

No. 93

AN ACT

HB 1129

Amending the act of July 31, 1968 (P.L.805), entitled "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes and counties of the second class A 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; 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 appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," repealing inconsistent acts, ordinances, and regulations; defining certain terms; clarifying the powers and duties of governing bodies and planning agencies; authorizing the adoption by reference of county subdivision and land development ordinances and the use by municipalities of the county planning agency for administrative purposes; clarifying appeal jurisdiction; and making editorial changes.

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

Section 1. The title and sections 103, 105, clauses (3), (4), (5), (10), (11), (12), (13) and (18) of section 107, act of July 31, 1968 (P.L.805), known as the "Pennsylvania Municipalities Planning Code," are amended and section 107 is also amended by adding clauses to read:

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 class A 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; 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 appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts.

Section 103. Construction of Act.—[The provisions of this act, as far as they are the same as those of existing laws, are intended as a continuation of such laws except for those portions of the laws which are specifically repealed. However, the repeal by this act of any act of Assembly, or part thereof, shall not revive any act or part thereof, heretofore repealed or superseded by law.] The

provisions of this act shall not affect any act done, contract executed or liability incurred prior to its effective date, or affect any suit or prosecution pending or to be instituted, to enforce any right, rule, regulation, or ordinance or to punish any offense against any such repealed laws or against any ordinance enacted under them. All ordinances, resolutions, regulations and rules made pursuant to any act of Assembly repealed by this act shall continue in effect as if such act had not been repealed, *except as the provisions are inconsistent herewith. The provisions of other acts relating to municipalities and townships are made a part of this act and this code shall be construed to give effect to all provisions of other acts not specifically repealed.*

Section 105. Purpose of Act.—It is the intent, purpose and scope of this act to protect and promote safety, health and morals; to accomplish a coordinated development of municipalities, other than cities of the first and second class; to provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic, practical, and social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions; to guide uses of land and structures, type and location of streets, public grounds and other facilities; and to permit municipalities, other than cities of the first and second class, to minimize such problems as may presently exist or which may be foreseen. It is the further intent of this act that any recommendations made by any planning agency to any governing body shall be advisory only.

Section 107. Definitions.—As used in this act, except where the context clearly indicates otherwise, the following words or phrases have the meaning indicated below:

* * *

(3) “Appointing authority,” the mayor in cities; the chairman of the board of commissioners in counties; the council in incorporated towns and boroughs; the board of commissioners in townships of the first class; and the board of supervisors in townships of the second class; *or as may be designated in the law providing for the form of government.*

(4) “Common open space,” a parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of the planned residential development, not including streets, off-street parking areas, and areas set aside for public facilities. **[Common open space shall be substantially free of structures but may contain such improvements as are in the development plan as finally approved and as are appropriate for the recreation of residents.]**

(5) “City” or “cities,” cities of the second class A and third class.

* * *

(10) “Governing body,” the council in cities, **[of the second class A, third class]**, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board

of commissioners in counties of the second class A through eighth classes *or as may be designated in the law providing for the form of government.*

(11) "Land development," (i) the improvement of one *lot* or *two* or more contiguous lots, tracts or parcels of land for any purpose involving (a) a group of two or more buildings, or (b) the division or allocation of land *or space* between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, *condominiums*, building groups or other features; (ii) a [**division**] *subdivision* of land. [**into lots for the purpose of conveying such lots singly or in groups to any person, partnership or corporation for the purpose of the erection of buildings by such person, partnership or corporation.**]

(12) "Landowner," the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee [**having a remaining term of not less than forty years,**] *if he is authorized under the lease to exercise the rights of the landowner*, or other person having a proprietary interest in land, shall be deemed to be a landowner for the purposes of this act.

(12.1) "*Mobilehome*," means a transportable, single family dwelling intended for permanent occupancy, office or place of assembly contained in one unit, or in two units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

(12.2) "*Mobilehome lot*," a parcel of land in a mobilehome park, improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobilehome, which is leased by the park owner to the occupants of the mobilehome erected on the lot.

(12.3) "*Mobilehome park*," a parcel of land under single ownership which has been planned and improved for the placement of mobilehomes for nontransient use, consisting of two or more mobilehome lots.

