

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1106 Session of
1997

INTRODUCED BY ROSS, BARD, HERMAN, LESCOVITZ AND COY,
APRIL 2, 1997

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 2, 1997

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 compliance by counties, for official municipality
24 maps, for county planning agency jurisdiction, for
25 subdivision and land development ordinances, for plat
26 approval and recording, for preventive remedies, for the
27 transportation capital improvements plan, for ordinance
28 provisions, for classifications, for municipal curative
29 amendments and for standards and conditions for planned
30 residential development; providing for transferable
31 development rights; further providing for zoning hearing
32 board membership, organization, jurisdiction and time limits;
33 and making repeals.

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

3 Section 1. Sections 103, 203(b), 207, 209.1, 301.4, 405 and
4 502(b) and (c) of the act of July 31, 1968 (P.L.805, No.247),
5 known as the Pennsylvania Municipalities Planning Code,
6 reenacted and amended December 21, 1988 (P.L.1329, No.170), are
7 amended to read:

8 Section 103. Construction of Act.--The provisions of this
9 act shall not affect any act done, contract executed or
10 liability incurred prior to its effective date, or affect any
11 suit or prosecution pending or to be instituted, to enforce any
12 right, rule, regulation, or ordinance or to punish any offense
13 against any such repealed laws or against any ordinance enacted
14 under them. All ordinances, resolutions, regulations and rules
15 made pursuant to any act of Assembly repealed by this act shall
16 continue in effect as if such act had not been repealed, except
17 as the provisions are inconsistent herewith. The provisions of
18 other acts relating to municipalities other than cities of the
19 first and second class [and counties of the second class] are
20 made a part of this act and this code shall be construed to give
21 effect to all provisions of other acts not specifically
22 repealed.

23 Section 203. Appointment, Term and Vacancy.--* * *

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

1 replaced.

2 * * *

3 Section 207. Conduct of Business; Quorum.--The commission
4 shall elect its own chairman and vice-chairman and create and
5 fill such other offices as it may determine. Officers shall
6 serve annual terms and may succeed themselves. The commission
7 may make and alter by laws and rules and regulations to govern
8 its procedures consistent with the ordinances of the
9 municipality and the laws of the Commonwealth. The commission
10 shall keep a full record of its business and shall annually make
11 a written report by March 1 of each year of its activities to
12 the governing body. Interim reports may be made as often as may
13 be necessary, or as requested by the governing body. A majority
14 of the members of the commission presently serving shall
15 constitute a quorum.

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

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

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

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

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

29 (2) Prepare and present to the governing body of the
30 municipality a zoning ordinance, and make recommendations to

1 the governing body on proposed amendments to it as set forth
2 in this act.

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

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

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

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

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

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

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

24 (9) Make recommendations to governmental, civic and
25 private agencies and individuals as to the effectiveness of
26 the proposals of such agencies and individuals.

27 (10) Hold public hearings and meetings.

28 (10.1) Present testimony before any board.

29 (11) Require from other departments and agencies of the
30 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.

(13) Prepare and present to the governing body of the municipality a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.

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

Section 301.4. Compliance by Counties.--(a) If a county does not have a comprehensive plan, then that county shall, within three years of the effective date of this act, prepare and adopt a comprehensive plan in accordance with the requirements of section 301.

(b) Municipal comprehensive plans which are adopted shall be generally consistent with the adopted county comprehensive plan.

Section 405. Buildings in Mapped Streets, Watercourses or Other Public Grounds.--For the purpose of preserving the integrity of the official map of the municipality, no permit shall be issued for any building within the lines of any street, watercourse or public ground shown or laid out on the official map. No person shall recover any damages for the taking for public use of any building or improvements constructed within the lines of any street, watercourse or public ground after the same shall have been included in the official map, and any such building or improvement shall be removed at the expense of the

1 owner. However, when the property of which the reserved location
2 forms a part, cannot yield a reasonable return to the owner
3 unless a permit shall be granted, the owner may apply to the
4 governing body for the grant of a special encroachment permit to
5 build. Before granting any special encroachment permit
6 authorized in this section, the governing body may submit the
7 application for a special encroachment permit to the local
8 planning agency and allow the planning agency 30 days for review
9 and comment and shall give public notice and hold a public
10 hearing at which all parties in interest shall have an
11 opportunity to be heard. A refusal by the governing body to
12 grant the special encroachment permit applied for may be
13 appealed by the applicant to [the zoning hearing board] the
14 court of common pleas in the same manner, and within the same
15 time limitation, as is provided in Article [IX] X-A.

