

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1329 Session of 2007

INTRODUCED BY KESSLER, FREEMAN, SAYLOR, BRENNAN, CARROLL, CREIGHTON, CURRY, EVERETT, FLECK, GALLOWAY, GERBER, GRUCELA, HARPER, HENNESSEY, KING, KORTZ, KULA, LEACH, LENTZ, LONGIETTI, MACKERETH, MELIO, MOYER, O'NEILL, SEIP, K. SMITH, WATSON, MENSCH AND CALTAGIRONE, MAY 24, 2007

SENATOR REGOLA, LOCAL GOVERNMENT, IN SENATE, AS AMENDED, FEBRUARY 6, 2008

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," PROVIDING FOR OPTIONAL NOTICE OF ORDINANCE OR <—  
21 DECISION AND PROCEDURAL VALIDITY CHALLENGES; further  
22 providing FOR ORDINANCE PROVISIONS AND for jurisdiction of <—  
23 the zoning hearing board and the court of common pleas in  
24 challenges to the validity of an ordinance for procedural  
25 defects in the process of enactment; AND PROVIDING FOR TIME <—  
26 FOR APPEAL AND PROCEDURAL DEFECTS OF DECISIONS.

27 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 ~~Section 1. Section 909.1(a) of the act of July 31, 1968~~ <—  
3 ~~(P.L.805, No.247), known as the Pennsylvania Municipalities~~  
4 ~~Planning Code, reenacted and amended December 21, 1988~~  
5 ~~(P.L.1329, No.170), is amended to read:~~

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

10 SECTION 108. OPTIONAL NOTICE OF ORDINANCE OR DECISION;  
11 PROCEDURAL VALIDITY CHALLENGES.--(A) IT IS THE INTENT OF THIS  
12 SECTION TO ALLOW OPTIONAL PUBLIC NOTICE OF MUNICIPAL ACTION IN  
13 ORDER TO PROVIDE AN OPPORTUNITY TO CHALLENGE, IN ACCORDANCE WITH  
14 SECTION 1002-A(B) OR SECTION 1002.1-A, THE VALIDITY OF AN  
15 ORDINANCE OR DECISION ON THE BASIS THAT A DEFECT IN PROCEDURE  
16 RESULTED IN A DEPRIVATION OF CONSTITUTIONAL RIGHTS, AND TO  
17 ESTABLISH A PERIOD OF LIMITATIONS FOR RAISING SUCH CHALLENGES.

18 (B) NOTICE THAT MUNICIPAL ACTION HAS BEEN TAKEN TO ADOPT AN  
19 ORDINANCE OR ENTER A DECISION, REGARDLESS OF WHETHER THE  
20 MUNICIPAL ACTION WAS TAKEN BEFORE OR AFTER THE EFFECTIVE DATE OF  
21 THIS SECTION, MAY BE PROVIDED THROUGH PUBLICATION, AT ANY TIME,  
22 ONCE EACH WEEK FOR TWO SUCCESSIVE WEEKS IN A NEWSPAPER OF  
23 GENERAL CIRCULATION IN THE MUNICIPALITY BY THE FOLLOWING:

24 (1) THE GOVERNING BODY OF THE MUNICIPALITY.

25 (2) IN THE CASE OF AN ORDINANCE, ANY RESIDENT OR  
26 LANDOWNER IN THE MUNICIPALITY.

27 (3) IN THE CASE OF A DECISION, THE APPLICANT REQUESTING  
28 THE DECISION OR THE LANDOWNER OR SUCCESSOR IN INTEREST OF THE  
29 PROPERTY SUBJECT TO OR AFFECTED BY THE DECISION.

30 (C) EACH NOTICE SHALL CONTAIN THE FOLLOWING:

1           (1) IF THE NOTICE RELATES TO AN ORDINANCE:

2                   (I) THE MUNICIPALITY'S ORDINANCE NUMBER.

3                   (II) A BRIEF STATEMENT OF THE GENERAL CONTENT OF THE  
4                   ORDINANCE.

5                   (III) THE ADDRESS OF THE MUNICIPAL BUILDING WHERE  
6                   THE FULL TEXT OF THE ORDINANCE MAY BE REVIEWED BY MEMBERS  
7                   OF THE PUBLIC.

8           (2) IF THE NOTICE RELATES TO A DECISION:

9                   (I) THE NAME OF THE APPLICANT OR OWNER OF THE  
10                   SUBJECT PROPERTY.

11                   (II) THE STREET ADDRESS OR LOCATION OF THE SUBJECT  
12                   PROPERTY.

13                   (III) THE FILE NUMBER OR DOCKET NUMBER OF THE  
14                   DECISION.

15                   (IV) A BRIEF DESCRIPTION OF THE NATURE OF THE  
16                   DECISION.

17                   (V) THE DATE UPON WHICH THE DECISION WAS ISSUED.

18                   (VI) THE ADDRESS OF THE MUNICIPAL BUILDING WHERE THE  
19                   FULL TEXT OF THE DECISION MAY BE REVIEWED BY MEMBERS OF  
20                   THE PUBLIC.

21           (3) IN ADDITION TO THE REQUIREMENTS OF PARAGRAPHS (1)  
22           AND (2), THE PUBLICATION OF EACH NOTICE AUTHORIZED BY THE  
23           SECTION SHALL CONTAIN A STATEMENT THAT THE PUBLICATION IS  
24           INTENDED TO PROVIDE NOTIFICATION OF AN ORDINANCE OR DECISION  
25           AND THAT ANY PERSON CLAIMING A RIGHT TO CHALLENGE THE  
26           VALIDITY OF THE ORDINANCE OR DECISION MUST BRING A LEGAL  
27           ACTION WITHIN 30 DAYS OF THE PUBLICATION OF THE SECOND  
28           NOTICE.