(13) "Municipality," any city of the second class A or third class, borough, incorporated town, township of the first or second class, [**and**] county of the second class A through eighth class, *or any similar general purpose unit of government which shall hereafter be created by the General Assembly.*

(13.1) "*Nonconforming use*," means a use, whether of land or of structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

(13.2) "*Nonconforming structure*," means a structure or part of a

structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

* * *

(18) “Public notice,” notice [given not more than thirty days and not less than fourteen days in advance of any public hearing required by this act. Such notice shall be] published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. *The first publication shall be not more than thirty days or less than fourteen days from the date of the hearing.*

* * *

Section 2. Section 209 of the act is repealed.

Section 3. The act is amended by adding a section to read:

Section 209.1. Powers and Duties of Planning Agency.—(a) The planning agency shall at the request of the governing body have the power and shall be required to:

(1) Prepare the comprehensive plan for the development of the municipality as set forth in this act, and present it for the consideration of the governing body;

(2) Maintain and keep on file records of its action. All records and files of the planning agency shall be in the possession of the governing body.

(b) The planning agency at the request of the governing body may:

(1) Make recommendations to the governing body concerning the adoption or amendment of an official map;

(2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it as set forth in this act;

(3) Prepare, recommend and administer subdivision and land development, planned residential development regulations, as set forth in this act;

(4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto;

(5) Do such other act or make such studies as may be necessary to fulfill the duties and obligations imposed by this act;

(6) Prepare and present to the governing body of the municipality an environmental study;

(7) Submit to the appointing authority of a municipality a recommended capital improvements program;

(8) *Promote public interest in, and understanding of, the comprehensive plan and planning;*

(9) *Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals;*

(10) *Hold public hearings and meetings;*

(11) *Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency;*

(12) *In the performance of its functions, enter upon any land to make examinations and surveys with the consent of the owner.*

(c) *In the performance of its powers and duties, any act or recommendation of the planning agency which involves engineering consideration, shall be subject to review and comments of the engineer, which shall be incorporated and separately set forth in any report, written act or recommendation of the planning agency.*

Section 4. Sections 301, 303, 305, 402, 501, 502, the introductory paragraph and subsections (1) and (5) of section 508 and subsection (c) of section 510 are amended to read:

Section 301. Preparation of Comprehensive Plan.—**[The planning agency shall prepare and maintain a comprehensive plan for the development of the municipality.]** The comprehensive plan, consisting of maps, charts and textual matter, shall indicate the recommendations of the planning agency for the continuing development of the municipality. The comprehensive plan shall include, but need not be limited to, the following related basic elements:

(1) A statement of objectives of the municipality concerning its future development;

(2) A plan for land use, which may include the amount, intensity, and character of land use proposed for residence, industry, business, agriculture, major traffic and transit facilities, public grounds, flood plans and other areas of special hazards and other similar uses;

(3) A plan for movement of people and goods, which may include expressways, highways, local street systems, parking facilities, mass transit routes, terminals, airfields, port facilities, railroad facilities and other similar facilities or uses;

(4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, libraries, water supply, sewage disposal, refuse disposal, storm drainage, hospitals, and other similar uses; and

(5) A map or statement indicating the relationship of the municipality and its proposed development to adjacent municipalities and areas.

In preparing the comprehensive plan the planning agency shall make careful surveys and studies of existing conditions and prospects for future growth in the municipality.

Section 303. Legal Status of Comprehensive Plan Within the Jurisdiction

that Adopted the Plan.—[Following the adoption of the comprehensive plan or any part thereof by] *Whenever* the governing body, pursuant to public notice, [any] *has adopted a comprehensive plan or any part thereof, any subsequent* proposed action of the [same] governing body [relating] *shall be submitted to the planning agency for its recommendations when the proposed action relates to:*

- (1) The location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or watercourse;
- (2) The location, erection, demolition, removal or sale of any public structure located within the municipality; or
- (3) The adoption, amendment or repeal of an official map, subdivision and land development ordinance, zoning ordinance or planned residential development ordinances. [shall be: (i) submitted to the planning agency for its recommendations and (ii) specifically found by the governing body to be in accordance with the spirit and intent of the formally adopted portions of the comprehensive plan before final action shall be taken by the governing body.]

The recommendations of the planning agency *including a specific statement as to whether or not the proposed action is in accordance with the intent of the formally adopted comprehensive plan* shall be made in writing to the governing body within thirty days.

