landmark Commission pursuant to section [21A.16.020](#) of this chapter. (Ord. 48-18, 2018)~~

#### **21A.16.020: PARTIES ENTITLED TO APPEAL:**

An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the Appeals Hearing Officer. For decisions made by the Historic Landmark Commission, the applicant may appeal to either the Historic Preservation Appeal Authority or the Appeals Hearing Officer. (Ord. 48-18, 2018)

#### **21A.16.030: PROCEDURE:**

Appeals of administrative decisions by the Zoning Administrator, Historic Landmark Commission or Planning Commission shall be taken in accordance with the following procedures:

- A. Filing Of Appeal: All appeals shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in District Court. The deadlines for filing an appeal are as indicated below:
  1. Administrative decisions made by the Zoning Administrator: Ten (10) days.
  2. Planning Commission decisions: Ten (10) days.
  3. Historic Landmark Commission: Thirty (30) days for appeals filed by the applicant, ten (10) days for appeals filed by any other party entitled to appeal.
- B. Fees: The application shall be accompanied by the applicable fees shown on the Salt Lake City consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by chapter 21A.10 of this title.
- C. Stay Of Proceedings: An appeal to the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall stay all further proceedings concerning the matter about which the appealed order,

requirement, decision, determination, or interpretation was made unless the Zoning Administrator certifies in writing to the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~, after the appeal has been filed, that a stay would, in the Zoning Administrator's opinion, be against the best interest of the City.

D. Notice Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the Zoning Administrator, the Appeals Hearing Officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in chapter 21A.10 of this title.
2. Public Meeting: Appeals from a decision of the Historic Landmark Commission or Planning Commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.
  - a. Upon receipt of an appeal of a decision by the Historic Landmark Commission or Planning Commission, the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the appellant and respondent a minimum of twelve (12) calendar days in advance of the meeting.
  - b. The City shall give e-mail notification, or other form of notification chosen by the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to [title 2, chapter 2.60](#) of this Code.
3. Time Limitation: All appeals shall be heard within one hundred eighty (180) days of the filing of the appeal. Appeals not heard within this time frame will be considered void and withdrawn by the appellant.

E. Standard Of Review:

1. The standard of review for an appeal, other than as provided in subsection E2 of this section, shall be de novo. The Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.
2. An appeal from a decision of the Historic Landmark Commission or Planning Commission shall be based on the record made below.
  - a. No new evidence shall be heard by the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ unless such evidence was improperly excluded from consideration below.
  - b. The Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall review the decision based upon applicable standards and shall determine its correctness.
  - c. The Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

F. Burden Of Proof: The appellant has the burden of proving the decision appealed is incorrect.

G. Action By The Appeals Hearing Officer ~~Or Historic Preservation Appeal Authority~~: The Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision shall become effective on the date the decision is rendered.

- H. Notification Of Decision: Notification of the decision of the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ shall be sent to all parties to the appeal within ten (10) days of the decision.
- I. Record Of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The Appeals Hearing Officer ~~and Historic Preservation Appeal Authority~~ may have the appeal proceedings contemporaneously transcribed by a court reporter.
- J. Policies And Procedures: The Planning Director shall adopt policies and procedures, consistent with the provisions of this section, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.
- K. Matters Delayed: For all matters delayed by the Appeals Hearing Officer ~~and Historic Preservation Appeal Authority~~, any subsequent written materials shall be submitted a minimum of fourteen (14) days prior to the rescheduled meeting date. (Ord. 48-18, 2018)

**21A.16.040: APPEAL OF DECISION:**

Any person adversely affected by a final decision made by the Appeals Hearing Officer ~~or Historic Preservation Appeal Authority~~ may file a petition for review of the decision with the District Court within thirty (30) days after the decision is rendered. (Ord. 48-18, 2018)

**21A.16.050: STAY OF DECISION:**

The Appeals Hearing Officer ~~and Historic Preservation Appeal Authority~~ may stay the issuance of any permits or approvals based on its decision for thirty (30) days or until the decision of the District Court in any appeal of the decision. (Ord. 48-18, 2018)

## ATTACHMENT C: ANALYSIS OF STANDARDS

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### 21A.50.050: STANDARDS FOR GENERAL AMENDMENTS:

A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the city council and is not controlled by any one standard.