16 Section 502. Jurisdiction of County Planning Agencies;
17 Adoption by Reference of County Subdivision and Land Development
18 Ordinances.--* * *

19 (b) The enactment of a subdivision and land development
20 ordinance by any municipality, other than a county, whose land
21 is subject to a county subdivision and land development
22 ordinance shall act as a repeal protanto of the county
23 subdivision and land development ordinance within the
24 municipality adopting such ordinance. However, applications for
25 subdivision and land development located within a municipality
26 having adopted a subdivision and land development ordinance as
27 set forth in this article shall be forwarded upon receipt by the
28 municipality to the county planning agency for review and report
29 and for recommendation, together with a fee sufficient to cover
30 the costs of the review, recommendation and report which fee

1 shall be paid by the applicant: Provided, That such
2 municipalities shall not approve such applications until the
3 county recommendation and report [is] are received or until the
4 expiration of 30 days from the date the application was
5 forwarded to the county.

6 (c) Further, any municipality other than a county may adopt
7 by reference the subdivision and land development ordinance of
8 the county, and may by separate ordinance designate the county
9 planning agency, with the county planning agency's concurrence,
10 as its official administrative agency for review, recommendation
11 and approval of plats.

12 Section 2. Section 503(1.1) and (11)(vi) of the act are
13 amended and the section is amended by adding a clause to read:

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

17 * * *

18 (1.1) Provisions for the exclusion of certain land
19 development from the definition of land development contained
20 in section 107 only when such land development involves:

21 (i) the conversion of an existing single-family
22 detached [dwelling or], single family semi-detached
23 [dwelling] or single family attached dwelling into not
24 more than three residential units, unless such units are
25 intended to be a condominium;

26 (ii) the addition of an accessory building,
27 including farm buildings, on a lot or lots subordinate to
28 an existing principal building; or

29 (iii) the addition or conversion of buildings or
30 rides within the confines of an enterprise which would be

1 considered an amusement park. For purposes of this
2 subclause, an amusement park is defined as a tract or
3 area used principally as a location for permanent
4 amusement structures or rides. This exclusion shall not
5 apply to newly acquired acreage by an amusement park
6 until initial plans for the expanded area have been
7 approved by proper authorities.

8 (1.2) Provisions defining minor land development and
9 establishing a simplified review procedure applicable to
10 minor land development.

11 * * *

12 (11) Provisions requiring the public dedication of land
13 suitable for the use intended; and, upon agreement with the
14 applicant or developer, the construction of recreational
15 facilities, the payment of fees in lieu thereof, the private
16 reservation of the land, or a combination, for park or
17 recreation purposes as a condition precedent to final plan
18 approval, provided that:

19 * * *

20 (vi) A fee authorized under this subsection shall,
21 upon its receipt by a municipality, be deposited in an
22 interest-bearing account, clearly identifying the
23 specific recreation facilities or land, or both, for park
24 purposes for which the fee was received. Interest earned
25 on such accounts shall become funds of that account.
26 Funds from such accounts shall be expended only in
27 properly allocable portions of the cost incurred to
28 construct the specific recreation facilities or land, or
29 both, for park purposes for which the funds were
30 collected.

1 * * *

2 Section 3. Sections 508(3), 509(a), 513 and 515.1 of the act
3 are amended to read:

4 Section 508. Approval of Plats.--All applications for
5 approval of a plat (other than those governed by Article VII),
6 whether preliminary or final, shall be acted upon by the
7 governing body or the planning agency within such time limits as
8 may be fixed in the subdivision and land development ordinance
9 but the governing body or the planning agency shall render its
10 decision and communicate it to the applicant not later than 90
11 days following the date of the regular meeting of the governing
12 body or the planning agency (whichever first reviews the
13 application) next following the date the application is filed,
14 provided that should the said next regular meeting occur more
15 than 30 days following the filing of the application, the said
16 90-day period shall be measured from the 30th day following the
17 day the application has been filed.

18 * * *

19 (3) Failure of the governing body or planning agency to
20 render a decision and communicate it to the applicant within
21 the time and in the manner required herein shall be deemed an
22 approval of the application in terms as presented unless the
23 applicant has agreed in writing to an extension of time or
24 change in the prescribed manner of presentation of
25 communication of the decision, in which case, failure to meet
26 the extended time or change in manner of presentation of
27 communication shall have like effect.