Section 305. The Legal Status of Comprehensive Plans Within School Districts.—Following the adoption of a comprehensive plan or any part thereof by any municipality or county governing body, pursuant to public notice, any proposed action of the governing body of any school district located within the municipality or county relating to the location, demolition, removal or sale of any school district structure or land shall be submitted to the municipal [or] *and* county planning agency for [its recommendations. The recommendations of the planning agency shall be made in writing to the governing body of the school district within thirty days.] *their recommendations at least thirty days prior to the execution of such proposed action by the governing body of the school district.*

Section 402. Adoption of the Official Map and Amendments Thereto.—Prior to the adoption of any survey of existing or proposed public streets, watercourses or public grounds as the official map, or part thereof, or any amendments to the official map, the governing body shall refer such surveys and amendments to the planning agency for review. The planning agency shall report its recommendations on said proposed official map, part thereof, or amendment thereto within forty days unless an extension of time shall be agreed to by the governing body. [before] *Before* voting on the enactment of the proposed official map, part thereof, or amendment thereto, *the governing body* shall hold a public hearing thereon [The governing body shall give] *after giving* public notice of such hearing.

Section 501. Grant of Power.—The governing body of each

municipality may regulate subdivisions and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance may require that all plats of land lying within the municipality shall be submitted for approval to the governing body or in lieu thereof to a planning agency designated in the ordinance for this purpose. All powers granted herein to the governing body or the planning agency shall be exercised in accordance with the provisions of the subdivision and land development ordinance. In the case of any development governed by an ordinance adopted pursuant to Article VII, however, the applicable provisions of the subdivision and land development ordinance shall be as modified by such ordinance and the procedures which shall be followed in the approval of any plat and the rights and duties of the parties thereto shall be governed by Article VII and the provisions of the ordinance adopted thereunder. ***Provisions regulating mobilehome parks shall be set forth in separate and distinct articles of any subdivision and land development ordinance adopted pursuant to Article V, or any planned residential development ordinance adopted pursuant to Article VII.***

Section 502. Jurisdiction of County Planning Agencies; ***Adoption by Reference of County Subdivision and Land Development Ordinances.***—When any county has adopted a subdivision and land development ordinance in accordance with the terms of this article, a certified copy of the ordinance shall be sent to every city, borough, incorporated town or township within the county. All amendments shall also be sent to the aforementioned municipalities. The powers of governing bodies of counties to enact, amend and repeal subdivision and land development ordinances shall be limited to land in those cities, boroughs, incorporated towns and townships wholly or partly within the county which have no subdivision and land development ordinance in effect at the time a subdivision and land development ordinance is introduced before the governing body of the county, and until the city, borough, incorporated town or township subdivision and land development ordinance is in effect and a certified copy of such ordinance is filed with the county planning agency, if one exists. The enactment of a subdivision and land development ordinance by any municipality, other than a county, whose land is subject to a county subdivision and land development ordinance shall act as a repeal protanto of the county subdivision and land development ordinance within the municipality adopting such ordinance. However, applications for subdivision and land development located within a city, borough, incorporated town or township having adopted a subdivision and land development ordinance as set forth in this article shall be forwarded upon receipt by the municipality to the county planning agency for review and report at county expense: Provided, That such municipalities shall not approve such applications until the county report is received or until the expiration of thirty days from the date the application was forwarded to the county.

Further, any municipality other than a county may adopt by reference the subdivision and land development ordinance of the county, and may by separate ordinance designate the county planning agency as its official administrative agency for review and approval of plats.

Section 508. Approval of Plats.—All applications for approval of a plat (other than those governed by Article VII), whether preliminary or final, shall be acted upon by the governing body *or the planning agency* within such time limits as may be fixed in the subdivision and land development ordinance but the governing body *or the planning agency* shall render its decision and communicate it to the applicant not later than **[forty] ninety** days after such application is filed.

(1) The decision of the governing body *or the planning agency* shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than five days following the decision;

* * *

(5) **[If a public hearing has been held upon a preliminary plat or plan, a public hearing shall not be required upon the final plat unless the final plat departs substantially from the preliminary plat or plan.] Before acting on any subdivision plat, the governing body or the planning agency, as the case may be, may hold a public hearing thereon after public notice.**

Section 510. Release from Improvement Bond.— * * *

(c) If the municipal governing body or the municipal engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond *or other security agreement.*

* * *

Section 5. Section 512 of the act is repealed.

