

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1409 Session of
2001INTRODUCED BY BARD, HERMAN, ROSS, LESCOVITZ AND TANGRETTI,
APRIL 24, 2001AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 16, 2001

AN ACT

1 Amending the act of July 31, 1968 (P.L.805, No.247), entitled,
2 as amended, "An act to empower cities of the second class A,
3 and third class, boroughs, incorporated towns, townships of
4 the first and second classes including those within a county
5 of the second class and counties of the second class A
6 through eighth classes, individually or jointly, to plan
7 their development and to govern the same by zoning,
8 subdivision and land development ordinances, planned
9 residential development and other ordinances, by official
10 maps, by the reservation of certain land for future public
11 purpose and by the acquisition of such land; to promote the
12 conservation of energy through the use of planning practices
13 and to promote the effective utilization of renewable energy
14 sources; providing for the establishment of planning
15 commissions, planning departments, planning committees and
16 zoning hearing boards, authorizing them to charge fees, make
17 inspections and hold public hearings; providing for
18 mediation; providing for transferable development rights;
19 providing for appropriations, appeals to courts and penalties
20 for violations; and repealing acts and parts of acts,"
21 further providing for construction, for planning commission
22 membership and business, for planning agency powers and
23 duties, for official municipality maps, for county planning
24 agency jurisdiction, for subdivision and land development
25 ordinances, for plat approval and recording, for municipal
26 curative amendments, for zoning appeals, for jurisdiction of
27 county planning agencies, for standards and conditions for
28 planned residential development and for zoning hearing board
29 membership, organization and jurisdiction.

30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 ~~Section 1. Sections 103, 203(b), 207, 209.1, 405 and 502(b)~~ <—
3 ~~and (c) of the act of July 31, 1968 (P.L.805, No.247), known as~~
4 ~~the Pennsylvania Municipalities Planning Code, reenacted and~~
5 ~~amended December 21, 1988 (P.L.1329, No.170), are amended to~~
6 ~~read:~~

7 SECTION 1. THE TITLE OF THE ACT OF JULY 31, 1968 (P.L.805, <—
8 NO.247), KNOWN AS THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE,
9 REENACTED AND AMENDED DECEMBER 21, 1988 (P.L.1329, NO.170) AND
10 AMENDED DECEMBER 14, 1992 (P.L.815, NO.131), IS AMENDED TO READ:

11 AN ACT
12 TO EMPOWER CITIES OF THE SECOND CLASS A, AND THIRD CLASS,
13 BOROUGHs, INCORPORATED TOWNS, TOWNSHIPS OF THE FIRST AND
14 SECOND CLASSES, INCLUDING THOSE WITHIN A COUNTY OF THE SECOND
15 CLASS, AND COUNTIES OF THE SECOND THROUGH EIGHTH CLASSES,
16 INDIVIDUALLY OR JOINTLY, TO PLAN THEIR DEVELOPMENT AND TO
17 GOVERN THE SAME BY ZONING, SUBDIVISION AND LAND DEVELOPMENT
18 ORDINANCES, PLANNED RESIDENTIAL DEVELOPMENT AND OTHER
19 ORDINANCES, BY OFFICIAL MAPS, BY THE RESERVATION OF CERTAIN
20 LAND FOR FUTURE PUBLIC PURPOSE AND BY THE ACQUISITION OF SUCH
21 LAND; TO PROMOTE THE CONSERVATION OF ENERGY THROUGH THE USE
22 OF PLANNING PRACTICES AND TO PROMOTE THE EFFECTIVE
23 UTILIZATION OF RENEWABLE ENERGY SOURCES; PROVIDING FOR THE
24 ESTABLISHMENT OF PLANNING COMMISSIONS, PLANNING DEPARTMENTS,
25 PLANNING COMMITTEES AND ZONING HEARING BOARDS, AUTHORIZING
26 THEM TO CHARGE FEES, MAKE INSPECTIONS AND HOLD PUBLIC
27 HEARINGS; PROVIDING FOR MEDIATION; PROVIDING FOR TRANSFERABLE
28 DEVELOPMENT RIGHTS; PROVIDING FOR APPROPRIATIONS, APPEALS TO
29 COURTS AND PENALTIES FOR VIOLATIONS; AND REPEALING ACTS AND
30 PARTS OF ACTS.