28 * * *

29 Section 509. Completion of Improvements or Guarantee Thereof
30 Prerequisite to Final Plat Approval.--(a) No plat shall be

1 finally approved unless the streets shown on such plat have been
2 improved to a mud-free or otherwise permanently passable
3 condition, or improved as may be required by the subdivision and
4 land development ordinance and any walkways, curbs, gutters,
5 street lights, fire hydrants, shade trees, water mains, sanitary
6 sewers, storm sewers and other improvements as may be required
7 by the subdivision and land development ordinance have been
8 installed in accordance with such ordinance. In lieu of the
9 completion of any improvements required as a condition for the
10 final approval of a plat, [including improvements or fees
11 required pursuant to section 509(i),] the subdivision and land
12 development ordinance shall provide for the deposit with the
13 municipality of financial security in an amount sufficient to
14 cover the costs of such improvements or common amenities
15 including, but not limited to, roads, storm water detention
16 and/or retention basins and other related drainage facilities,
17 recreational facilities, open space improvements, or buffer or
18 screen plantings which may be required.

19 * * *

20 Section 513. Recording Plats and Deeds.--(a) Upon the
21 approval of a final plat, the developer shall within 90 days of
22 such final approval record such plat in the office of the
23 recorder of deeds of the county in which the municipality is
24 located. Whenever such plat approval is required by a
25 municipality, the recorder of deeds of the county shall not
26 accept any plat for recording, unless such plat officially notes
27 the approval of the governing body or planning agency, if
28 designated by the governing body, and review by the county
29 planning agency, if one exists.

30 (b) The recording of the plat shall not constitute grounds

1 for assessment increases until such time as lots are sold or
2 improvements are installed on the land included within the
3 subject plat.

4 Section 515.1. Preventive Remedies.--(a) In addition to
5 other remedies, the municipality may institute and maintain
6 appropriate actions by law or in equity to restrain, correct or
7 abate violations, to prevent unlawful construction, to recover
8 damages and to prevent illegal occupancy of a building,
9 structure or premises. The description by metes and bounds in
10 the instrument of transfer or other documents used in the
11 process of selling or transferring shall not exempt the seller
12 or transferor from [such penalties or from] the remedies herein
13 provided.

14 (b) A municipality may refuse to issue any permit or grant
15 any approval necessary to further improve or develop any real
16 property which has been developed or which has resulted from a
17 subdivision of real property in violation of any ordinance
18 adopted pursuant to this article. This authority to deny such a
19 permit or approval shall apply to any of the following
20 applicants:

21 (1) The owner of record at the time of such violation.

22 (2) The vendee or lessee of the owner of record at the
23 time of such violation without regard as to whether such
24 vendee or lessee had actual or constructive knowledge of the
25 violation.

26 (3) The current owner of record who acquired the
27 property subsequent to the time of violation without regard
28 as to whether such current owner had actual or constructive
29 knowledge of the violation.

30 (4) The vendee or lessee of the current owner of record

1 who acquired the property subsequent to the time of violation
2 without regard as to whether such vendee or lessee had actual
3 or constructive knowledge of the violation.

4 As an additional condition for issuance of a permit or the
5 granting of an approval to any such owner, current owner, vendee
6 or lessee for the development of any such real property, the
7 municipality may require compliance with the conditions that
8 would have been applicable to the property at the time the
9 applicant acquired an interest in such real property.

10 Section 4. Section 504-A(f) of the act, added December 19,
11 1990 (P.L.1343, No.209), is amended to read:

12 Section 504-A. Transportation Capital Improvements Plan.--*

13 * *

14 (f) Any improvements to [Federal-aid or State] highways
15 under the jurisdiction and authority of the Department of
16 Transportation to be funded in part by impact fees shall require
17 the approval of the Department of Transportation and, if
18 necessary, the United States Department of Transportation.
19 Nothing in this act shall be deemed to alter or diminish the
20 powers, duties or jurisdiction of the Department of
21 Transportation with respect to [State highways or the rural
22 State highway system] highways under its jurisdiction and
23 authority.