Section 6. Section 515 of the act is amended to read:

Section 515. Penalties.—Any person, partnership, or corporation who or which being the owner or agent of the owner of any lot, tract or parcel of land shall lay out, construct, open or dedicate any street, sanitary sewer, storm sewer, water main or other improvements for public use, travel or other purposes or for the common use of occupants of buildings abutting thereon, or who sells, transfers or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of such subdivision or land development **[or otherwise,]** or erect any building thereon, unless and until a final plat has been prepared in full compliance with the provisions of this act and of the regulations adopted hereunder and has been recorded as provided herein, shall be guilty of a misdemeanor, and upon conviction thereof, such person, or the members of such partnership, or the officers of such corporation, or the agent of any of them,

responsible for such violation pay a fine not exceeding [**one hundred dollars (\$100)**] *one thousand dollars (\$1,000)* per lot or parcel or per dwelling within each lot or parcel. All fines collected for such violations shall be paid over to the municipality whose ordinance has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

Section 7. Section 516 of the act is repealed.

Section 8. Section 605 of the act is amended by adding a clause to read:

Section 605. Classifications.—In any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned. The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such various districts of the municipality as shall be described by a map made part of the zoning ordinance. Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:

* * *

(1.1) For the purpose of regulating nonconforming uses and structures, and

* * *

Section 9. The section heading of section 606 and sections 608 and 609 of the act are amended to read:

Section 606. Statement of Community Development [**Objections**] *Objectives.*—* * *

Section 608. Enactment of Zoning Ordinance [**Amendments**].—Before voting on the enactment of a zoning ordinance, the governing body shall hold a public hearing thereon, pursuant to public notice. *The vote on the enactment by the governing body shall be within ninety days after the public hearing.*

Section 609. Enactment of Zoning Ordinance Amendments.—For the preparation of amendments to zoning ordinances, the procedure set forth in this article for the preparation of a proposed zoning ordinance shall be permissive. Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice. In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least thirty days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include land previously not affected by it, the governing body shall hold

another public hearing, pursuant to public notice, before proceeding to vote on the amendment. *If a county planning agency shall have been created for the county in which the city, borough, incorporated town or township adopting the ordinance is located, then at least thirty days prior to the hearing on the ordinance by the local governing body, the city, borough, incorporated town or township planning agency shall submit the proposed ordinance to the county planning agency for recommendations.*

Section 10. The act is amended by adding a section to read:

Section 609.1. Procedure Upon Curative Amendments.—A landowner who desires to challenge on substantive grounds the validity of an ordinance or map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the governing body with a written request that his challenge and proposed amendment be heard and decided as provided in section 1004. The governing body shall commence a hearing thereon within sixty days of the request as provided in section 1004. The curative amendment shall be referred to the planning agency or agencies as provided in section 609 and notice of the hearing thereon shall be given as provided in section 610 and in section 1004. The hearing shall be conducted in accordance with subsections (4) to (8) of section 908 and all references therein to the zoning hearing board shall, for purposes of this section be references to the governing body.

Section 11. Section 612 of the act is repealed.

Section 12. Sections 613 and 614 of the act are amended to read:

Section 613. Registration of Nonconforming Uses.—Zoning ordinances [may] *shall* contain provisions [providing for and] requiring the [identification and registration of] *zoning officer to identify and register* nonconforming uses and nonconforming structures.

Section 614. Appointment and Powers of Zoning Officer.—For the administration of a zoning ordinance, a zoning officer, who may *not* hold [other] *any elective* office in the municipality, shall be appointed. The zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance.

Section 13. Sections 620, 712 and Article VIII of the act are repealed.

Section 14. Section 906, subsections (1), (3), (7), (8) and (9) of section 908 and section 910 of the act are amended to read:

Section 906. Organization of Board.—The board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board, but [the] *where two members are disqualified to act in a*

particular matter, the remaining member may act for the board. The board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the board as provided in section 908. The board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws of the Commonwealth. The board shall keep full public records of its business and shall submit a report of its activities to the governing body once a year.

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

(1) Notice shall be given to the public, the applicant, **[the county planning agency,]** the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. Notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the board. The governing body may establish reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by ordinance.

* * *

(3) The parties to the hearing shall be *the municipality*, any person **[who is entitled to notice under clause (1) without special request therefore]** *affected by the application* who has made timely appearance of record before the board, and any other person *including civic or community organizations* permitted to appear by the board. *The board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose.*

* * *

(7) The board or the hearing officer, as the case may be, shall keep a *stenographic* record of the proceedings **[, either stenographically or by sound recording,]** and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.