A. In making its decision concerning a proposed text amendment, the city council should consider the following factors:

Standard	Finding	Rationale
Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents	Complies	The proposed text revisions are for the purpose of maintaining, updating, and clarifying the Zoning Ordinance for consistency with State Code and consistency with processing appeals of administrative decisions.
Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance	Complies	The proposed text amendments will not have an effect on the overall purpose of the zoning ordinance or specific purpose statements of the zoning ordinance.
Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards	Complies	The proposed text amendments are consistent with the purposes and provisions of the H Historic Preservation Overlay zoning district, and help to clarify the provisions for appeals of decisions of the Historic Landmark Commission so they are consistent with State Code requirements and as well as appeals of other administrative decisions.
The extent to which a proposed text amendment implements best current, professional practices of urban planning and design	Complies	The code changes are proposed as a result of State code amendments. It is necessary for Salt Lake City to make code revisions that lead to a greater ease of use and understanding of the ordinance and to maintain consistency with how appeals of administrative decisions are processed. Updating the appeals process for decisions made by the Historic Landmark Commission is consistent with Utah State code as it relates to procedures for due process for aggrieved parties.

## **ATTACHMENT D: PUBLIC PROCESS AND COMMENTS**

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### **Public Notice, Meetings and Comments**

The following is summary of the public notice that has occurred, as well a list of meetings that have been held, and other public input opportunities, related to the proposed project.

### **Notice of the public hearing for the proposal include:**

- Newspaper notification on May 30, 2017
- Notice mailed on June 1, 2017.
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites on June 1, 2017.

### **Meetings**

- An Open House was held on April 18, 2019. One person from the public attended the open house.

### **Public Meetings**

The Historic Landmark Commission was notified of the proposed amendments at their April 4<sup>th</sup> meeting during the Director's Report.

In addition to the proposed changes to the HLC appeals process, there are additional proposed amendments included in the petition initiation letter that are being processed under a different petition number (PLNPCM2019-00265). Those additional proposed changes will be presented at a future public hearing to the Historic Landmark Commission and the Planning Commission for review and a recommendation to City Council.

### **Public Comments:**

- As of the publication of this staff report, Staff has not received any comments related to the proposed text amendments.

## **ATTACHMENT E: H.B. 315**

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**Representative Logan Wilde** proposes the following substitute bill:

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**LAND USE AND DEVELOPMENT AMENDMENTS**

2

2019 GENERAL SESSION

3

STATE OF UTAH

4

**Chief Sponsor: Logan Wilde**

5

Senate Sponsor: Kirk A. Cullimore

6

7 **LONG TITLE**8 **General Description:**

9 This bill amends provisions of the Municipal Land Use, Development, and  
10 Management Act and the County Land Use, Development, and Management Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ addresses local authority to adopt local land use requirements and regulations;
- 15 ▶ amends the process to vacate a public street;
- 16 ▶ clarifies local authority regarding a planning commission;
- 17 ▶ amends the authority of a local legislative body regarding zoning;
- 18 ▶ provides that a local legislative body may, by ordinance, consider a planning  
19 commission's failure to make a certain timely recommendation as a negative  
20 recommendation;
- 21 ▶ requires a legislative body to classify each allowed use in a zoning district;
- 22 ▶ prohibits a municipality from withholding the issuance of a certificate of occupancy  
23 in certain circumstances;
- 24 ▶ imposes a time limit for final action on certain applications;
- 25 ▶ prohibits a county recorder from recording a subdivision plat unless the relevant

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- 26 municipality or county has approved and signed the plat;
- 27 ▶ requires a municipality and county to establish two acceptable forms of completion  
28 assurance and adds elements for which the municipality or county may not require  
29 completion assurance;
  - 30 ▶ amends provisions regarding exemptions from the plat requirement;
  - 31 ▶ amends a provision regarding municipal or county liability for the dedication of a  
32 street;
  - 33 ▶ allows for a separate process to vacate a public street through a petition;
  - 34 ▶ **repeals provisions regarding a historic preservation appeal authority;**
  - 35 ▶ allows a legislative body to act as an appeal authority to review a land use decision  
36 in certain circumstances;
  - 37 ▶ provides for a court to review a land use application denial and remand the matter in  
38 certain circumstances;
  - 39 ▶ allows a court to award attorney fees if the court makes a certain determination of  
40 bad faith challenge to a land use application decision;
  - 41 ▶ requires a boundary line agreement operating as a quitclaim deed to meet certain  
42 standards;
  - 43 ▶ amends provisions regarding boundary line agreements, including elements, status,  
44 and exemptions; and
  - 45 ▶ makes technical and conforming changes.