24 Section 5. Sections 603(c)(5), 605(3), 609.2 introductory
25 paragraph, 615, 704(b) and 705(f)(5) and (6) of the act are
26 amended to read:

27 Section 603. Ordinance Provisions.--* * *

28 (c) Zoning ordinances may contain:

29 * * *

30 (5) provisions to encourage innovation and to promote

flexibility, economy and ingenuity in development[, including subdivisions and land developments as defined in this act]; and

* * *

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:

* * *

(3) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, [including subdivisions and land developments as defined in this act,] and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

* * *

Section 609.2. Procedure for Municipal Curative Amendments.--If a municipality determines that its zoning ordinance or any portion thereof is [substantially] substantively invalid, it shall take the following actions:

* * *

Section 615. Zoning Appeals.--All appeals from [decisions]

1 determinations of the zoning officer shall be taken in the
2 manner set forth in this act.

3 Section 704. Jurisdiction of County Planning Agencies.--* *
4 *

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

22 Section 705. Standards and Conditions for Planned
23 Residential Development.--* * *

24 (f) The standards for a planned residential development
25 established by provisions adopted pursuant to this article may
26 require that the common open space resulting from the
27 application of standards for density, or intensity of land use,
28 shall be set aside for the use and benefit of the residents in
29 such development and may include provisions which shall
30 determine the amount and location of said common open space and

1 secure its improvement and maintenance for common open space
2 use, subject, however, to the following:

3 * * *

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

8 (6)] (5) The cost of such maintenance by the
9 municipality shall be assessed ratably against the properties
10 within the planned residential development that have a right
11 of enjoyment of the common open space, and shall become a
12 lien on said properties. The municipality at the time of
13 entering upon said common open space for the purpose of
14 maintenance shall file a notice of lien in the office of the
15 prothonotary of the county, upon the properties affected by
16 the lien within the planned residential development.

17 * * *

18 Section 6. The act is amended by adding a section to read:

19 Section 822-A. Transferable Development Rights.--All rights
20 and procedures provided for in section 619.1 shall pertain to
21 municipalities participating in a joint municipal zoning
22 ordinance.

23 Section 7. Sections 903 and 906(b) of the act are amended to
24 read:

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

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

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

1 a member of the board nor be compensated pursuant to section 907
2 unless designated as a voting alternate member pursuant to
3 section 906.

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

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

16 * * *

17 Section 8. The introductory paragraphs of section 909.1(a)
18 and (b) of the act are amended and the section is amended by
19 adding a subsection to read:

20 Section 909.1. Jurisdiction.--(a) [The] Except as provided
21 in subsection (c), the zoning hearing board shall have exclusive
22 jurisdiction to hear and render final adjudications in the
23 following matters:

24 * * *

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

29 * * *

30 (c) If a municipality has no zoning ordinance or if the

1 municipality adopts or amends an ordinance conferring on its
2 governing body exclusive jurisdiction to hear and render final
3 adjudications in the matters identified in clauses (1), (2) and
4 (3), the governing body of the municipality shall have exclusive
5 jurisdiction to hear and render final adjudications in the
6 following matters:

7 (1) Appeals from determinations with reference to the
8 administration of any flood plain or flood hazard ordinance
9 or such provisions within a land use ordinance.

10 (2) Applications for variances from the terms of the
11 flood hazard ordinance or such provisions within a land use
12 ordinance, pursuant to section 910.2.

13 (3) Applications for special exceptions under the flood
14 plain or flood hazard ordinance or such provisions within a
15 land use ordinance, pursuant to section 912.1.

16 Section 9. Section 914.1(a) of the act is amended to read:

17 Section 914.1. Time Limitations.--(a) No person shall be
18 allowed to file any proceeding with the board later than 30 days
19 after an application for development, whether preliminary,
20 tentative or final, has been approved by an appropriate
21 municipal officer, agency or body if such proceeding is designed
22 to secure reversal or to limit the approval in any manner unless
23 such person alleges and proves that he had no notice, knowledge,
24 or reason to believe that such approval had been given. If such
25 person has succeeded to his interest after such approval, he
26 shall be bound by the knowledge of his predecessor in interest.
27 The failure of anyone other than the landowner to appeal from an
28 adverse decision on a preliminary or tentative plan pursuant to
29 section 508 or 709 or from an adverse decision by a zoning
30 officer on a challenge to the validity of an ordinance or map

1 pursuant to section 916.2 shall preclude an appeal from a final
2 approval except in the case where the final submission
3 substantially deviates from the approved tentative or
4 preliminary approval.

5 * * *

6 Section 10. Sections 2201 through 2211 and 2220 through 2239
7 of the act of July 28, 1953 (P.L.723, No.230), known as the
8 Second Class County Code, are repealed.

9 Section 11. This act shall take effect in 60 days.