SECTION 1.1. SECTIONS 103, 203(B), 207, 209.1, 405 AND
502(B) AND (C) OF THE ACT ARE AMENDED TO READ:

Section 103. Construction of Act.--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 other than cities of the first and second class [and counties of the second class] 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 203. Appointment, Term and Vacancy.--* * *

(b) The term of each of the members of the commission shall be for four years[, or until his successor is appointed and qualified], except that the terms of the members first appointed pursuant to this act shall be so fixed that on commissions of eight members or less no more than two shall be reappointed or replaced during any future calendar year, and on commissions of nine members no more than three shall be so reappointed or replaced.

* * *

Section 207. Conduct of Business; Quorum.--The commission shall elect its own chairman and vice-chairman and create and fill such other offices as it may determine. Officers shall

1 serve annual terms and may succeed themselves. The commission
2 may make and alter by laws and rules and regulations to govern
3 its procedures consistent with the ordinances of the
4 municipality and the laws of the Commonwealth. The commission
5 shall keep a full record of its business and shall annually make
6 a written report by March 1 of each year of its activities to
7 the governing body. Interim reports may be made as often as may
8 be necessary, or as requested by the governing body. A majority
9 of the members of the commission presently serving shall
10 constitute a quorum.

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

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

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

20 (b) The planning agency at the request of the governing body
21 [may] shall:

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

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

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

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

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

7 (6) Prepare and present to the governing body of the
8 municipality an environmental study.

9 (7) Submit to the governing body of a municipality a
10 recommended capital improvements program.

11 (7.1) Prepare and present to the governing body of the
12 municipality a water survey, which shall be consistent with
13 the State Water Plan and any applicable water resources plan
14 adopted by a river basin commission. The water survey shall
15 be conducted in consultation with any public water supplier
16 in the area to be surveyed.

17 (8) Promote public interest in, and understanding of,
18 the comprehensive plan and planning.

19 (9) Make recommendations to governmental, civic and
20 private agencies and individuals as to the effectiveness of
21 the proposals of such agencies and individuals.

22 (10) Hold public hearings and meetings.

23 (10.1) Present testimony before any board.

24 (11) Require from other departments and agencies of the
25 municipality such available information as relates to the
26 work of the planning agency.

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

30 (13) Prepare and present to the governing body of the

1 municipality a study regarding the feasibility and
2 practicability of using renewable energy sources in specific
3 areas within the municipality.

4 (14) Review the zoning ordinance, subdivision and land
5 development ordinance, official map, provisions for planned
6 residential development, and such other ordinances and
7 regulations governing the development of land no less
8 frequently than it reviews the comprehensive plan.

9 Section 405. Buildings in Mapped Streets, Watercourses or
10 Other Public Grounds.--For the purpose of preserving the
11 integrity of the official map of the municipality, no permit
12 shall be issued for any building within the lines of any street,
13 watercourse or public ground shown or laid out on the official
14 map. No person shall recover any damages for the taking for
15 public use of any building or improvements constructed within
16 the lines of any street, watercourse or public ground after the
17 same shall have been included in the official map, and any such
18 building or improvement shall be removed at the expense of the
19 owner. However, when the property of which the reserved location
20 forms a part, cannot yield a reasonable return to the owner
21 unless a permit shall be granted, the owner may apply to the
22 governing body for the grant of a special encroachment permit to
23 build. Before granting any special encroachment permit
24 authorized in this section, the governing body may submit the
25 application for a special encroachment permit to the local
26 planning agency and allow the planning agency 30 days for review
27 and comment and shall give public notice and hold a public
28 hearing at which all parties in interest shall have an
29 opportunity to be heard. A refusal by the governing body to
30 grant the special encroachment permit applied for may be

1 appealed by the applicant to [the zoning hearing board] the
2 court of common pleas in the same manner, and within the same
3 time limitation, as is provided in Article [IX] X-A.

