

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1807 Session of  
2009

INTRODUCED BY SANTARSIERO, FREEMAN, GEORGE, HOUGHTON,  
McILVAINE SMITH, MELIO, MUNDY, MURT AND YOUNGBLOOD,  
JUNE 30, 2009

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JUNE 30, 2009

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 through eighth  
6 classes, individually or jointly, to plan their development  
7 and to govern the same by zoning, subdivision and land  
8 development ordinances, planned residential development and  
9 other ordinances, by official maps, by the reservation of  
10 certain land for future public purpose and by the acquisition  
11 of such land; to promote the conservation of energy through  
12 the use of planning practices and to promote the effective  
13 utilization of renewable energy sources; providing for the  
14 establishment of planning commissions, planning departments,  
15 planning committees and zoning hearing boards, authorizing  
16 them to charge fees, make inspections and hold public  
17 hearings; providing for mediation; providing for transferable  
18 development rights; providing for appropriations, appeals to  
19 courts and penalties for violations; and repealing acts and  
20 parts of acts," further providing for validity of ordinance  
21 and substantive questions.

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

24 Section 1. Section 916.1(c) and (g) of the act of July 31,  
25 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities  
26 Planning Code, reenacted and amended December 21, 1988  
27 (P.L.1329, No.170), is amended and the section is amended by

1 adding subsections to read:

2 Section 916.1. Validity of Ordinance; Substantive  
3 Questions.--\* \* \*

4 (c) The submissions referred to in subsections (a) and (b)  
5 shall be governed by the following:

6 (1) In challenges before the zoning hearing board, the  
7 challenging party shall make a written request to the board  
8 that it hold a hearing on its challenge. The request shall  
9 contain the reasons for the challenge. Where the landowner  
10 desires to challenge the validity of such ordinance and  
11 elects to proceed by curative amendment under section 609.1,  
12 his application to the governing body shall contain, in  
13 addition to the requirements of the written request hereof,  
14 the plans and explanatory materials describing the use or  
15 development proposed by the landowner in lieu of the use or  
16 development permitted by the challenged ordinance or map.  
17 Such plans or other materials shall not be required to meet  
18 the standards prescribed for preliminary, tentative or final  
19 approval or for the issuance of a permit, so long as they  
20 provide reasonable notice of the proposed use or development  
21 and a sufficient basis for evaluating the challenged  
22 ordinance or map in light thereof. Nothing herein contained  
23 shall preclude the landowner from first seeking a final  
24 approval before submitting his challenge.

25 (2) If the submission is made by the landowner to the  
26 governing body under subsection (a) (2), the request also  
27 shall be accompanied by an amendment or amendments to the  
28 ordinance proposed by the landowner to cure the alleged  
29 defects therein.

30 (2.1) All challenges submitted to either the governing

1 body or the zoning hearing board must include a description  
2 of the infrastructure required by the proposal, the  
3 infrastructure currently available and proposals to provide  
4 for the difference between what infrastructure is available  
5 and what is needed, if any. Infrastructure shall include  
6 roads, schools, storm water controls, police, fire, emergency  
7 services, water, wastewater and recreation. No municipality  
8 shall be required by curative amendment or substantive  
9 challenge to provide for a use for which there is not  
10 adequate infrastructure in existence or planned and  
11 reasonably expected to be in place prior to the estimated  
12 completion of the project which is the subject of the action.  
13 The applicant may, at their option, commit to fulfilling  
14 infrastructure needs to meet the requirements of this  
15 section.

16 (2.2) All challenges submitted to either the governing  
17 body or the zoning hearing board must describe and quantify  
18 the extent of the identified need for the use and/or housing  
19 types specified in the proposed remedy to the challenged  
20 ordinance. Need shall be construed to mean an existing  
21 shortage or future shortage that is reasonably expected to  
22 occur within ten years of the application for a particular  
23 use or housing type as identified and documented by the  
24 relevant multimunicipal planning agency, regional planning  
25 agency or county planning commission. No municipality shall  
26 be required by substantive challenge or curative amendment to  
27 provide for more of a particular use than for which exists an  
28 identified and documented need.