(8) The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings *after the commencement of hearings* with any party or his representative unless all parties are given an opportunity to be present.

(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 forty-five days **[. Each]** *after the last hearing before the board or hearing officer. Except in home rule municipalities, 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 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 forty-five days after the decision of the hearing officer.* Where the board has power to render a decision and the board or the hearing officer, as the case may be, fails to render the same within the period required by this [clause] subsection, the decision shall be deemed to have been rendered in favor of the applicant *unless the applicant has agreed in writing to an extension of time. Nothing in this subsection shall prejudice the right of any party opposing the application to urge that such decision is erroneous.*

* * *

Section 910. Board Functions: Challenge to the Validity of any Ordinance or Map.—[Except as provided in section 912, relating to variances, the board shall have no power to pass upon the validity of any provision of an ordinance or map adopted by the governing body. Recognizing that challenges to the validity of an ordinance or map may present issues of fact and of interpretation which may lie within the special competence of the board, and to facilitate speedy disposition of such challenges by a court, the board may hear all challenges wherein the validity of the ordinance or map presents any issue of fact or of interpretation, not hitherto properly determined at a hearing before another competent agency or body, and] *The board shall hear challenges to the validity of a zoning ordinance or map except as indicated in section 1003 and subsection (1) (b) of section 1004. In all such challenges, the board shall take evidence and make a record thereon as provided in section 908. At the conclusion of the hearing, the board shall decide all contested questions [of interpretation] and shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.*

Section 15. Section 911 of the act is repealed.

Section 16. The act is amended by adding a section to read:

Section 913.1. Unified Appeals.—Where the board has jurisdiction over a zoning matter pursuant to sections 909 through 912, the board shall also hear all appeals which an applicant may elect to bring before it with respect to any municipal ordinance or requirement pertaining to the same development plan or development. In any such case, the board shall have no power to pass upon the nonzoning issues, but shall take evidence and make a record thereon as provided in section 908. At the conclusion of the hearing, the board shall make findings on all

relevant issues of fact which shall become part of the record on appeal to the court. The provisions of this section shall not apply to cities of the first and second class.

Section 17. Sections 914 and 915 of the act are amended to read:

Section 914. Parties Appellant Before Board.—Appeals under section 909 and proceedings to challenge an ordinance under section 910 may be filed with the board in writing *by the landowner affected*, any officer or agency of the municipality, or any person aggrieved. Requests for a variance under section 912 and for special exception under section 913 may be filed with the board by any landowner or any tenant with the permission of such landowner.

Section 915. Time Limitations; *Persons Aggrieved*.—[The time limitations for raising certain issues and filing certain proceedings with the board shall be the following:

(1) No issue of alleged defect in the process of enactment of any ordinance or map or any amendment thereto shall be raised in any proceeding filed with the board later than thirty days from the time such ordinance, map or amendment takes effect unless the person raising such issue alleges and proves that he failed to receive adequate notice of the enactment or amendment. If such person has succeeded to his interest after the enactment of the ordinances, adequate notice to his predecessor in interest shall be deemed adequate notice to him.

(2) No person shall be allowed to file any proceeding with the board later than thirty days after any application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he [failed to receive adequate notice of such approval.] *had no notice, knowledge, or reason to believe that such approval had been given.* If such person has succeeded to his interest after such approval [adequate notice to], *he shall be bound by the knowledge of his predecessor in interest [shall be deemed adequate notice to him].*

The failure of anyone other than the landowner to appeal from an adverse decision on a tentative or preliminary plan pursuant to section 709 or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map pursuant to section 1005 (b) shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative or preliminary approval.

Section 18. Article X of the act is repealed.

Section 19. The act is amended by adding an article to read:

ARTICLE X Appeals

Section 1001. Zoning Appeals.—The proceedings set forth in this

article shall constitute the exclusive mode for securing review of any ordinance, decision, determination or order of the governing body of a municipality, its agencies or officers adopted or issued pursuant to this act.

Section 1002. Venue.—Appeals to a court shall be taken to the court of common pleas of the county in which the land involved is located.

Section 1003. Validity of Ordinance; Procedural Questions.—Questions of an alleged defect in the process of enactment or adoption of any ordinance or map shall be raised by an appeal taken directly from the action of the governing body to the court filed not later than thirty days from the effective date of the ordinance or map.

Section 1004. Validity of Ordinance; Substantive Questions; Landowner Appeals.—(1) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:

(a) To the zoning hearing board for a report thereon under section 910 or 913.1; or

(b) To the governing body together with a request for a curative amendment under section 609.1.