4 Section 502. Jurisdiction of County Planning Agencies;
5 Adoption by Reference of County Subdivision and Land Development
6 Ordinances.--* * *

7 (b) The enactment of a subdivision and land development
8 ordinance by any municipality, other than a county, whose land
9 is subject to a county subdivision and land development
10 ordinance shall act as a repeal protanto of the county
11 subdivision and land development ordinance within the
12 municipality adopting such ordinance. However, applications for
13 subdivision and land development located within a municipality
14 having adopted a subdivision and land development ordinance as
15 set forth in this article shall be forwarded upon receipt by the
16 municipality to the county planning agency for review and report
17 and for recommendation, together with a fee sufficient to cover
18 the costs of the review, recommendation and report which fee
19 shall be paid by the applicant: Provided, That such
20 municipalities shall not approve such applications until the
21 county recommendation and report [is] are received or until the
22 expiration of 30 days from the date the application was
23 forwarded to the county.

24 (c) Further, any municipality other than a county may adopt
25 by reference the subdivision and land development ordinance of
26 the county, and may by separate ordinance designate the county
27 planning agency, with the county planning agency's concurrence,
28 as its official administrative agency for review, recommendation
29 and approval of plats.

30 Section 2. Section 503(1.1) and (11)(vi) of the act are

1 amended and the section is amended by adding a clause to read:

2 Section 503. Contents of Subdivision and Land Development
3 Ordinance.--The subdivision and land development ordinance may
4 include, but need not be limited to:

5 * * *

6 (1.1) Provisions for the exclusion of certain land
7 development from the definition of land development contained
8 in section 107 only when such land development involves:

9 (i) the conversion of an existing single-family
10 detached [dwelling or], single family semi-detached
11 [dwelling] or single family attached dwelling into not
12 more than three residential units, unless such units are
13 intended to be a condominium;

14 (ii) the addition of an accessory building,
15 including farm buildings, on a lot or lots subordinate to
16 an existing principal building; or

17 (iii) the addition or conversion of buildings or
18 rides within the confines of an enterprise which would be
19 considered an amusement park. For purposes of this
20 subclause, an amusement park is defined as a tract or
21 area used principally as a location for permanent
22 amusement structures or rides. This exclusion shall not
23 apply to newly acquired acreage by an amusement park
24 until initial plans for the expanded area have been
25 approved by proper authorities.

26 (1.2) Provisions defining minor land development and
27 establishing a simplified review procedure applicable to
28 minor land development.

29 * * *

30 (11) Provisions requiring the public dedication of land

1 suitable for the use intended; and, upon agreement with the
2 applicant or developer, the construction of recreational
3 facilities, the payment of fees in lieu thereof, the private
4 reservation of the land, or a combination, for park or
5 recreation purposes as a condition precedent to final plan
6 approval, provided that:

7 * * *

8 (vi) A fee authorized under this subsection shall,
9 upon its receipt by a municipality, be deposited in an
10 interest-bearing account, clearly identifying the
11 specific recreation facilities or land, or both, for park
12 purposes for which the fee was received. Interest earned
13 on such accounts shall become funds of that account.
14 Funds from such accounts shall be expended only in
15 properly allocable portions of the cost incurred to
16 construct OR ACQUIRE the specific recreation facilities <—
17 or land, or both, for park purposes for which the funds
18 were collected.

19 * * *

20 Section 3. Sections 508(3) and 509(a) of the act are amended
21 to read:

22 Section 508. Approval of Plats.--All applications for
23 approval of a plat (other than those governed by Article VII),
24 whether preliminary or final, shall be acted upon by the
25 governing body or the planning agency within such time limits as
26 may be fixed in the subdivision and land development ordinance
27 but the governing body or the planning agency shall render its
28 decision and communicate it to the applicant not later than 90
29 days following the date of the regular meeting of the governing
30 body or the planning agency (whichever first reviews the

1 application) next following the date the application is filed,
2 provided that should the said next regular meeting occur more
3 than 30 days following the filing of the application, the said
4 90-day period shall be measured from the 30th day following the
5 day the application has been filed.