29 (2.3) All challenges submitted to either the governing  
30 body or zoning hearing board must be viable and able to be

1 constructed within the limits of the natural resource  
2 protections in effect at the time of the application or  
3 accompanied by a separate challenge to those natural resource  
4 protections. Substantive challenges or curative amendments  
5 challenging the natural resource protection standards of a  
6 municipality which are filed in conjunction with a curative  
7 amendment or substantive challenge alleging ordinance  
8 deficiencies relating to a specific use or housing type  
9 shall:

10 (i) Be heard and fully adjudicated prior to the  
11 commencement of hearings on use and/or housing type  
12 issues. All relevant requirements and schedules specified  
13 in sections 609 and 916 shall commence on the date that  
14 the decision becomes unappealable by any party to the  
15 proceedings.

16 (ii) Not be subject to any additional filing or  
17 application fees if filed at the same time as an action  
18 challenging an ordinance's validity on other grounds. The  
19 applicant and the municipality shall evenly divide the  
20 cost of a court reporter.

21 (iii) A municipality's resource protections shall be  
22 considered to be valid and inviolable provided they  
23 reflect current Federal, State or county standards and/or  
24 are generally consistent with the standards of 35% of the  
25 municipalities within the county and/or are supported by  
26 substantial scientific evidence justifying their  
27 existence. The burden of proof that a municipality's  
28 environmental protection standards are unduly restrictive  
29 shall lie with the applicant.

30 (3) If the submission is made to the governing body, the

1 municipal solicitor shall represent and advise it at the  
2 hearing or hearings referred to in section 909.1(b) (4) .

3 (4) The governing body may retain an independent  
4 attorney to present the defense of the challenged ordinance  
5 or map on its behalf and to present their witnesses on its  
6 behalf.

7 (5) Based upon the testimony presented at the hearing or  
8 hearings, the governing body or the zoning board, as the case  
9 may be, shall determine whether the challenged ordinance or  
10 map is defective, as alleged by the landowner. If a challenge  
11 heard by a governing body is found to have merit, the  
12 governing body shall proceed as provided in section 609.1. If  
13 a challenge heard by a zoning hearing board is found to have  
14 merit, the decision of the zoning hearing board shall include  
15 recommended amendments to the challenged ordinance which will  
16 cure the defects found. In reaching its decision, the zoning  
17 hearing board shall consider the amendments, plans and  
18 explanatory material submitted by the landowner and shall  
19 also consider:

20 (i) the impact of the proposal upon roads, sewer  
21 facilities, water supplies, schools and other public  
22 service facilities;

23 (ii) if the proposal is for a residential use, the  
24 impact of the proposal upon regional housing needs and  
25 the effectiveness of the proposal in providing housing  
26 units of a type actually available to and affordable by  
27 classes of persons otherwise unlawfully excluded by the  
28 challenged provisions of the ordinance or map;

29 (iii) the suitability of the site for the intensity  
30 of use proposed by the site's soils, slopes, woodlands,

wetlands, flood plains, aquifers, natural resources and other natural features;

(iv) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

(v) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

(6) The governing body or the zoning hearing board, as the case may be, shall render its decision within 45 days after the conclusion of the last hearing.

(7) If the governing body or the zoning board, as the case may be, fails to act on the landowner's request within the time limits referred to in paragraph (6), a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

\* \* \*

[(g) Where, after the effective date of this act, a curative amendment proposal is approved by the grant of a curative amendment application by the governing body pursuant to section 909.1(b)(4) or a validity challenge is sustained by the zoning hearing board pursuant to section 909.1(a)(1) or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval to file an application for preliminary or

