

No. 2002-2

AN ACT

HB 1219

Amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," further providing for planning commission, for zoning ordinance amendments, for procedure for landowner curative amendments, for certain findings, for hearings and for governing body's functions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 202 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, reenacted and amended December 21, 1988 (P.L.1329, No.170), is amended to read:

Section 202. Planning Commission.—If the governing body of any municipality shall elect to create a planning commission, such commission shall have not less than three nor more than nine members. [All members of the commission shall serve without compensation, but may be reimbursed for necessary and reasonable expenses.] *Except for elected or appointed officers or employees of the municipality, members of the commission may receive compensation in an amount fixed by the governing body. Compensation shall not exceed the rate of compensation authorized to be paid to members of the governing body. Without exception, members of the planning commission may be reimbursed for necessary and reasonable expenses.* However, elected or appointed officers or employees of the municipality shall not, by reason of membership thereon, forfeit the right to exercise the powers, perform the duties or receive the compensations of the municipal offices held by them during such membership.

Section 2. Section 609(b) of the act, amended May 27, 1994 (P.L.251, No.38), is amended to read:

Section 609. Enactment of Zoning Ordinance Amendments.—* * *

(b) (1) Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice. In

addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the municipality at points deemed sufficient by the municipality along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing.

(2) (i) *In addition to the requirement that notice be posted under clause (1), where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least 30 days prior to the date of the hearing by first class mail to the addressees to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the municipality. The notice shall include the location, date and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this subsection.*

(ii) *This clause shall not apply when the rezoning constitutes a comprehensive rezoning.*

* * *

Section 3. Sections 609.1(b), 709(a) and 908(1.2), (2) and (9) of the act are amended to read:

Section 609.1. Procedure for Landowner Curative Amendments.—* * *

(b) The hearing shall be conducted in accordance with section 908 and all references therein to the zoning hearing board shall, for purposes of this section be references to the governing body: *provided, however, That the deemed approval provisions of section 908 shall not apply and the provisions of section 916.1 shall control.* If a municipality does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for the entire zoning ordinance and map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.

* * *

Section 709. The Findings.—(a) The governing body, or the planning agency, within 60 days following the conclusion of the public hearing provided for in this article *or within 180 days after the date of filing of the application, whichever occurs first,* shall, by official written communication, to the landowner, either:

- (1) grant tentative approval of the development plan as submitted;
- (2) grant tentative approval subject to specified conditions not included in the development plan as submitted; or
- (3) deny tentative approval to the development plan.

Failure to so act within said period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that tentative approval is granted subject to conditions, the landowner may, within 30 days after receiving a copy of the official written communication

of the governing body notify such governing body of his refusal to accept all said conditions, in which case, the governing body shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not, within said period, notify the governing body of his refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

* * *

Section 908. Hearings.—The board shall conduct hearings and make decisions in accordance with the following requirements:

* * *

(1.2) The *first* hearing shall be [held] *commenced* within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time. *Each subsequent hearing shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant. Any party aggrieved by the schedule or progress of the hearings may apply to the court of common pleas for judicial relief. The hearing shall be completed no later than 100 days after the completion of the applicant's case in chief unless extended for good cause upon application to the court of common pleas.*

(2) The hearings shall be conducted by the board or the board may appoint any member *or an independent attorney* as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the board; however, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the board and accept the decision or findings of the hearing officer as final.

* * *

(9) The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer[,] and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings, and the board's decision shall be entered no later than 30 days after the report of the hearing officer. Where the board fails to render the decision within the period required by this subsection[,] or fails to [hold] *commence or complete* the required hearing [within 60 days from the

date of the applicant's request for a hearing,] *as provided in subsection (1.2)*, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

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Section 4. Section 913.2(a) and (b)(2) of the act, amended December 18, 1996 (P.L.1102, No.165), is amended to read:

Section 913.2. Governing Body's Functions; Conditional Uses.—(a) Where the governing body, in the zoning ordinances, has stated conditional uses to be granted or denied by the governing body pursuant to express standards and criteria, the governing body shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. *The hearing shall be conducted by the board or the board may appoint any member or an independent attorney as a hearing officer. The decision or, where no decision is called for, the findings shall be made by the board. However, the appellant or the applicant, as the case may be, in addition to the municipality may, prior to the decision of the hearing, waive decision or findings by the board and accept the decision or findings of the hearing officer as final.* In granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in the zoning ordinance.

(b) * * *

(2) Where the governing body fails to render the decision within the period required by this subsection or fails to [hold] *commence* the required hearing within 60 days from the date of the applicant's request for a hearing *or fails to complete the hearing no later than 100 days after the completion of the applicant's case in chief, unless extended for good cause upon application to the court of common pleas*, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the governing body to meet or render a decision as hereinabove provided, the governing body shall give public notice of the decision within ten days from the last day it could have met to render a decision in the same manner as required by the public notice

requirements of this act. If the governing body shall fail to provide such notice, the applicant may do so.

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Section 5. This act shall apply only to applications or appeals filed after the effective date of this act.

Section 6. This act shall take effect in 90 days.

APPROVED—The 11th day of January, A.D. 2002.

MARK S. SCHWEIKER