1295 (5) If the municipality establishes or, prior to the effective date of this chapter, has  
 1296 established a multiperson board, body, or panel to act as an appeal authority, at a minimum the

1297 board, body, or panel shall:

- 1298 (a) notify each of its members of any meeting or hearing of the board, body, or panel;
- 1299 (b) provide each of its members with the same information and access to municipal
- 1300 resources as any other member;
- 1301 (c) convene only if a quorum of its members is present; and
- 1302 (d) act only upon the vote of a majority of its convened members.

1303 ~~[(6) (a) Each municipality that designates a historic preservation district or area shall,~~  
 1304 ~~by ordinance, establish or designate a historic preservation appeal authority.]~~

1305 ~~[(b) A historic preservation appeal authority shall:]~~

1306 ~~[(i) be comprised of the members of the governing body;]~~

1307 ~~[(ii) exercise only administrative authority and act in a quasi-judicial manner; and]~~

1308 ~~[(iii) hear and decide appeals from administrative decisions of the historic preservation~~  
 1309 ~~authority.]~~

1310 ~~[(e) An applicant appealing an administrative decision of the historic preservation~~  
 1311 ~~authority may appeal to either:]~~

1312 ~~[(i) the historic preservation appeal authority; or]~~

1313 ~~[(ii) the land use appeal authority established under Subsection (1).]~~

1314 Section 22. Section **10-9a-707** is amended to read:

1315 **10-9a-707. Scope of review of factual matters on appeal -- Appeal authority**  
 1316 **requirements.**

1317 (1) A municipality may, by ordinance, designate the scope of review of factual matters  
 1318 for appeals of land use authority decisions.

1319 (2) If the municipality fails to designate a scope of review of factual matters, the appeal  
 1320 authority shall review the matter de novo, without deference to the land use authority's  
 1321 determination of factual matters.

1322 (3) If the scope of review of factual matters is on the record, the appeal authority shall  
 1323 determine whether the record on appeal includes substantial evidence for each essential finding  
 1324 of fact.

1325 (4) The appeal authority shall:

1326 (a) determine the correctness of the land use authority's interpretation and application  
 1327 of the plain meaning of the land use regulations; and

1328 (b) interpret and apply a land use regulation to favor a land use application unless the  
 1329 land use regulation plainly restricts the land use application.

1330 (5) ~~(a) An appeal authority's land use decision is a quasi-judicial act[, even if the appeal~~  
 1331 ~~authority is the].~~

1332 ~~(b) A legislative body may act as an appeal authority unless both the legislative body~~  
 1333 ~~and the appealing party agree to allow a third party to act as the appeal authority.~~

1334 (6) Only a decision in which a land use authority has applied a land use regulation to a  
 1335 particular land use application, person, or parcel may be appealed to an appeal authority.

1336 Section 23. Section **10-9a-801** is amended to read:

1337 **10-9a-801. No district court review until administrative remedies exhausted --**  
 1338 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**  
 1339 **-- Staying of decision.**

1340 (1) No person may challenge in district court a land use decision until that person has  
 1341 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and  
 1342 Variances, if applicable.

1343 (2) (a) Any person adversely affected by a final decision made in the exercise of or in  
 1344 violation of the provisions of this chapter may file a petition for review of the decision with the  
 1345 district court within 30 days after the decision is final.

1346 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a  
 1347 property owner files a request for arbitration of a constitutional taking issue with the property  
 1348 rights ombudsman under Section [13-43-204](#) until 30 days after:

1349 (A) the arbitrator issues a final award; or

1350 (B) the property rights ombudsman issues a written statement under Subsection  
 1351 [13-43-204](#)(3)(b) declining to arbitrate or to appoint an arbitrator.

1352 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional  
 1353 taking issue that is the subject of the request for arbitration filed with the property rights  
 1354 ombudsman by a property owner.

1355 (iii) A request for arbitration filed with the property rights ombudsman after the time  
 1356 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.