(2) The submissions referred to in subsection (1) shall be governed by the following:

(a) The landowner shall make a written request to the board or governing body that it hold a hearing on his challenge. The request shall contain a short statement reasonably informing the board or the governing body of the matters that are in issue and the grounds for the challenge.

(b) The request may be submitted at any time after the ordinance or map takes effect but if an application for a permit or approval is denied thereunder, the request shall be made not later than the time provided for appeal from the denial thereof. In such case, if the landowner elects to make the request to the governing body and the request is timely, the time within which he may seek review of the denial of the permit or approval on other issues shall not begin to run until the request to the governing body is finally disposed of.

(c) The request shall be accompanied by plans and other materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in the light thereof. Nothing contained herein shall preclude the landowner from first seeking a final permit or approval before submitting his challenge to the board or governing body.

(d) If the submission is made to the governing body under subsection (1) (b), the request shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.

(e) Notice of the hearing required by sections 609.1, 910, or 913.1, whichever is applicable, shall include notice that the validity of the ordinance or map is in question and shall give the place where and the times when a copy of the landowner's request, including the plans submitted pursuant to subsection (2) (c) and the proposed amendments, if any, submitted under subsection (2) (d) may be examined by the public.

(f) The board or the governing body, as the case may be, shall hold a hearing upon the landowner's request pursuant to sections 609.1, 910, or 913.1, whichever is applicable, commencing not later than sixty days after the request is filed unless the landowner requests or consents to an extension of time.

(3) After submitting his challenge to the board or governing body as provided in subsections (1) and (2) of this section, the landowner may appeal to court by filing same within thirty days (i) after notice of the report of the board is issued, or (ii) after the governing body has denied the landowner's request for a curative amendment as provided in subsection (4).

Failure to appeal the denial of a request for a curative amendment under clause (ii), shall not preclude the landowner from thereafter presenting the same validity questions by commencing a proceeding as provided in subsection (1) (a) of this section.

(4) For purposes of subsection (3) (ii), the landowner's request for a curative amendment is denied when (i) the governing body notifies the landowner that it will not adopt the amendment, or (ii) the governing body adopts another amendment which is unacceptable to the landowner, or (iii) the governing body fails to act on the landowner's request, in which event the denial is deemed to have occurred on the thirtieth day after the close of the last hearing on the request unless the time is extended by mutual consent between the landowner and the municipality.

Section 1005. Validity of Ordinance; Substantive Questions; Appeals by Persons Aggrieved.—Persons aggrieved by a use or development permitted on the land of another by an ordinance or map or any provision thereof who desire to challenge its validity on substantive grounds shall first submit their challenge to the zoning hearing board for a report thereon under section 910.

The submission to the board shall be governed by the following:

(a) The aggrieved person shall submit a written request to the board that it hold a hearing on the challenge. The request shall contain a short

statement reasonably informing the board of the matters that are in issue and the grounds for the challenge.

(b) The request shall be submitted within the time limitations prescribed by section 915. In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposes to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to the ordinance or map will run under section 915 by the following procedure: (i) The landowner may submit plans and other materials describing his proposed use or development to the zoning officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance. (ii) If the zoning officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary opinion of the zoning officer shall be deemed to be a preliminary approval under section 915 and the time therein specified for commencing a proceeding with the board shall run from the time when the second notice thereof has been published.

(c) The board shall hold a hearing upon the aggrieved person's request pursuant to section 910, commencing not later than sixty days after the request is filed. If a hearing has been held by the governing body covering the same matters, at which a stenographic record has been taken, the board shall upon motion of any party accept said record as the record in the case before the board but the board shall not be precluded from taking additional evidence, unless such evidence ought to be excluded under section 908 (6).

After submitting his challenge to the board, as provided in clauses (a) and (b), any party aggrieved may take the same to court by appeal filed not later than thirty days after notice of the report of the board is issued.

Section 1006. Applications, Decisions and Orders Not Involving the Validity of an Ordinance; Landowner Appeals.—(1) A landowner who desires to file a zoning application or to secure review or correction of a decision or order of the governing body or of any officer or agency of the municipality which prohibits or restricts the use or development

of land in which he has an interest on the grounds that such decision or order is not authorized by or is contrary to the provisions of an ordinance or map shall proceed as follows:

(a) From a decision of the governing body or planning agency under a subdivision or land development ordinance the landowner may appeal directly to court or to the zoning hearing board under section 913.1 in cases where that section is applicable. If the municipality provides a procedure, formal or informal, for the submission of preliminary or tentative plans an adverse decision thereon shall, at the landowner's election, be treated as final and appealable.