6 * * *

7 (3) Failure of the governing body or planning agency to
8 render a decision and communicate it to the applicant within
9 the time and in the manner required herein shall be deemed an
10 approval of the application in terms as presented unless the
11 applicant has agreed in writing to an extension of time or
12 change in the prescribed manner of presentation of
13 communication of the decision, in which case, failure to meet
14 the extended time or change in manner of presentation of
15 communication shall have like effect.

16 * * *

17 Section 509. Completion of Improvements or Guarantee Thereof
18 Prerequisite to Final Plat Approval.--(a) No plat shall be
19 finally approved unless the streets shown on such plat have been
20 improved to a mud-free or otherwise permanently passable
21 condition, or improved as may be required by the subdivision and
22 land development ordinance and any walkways, curbs, gutters,
23 street lights, fire hydrants, shade trees, water mains, sanitary
24 sewers, storm sewers and other improvements as may be required
25 by the subdivision and land development ordinance have been
26 installed in accordance with such ordinance. In lieu of the
27 completion of any improvements required as a condition for the
28 final approval of a plat, [including improvements or fees
29 required pursuant to section 509(i),] the subdivision and land
30 development ordinance shall provide for the deposit with the

1 municipality of financial security in an amount sufficient to
2 cover the costs of such improvements or common amenities
3 including, but not limited to, roads, storm water detention
4 and/or retention basins and other related drainage facilities,
5 recreational facilities, open space improvements, or buffer or
6 screen plantings which may be required.

7 * * *

8 Section 4. Section 513 of the act, amended December 20, 2000
9 (P.L.940, No.127), is amended to read:

10 Section 513. Recording Plats and Deeds.--(a) Upon the
11 approval of a final plat, the developer shall within 90 days of
12 such final approval or 90 days after the date of delivery of an
13 approved plat signed by the governing body or planning agency,
14 if designated by the governing body, following completion of
15 conditions imposed for such approval, whichever is later, record
16 such plat in the office of the recorder of deeds of the county
17 in which the municipality is located. Whenever such plat
18 approval is required by a municipality, the recorder of deeds of
19 the county shall not accept any plat for recording, unless such
20 plat officially notes the approval of the governing body or
21 planning agency, if designated by the governing body, and review
22 by the county planning agency, if one exists.

23 (b) The recording of the plat shall not constitute grounds
24 for assessment increases until such time as lots are sold or
25 improvements are installed on the land included within the
26 subject plat.

27 Section 5. Sections 609.2 introductory paragraph, 615,
28 704(b), 705(f)(5) and (6), 903, ~~906(b) and 909.1(b) introductory~~ <—
29 ~~paragraph~~ AND 906(B) of the act are amended to read: <—

30 Section 609.2. Procedure for Municipal Curative

1 Amendments.--If a municipality determines that its zoning
2 ordinance or any portion thereof is [substantially]
3 substantively invalid, it shall take the following actions:

4 * * *

5 Section 615. Zoning Appeals.--All appeals from [decisions]
6 determinations of the zoning officer shall be taken in the
7 manner set forth in this act.

8 Section 704. Jurisdiction of County Planning Agencies.--* *
9 *

10 (b) The powers of governing bodies of counties to enact,
11 amend and repeal planned residential development provisions
12 shall not supersede any local planned residential development,
13 zoning or subdivision and land development ordinance which is
14 already in effect or subsequently becomes effective in any
15 municipality within such county, provided that a certified copy
16 of such provision is filed with the county planning agency, if
17 one exists. However, all applications for tentative approval of
18 planned residential development of land located within a
19 municipality having adopted planned residential development
20 provisions as set forth in this article shall nevertheless be
21 referred to the county planning agency, if one exists, for study
22 and recommendation, together with a fee sufficient to cover the
23 costs of the review, recommendation and report, which fee shall
24 be paid by the applicant, and such county planning agency shall
25 be required to report to such municipality within 30 days or
26 forfeit the right to review.