1 tentative approval pursuant to Article V or VII. Within the two-  
2 year period, no subsequent change or amendment in the zoning,  
3 subdivision or other governing ordinance or plan shall be  
4 applied in any manner which adversely affects the rights of the  
5 applicant as granted in the curative amendment or the sustained  
6 validity challenge. Upon the filing of the preliminary or  
7 tentative plan, the provisions of section 508(4) shall apply.  
8 Where the proposal appended to the curative amendment  
9 application or the validity challenge is approved but does not  
10 require further application under any subdivision or land  
11 development ordinance, the developer shall have one year within  
12 which to file for a building permit. Within the one-year period,  
13 no subsequent change or amendment in the zoning, subdivision or  
14 other governing ordinance or plan shall be applied in any manner  
15 which adversely affects the rights of the applicant as granted  
16 in the curative amendment or the sustained validity challenge.  
17 During these protected periods, the court shall retain or assume  
18 jurisdiction for the purpose of awarding such supplemental  
19 relief as may be necessary.]

20 (g) Where, after the effective date of this act, a curative  
21 amendment proposal is approved by the grant of a curative  
22 amendment application by the governing body pursuant to section  
23 909.1(b)(4) or a validity challenge is sustained by the zoning  
24 hearing board pursuant to section 909.1(a)(1) or the court acts  
25 finally on appeal from denial of a curative amendment proposal  
26 or a validity challenge, and the proposal or challenge so  
27 approved requires a further application for subdivision or land  
28 development, the developer shall have two years from the date of  
29 such approval to file an application for preliminary or  
30 tentative approval pursuant to Article V or VII. The application

for preliminary or tentative approval must reflect, in all substantial regards, the curative amendment granted, sustained or awarded by the governing body, zoning hearing board or the courts inclusive of the use or housing types, location, site layout, roads, number and/or size of units purposed and source of utilities. A substantial change shall be deemed to have occurred if there is any change in use or in the proposed housing types, if the project location changes or additional tax parcels are incorporated, if the site layout changes or roads are altered in more than a de minimus manner to account for field conditions, if the number of units to be built changes, if the size of any proposed nonresidential buildings are altered by 5% or more or if the proposed source of water and/or sewage treatment is altered.

(g.1) Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant to proceed to complete the proposed project as granted in the curative amendment or the sustained validity challenge. Preliminary or tentative plans submitted within the two-year period that do not correspond in all substantial regards to the curative amendment awarded or otherwise implemented shall be reviewed based on the zoning and/or other ordinances and regulations in effect as of the date of the preliminary plan application and the curative shall be considered as abandoned by the applicant upon the filing of the application for the nonconforming plans. If the curative is abandoned, no additional curative or substantive challenges involved the same parcel, group of parcels or part thereof may be submitted for a period of 36 months from the abandonment. The



1 municipality shall:

2 (1) Retain the right to correct any defects in  
3 ordinances identified in an abandoned curative or substantive  
4 challenge in a manner consistent with the municipal  
5 comprehensive plan.

6 (2) Not enter into agreements or stipulated settlements  
7 or revise ordinances, specifically or ostensibly, to allow  
8 for the approval of preliminary or final plans which vary in  
9 any substantial regard per the standards of subsection (g)  
10 from a granted or awarded curative or substantive challenge.  
11 Legal challenges to the actions of a municipality alleging  
12 noncompliance with this section may be brought by any  
13 resident of the municipality or any person or entity impacted  
14 by the plan and shall be brought to the court of common  
15 pleas. The municipality and the applicant shall be equally  
16 responsible for all of the reasonable legal expenses of the  
17 challenger if the challenge is found to be valid.

18 (g.2) Upon the filing of the preliminary or tentative plan,  
19 the provisions of section 508(4) shall apply. Where the proposal  
20 appended to the curative amendment application or the validity  
21 challenge is approved but does not require further application  
22 under any subdivision or land development ordinance, the  
23 developer shall have one year within which to file for a  
24 building permit. Within the one-year period, no subsequent  
25 change or amendment in the zoning, subdivision or other  
26 governing ordinance or plan shall be applied in any manner which  
27 adversely affects the rights of the applicant as granted in the  
28 curative amendment or the sustained validity challenge. During  
29 these protected periods, the court shall retain or assume  
30 jurisdiction for the purpose of awarding such supplemental

1 relief as may be necessary.

2 \* \* \*

3 Section 2. This act shall take effect in 60 days.