(b) From the decision of the governing body or planning agency denying tentative approval of a development plan under section 709 (3) or, if tentative approval has been granted, from any adverse decision on an application for final approval, the landowner may appeal directly to court or to the zoning hearing board under section 913.1 in cases where that section is applicable.

(c) To the extent that the board has jurisdiction of the same under section 909 all other appeals shall lie exclusively to the zoning hearing board.

(d) Applications under sections 912 and 913 shall be made exclusively to the zoning hearing board.

(2) Appeals to the zoning hearing board pursuant to subsections (1) (a) and (1) (c) shall be filed within thirty days after notice of the decision is issued or, if no decision is made, within thirty days from the date when a decision is deemed to have been made under this act.

(3) (a) Appeals to court may be taken by the landowner from any decision of the governing body or planning agency under subsections (1) (a) and (1) (b), by appeal filed within thirty days after notice of the decision is issued or, if no decision is made, thirty days after the date when a decision is deemed to have been made under this act.

(b) Appeals to court from any decision of the zoning hearing board may be taken by any party aggrieved by appeal filed within thirty days after notice of the decision is issued.

Section 1007. Decisions and Orders Not Involving the Validity of an Ordinance; Appeals by Persons Aggrieved.—Persons aggrieved by a use or development permitted on the land of another who desire to secure review or correction of a decision or order of the governing body or of any officer or agency of the municipality which has permitted the same, on the grounds that such decision or order is not authorized by or is contrary to the provisions of an ordinance or map shall first submit their objections to the zoning hearing board under sections 909 and 915. The submission shall be governed by the provisions of section 1005.

Appeals to court from the decision of the zoning hearing board may be taken by any party aggrieved by appeal filed not later than thirty days after notice of the decision is issued.

Section 1008. Appeals to Court; Commencement; Stay of Proceedings.—(1) Zoning appeals shall be entered as of course by the prothonotary or clerk upon the filing of a zoning appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The zoning appeal notice shall be accompanied by a true copy thereof.

(2) Upon filing of a zoning appeal, the prothonotary or clerk shall forthwith as of course, send to the governing body, board or agency whose decision or action has been appealed, by registered or certified mail, the copy of the zoning appeal notice together with a writ of certiorari commanding said governing body, board or agency within twenty days after receipt thereof to certify to the court its entire record in the matter in which the zoning appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency at the time it received the writ of certiorari.

(3) If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the zoning appeal is filed, shall serve a true copy of the zoning appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

(4) The filing of an appeal in court under this section, shall not stay the action appealed from but the appellants may petition the court having jurisdiction of zoning appeals for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.

Section 1009. Intervention.—Within the thirty days first following the filing of a zoning appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Rules of Civil Procedure.

Section 1010. Hearing and Argument of Zoning Appeal.—If upon motion it is shown that proper consideration of the zoning appeal requires the presentation of additional evidence, a judge of the court

may hold a hearing to receive additional evidence or may remand the case to the body, agency or officer whose decision or order has been brought up for review or may refer the case to a referee to receive additional evidence provided that appeals brought before the court pursuant to sections 1004 and 1005 shall not be remanded for further hearings before any body, agency or officer of the municipality. If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact, or if additional evidence is taken by the court or by a referee, the court may make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

Section 1011. Judicial Relief.—(1) In a zoning appeal the court shall have power to declare any ordinance or map invalid and to set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal.

(2) If the court finds that an ordinance or map or a decision or order thereunder which has been brought up for review unlawfully prevents or restricts a development or use which has been described by the landowner through plans and other materials submitted to the governing body, agency or officer of the municipality whose action or failure to act is in question on the appeal, it may order the described development or use approved as to all elements or it may order it approved as to some elements and refer other elements to the governing body, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order. The court shall retain jurisdiction of the appeal during the pendency of any such further proceedings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.

(3) The fact that the plans and other materials referred to in subsection (1) are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits shall not prevent the court from granting the definitive relief authorized in subsection ¹(2) and the court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.

¹"(1)" in original.

APPROVED—The 1st day of June, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly
No. 93.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent "T" at the end.

Secretary of the Commonwealth.