27 Section 705. Standards and Conditions for Planned
28 Residential Development.--* * *

29 (f) The standards for a planned residential development
30 established by provisions adopted pursuant to this article may

1 require that the common open space resulting from the
2 application of standards for density, or intensity of land use,
3 shall be set aside for the use and benefit of the residents in
4 such development and may include provisions which shall
5 determine the amount and location of said common open space and
6 secure its improvement and maintenance for common open space
7 use, subject, however, to the following:

8 * * *

9 [(5) The decision of the governing body or its
10 designated agency shall be subject to appeal to court in the
11 same manner, and within the same time limitation, as is
12 provided for zoning appeals by this act.

13 (6)] (5) The cost of such maintenance by the
14 municipality shall be assessed ratably against the properties
15 within the planned residential development that have a right
16 of enjoyment of the common open space, and shall become a
17 lien on said properties. The municipality at the time of
18 entering upon said common open space for the purpose of
19 maintenance shall file a notice of lien in the office of the
20 prothonotary of the county, upon the properties affected by
21 the lien within the planned residential development.

22 * * *

23 Section 903. Membership of Board.--(a) The membership of
24 the board shall, upon the determination of the governing body,
25 consist of either three or five residents of the municipality
26 appointed by resolution by the governing body. The terms of
27 office of a three member board shall be three years and shall be
28 so fixed that the term of office of one member shall expire each
29 year. The terms of office of a five member board shall be five
30 years and shall be so fixed that the term of office of one

1 member of a five member board shall expire each year. If a three
2 member board is changed to a five member board, the members of
3 the existing three member board shall continue in office until
4 their term of office would expire under prior law. The governing
5 body shall appoint two additional members to the board with
6 terms scheduled to expire in accordance with the provisions of
7 this section. The board shall promptly notify the governing body
8 of any vacancies which occur. Appointments to fill vacancies
9 shall be only for the unexpired portion of the term. Members of
10 the board shall hold no other elected or appointed office in the
11 municipality[.] nor shall any member act as an employee of the
12 municipality.

13 (b) The governing body may appoint by resolution at least
14 one but no more than three residents of the municipality to
15 serve as alternate members of the board. The term of office of
16 an alternate member shall be three years. When seated pursuant
17 to the provisions of section 906, an alternate shall be entitled
18 to participate in all proceedings and discussions of the board
19 to the same and full extent as provided by law for board
20 members, including specifically the right to cast a vote as a
21 voting member during the proceedings, and shall have all the
22 powers and duties set forth in this act and as otherwise
23 provided by law. Alternates shall hold no other elected or
24 appointed office in the municipality nor shall any alternate act
25 as an employee of the municipality, including [membership on]
26 service as a member of the planning commission [and] or as a
27 zoning officer. Any alternate may participate in any proceeding
28 or discussion of the board but shall not be entitled to vote as
29 a member of the board nor be compensated pursuant to section 907
30 unless designated as a voting alternate member pursuant to

1 section 906.

2 Section 906. Organization of Board.--* * *

3 (b) If, by reason of absence or disqualification of a
4 member, a quorum is not reached, the chairman of the board shall
5 designate as many alternate members of the board to sit on the
6 board as may be needed to {provide a quorum.} ~~replace any absent~~ <—
7 THE CHAIRMAN ALSO MAY DESIGNATE ALTERNATE MEMBERS OF THE BOARD <—
8 TO REPLACE ANY ABSENT or disqualified member. Any alternate
9 member of the board shall continue to serve on the board in all
10 proceedings involving the matter or case for which the alternate
11 was initially appointed until the board has made a final
12 [determination of] decision on the matter or case. Designation
13 of an alternate pursuant to this section shall be made on a
14 case-by-case basis in rotation according to declining seniority
15 among all alternates.

16 * * *

17 ~~Section 909.1. Jurisdiction. * * *~~ <—

18 ~~(b) The governing body or, except as to clauses (3), (4) and~~
19 ~~(5), the planning agency, if designated, shall have exclusive~~
20 ~~jurisdiction to hear and render final adjudications, in~~
21 ~~accordance with section 908, in the following matters:~~

22 * * *

23 Section 6. This act shall take effect in 60 days.