29           (4) THE PERSON PROVIDING NOTICE AS AUTHORIZED BY THIS  
30           SECTION SHALL PROVIDE PROOF OF PUBLICATION TO THE

1        MUNICIPALITY ADOPTING THE ORDINANCE OR DECISION FOR RETENTION  
2        WITH MUNICIPAL RECORDS. FAILURE TO COMPLY WITH THIS PARAGRAPH  
3        SHALL NOT INVALIDATE ANY NOTICE PROVIDED IN ACCORDANCE WITH  
4        THIS SECTION OR THE APPLICABILITY OF THE PERIOD OF LIMITATION  
5        IN SUBSECTION (D).

6        (D) NOTWITHSTANDING THIS OR ANY OTHER ACT, IN ORDER TO  
7        PROVIDE CERTAINTY OF THE VALIDITY OF AN ORDINANCE OR DECISION,  
8        ANY APPEAL OR ACTION CONTESTING THE VALIDITY OF AN ORDINANCE  
9        BASED ON A PROCEDURAL DEFECT IN THE PROCESS OF ENACTMENT OR THE  
10       VALIDITY OF A DECISION BASED ON A PROCEDURAL OR SUBSTANTIVE  
11       DEFECT SHALL BE DISMISSED, WITH PREJUDICE, AS UNTIMELY IF NOT  
12       FILED WITHIN THE 30TH DAY FOLLOWING THE SECOND PUBLICATION OF  
13       THE NOTICE AUTHORIZED IN THIS SECTION.

14       (E) ANY APPEAL OR ACTION FILED WITHIN THE 30-DAY PERIOD  
15       REFERRED TO IN SUBSECTION (D) SHALL BE TAKEN TO THE COURT OF  
16       COMMON PLEAS AND SHALL BE CONDUCTED IN ACCORDANCE WITH AND  
17       SUBJECT TO THE PROCEDURES SET FORTH IN 42 PA.C.S. § 5571.1  
18       (RELATING TO APPEALS FROM ORDINANCES, RESOLUTIONS, MAPS, ETC.)  
19       IN THE CASE OF CHALLENGES TO ORDINANCES OR SECTION 1002.1-A IN  
20       THE CASE OF CHALLENGES TO DECISIONS.

21       (F) WHERE NO APPEAL OR ACTION CONTESTING THE PROCEDURAL  
22       VALIDITY OF AN ORDINANCE OR THE PROCEDURAL OR SUBSTANTIVE  
23       VALIDITY OF A DECISION IS FILED WITHIN THE PERIOD SET FORTH IN  
24       SUBSECTION (D), THE ORDINANCE OR DECISION SHALL BE DEEMED TO BE  
25       REAFFIRMED AND REISSUED ON THE DATE OF THE SECOND PUBLICATION OF  
26       THE OPTIONAL NOTICE PERMITTED UNDER THIS SECTION.

27       (G) AN APPEAL SHALL BE EXEMPT FROM THE TIME LIMITATION IN  
28       SUBSECTION (D) ONLY IF THE PARTY BRINGING THE APPEAL ESTABLISHES  
29       THAT THE APPLICATION OF THE TIME LIMITATION IN SUBSECTION (D)  
30       WOULD RESULT IN AN UNCONSTITUTIONAL DEPRIVATION OF DUE PROCESS.

1        (H) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE,  
2 REPEAL, EXTEND OR OTHERWISE MODIFY THE TIME FOR APPEAL AS SET  
3 FORTH IN SECTION 1002-A WHERE THE APPELLANT WAS A PARTY TO  
4 PROCEEDINGS PRIOR TO THE ENTRY OF A DECISION OR OTHERWISE HAD AN  
5 ADEQUATE OPPORTUNITY TO BRING A TIMELY ACTION IN ACCORDANCE WITH  
6 SECTION 1002-A TO CONTEST THE PROCEDURAL VALIDITY OF AN  
7 ORDINANCE OR THE PROCEDURAL OR SUBSTANTIVE VALIDITY OF A  
8 DECISION.

9        SECTION 2. SECTION 603(C) OF THE ACT, AMENDED JUNE 22, 2000  
10 (P.L.495, NO.68), IS AMENDED TO READ:

11        SECTION 603. ORDINANCE PROVISIONS.--\* \* \*

12        (C) ZONING ORDINANCES MAY CONTAIN:

13            (1) PROVISIONS FOR SPECIAL EXCEPTIONS AND VARIANCES  
14 ADMINISTERED BY THE ZONING HEARING BOARD, WHICH PROVISIONS  
15 SHALL BE IN ACCORDANCE WITH THIS ACT;

16            (2) PROVISIONS FOR CONDITIONAL USES TO BE ALLOWED OR  
17 DENIED BY THE GOVERNING BODY [PURSUANT TO PUBLIC NOTICE AND  
18 HEARING AND RECOMMENDATIONS BY THE PLANNING AGENCY AND  
19 PURSUANT TO EXPRESS STANDARDS AND CRITERIA SET FORTH IN THE  
20 ZONING ORDINANCES.] AFTER RECOMMENDATIONS BY THE PLANNING  
21 AGENCY AND HEARING, PURSUANT TO EXPRESS STANDARDS AND  
22 CRITERIA SET FORTH IN THE ZONING ORDINANCE. NOTICE OF  
23 HEARINGS ON CONDITIONAL USES SHALL BE PROVIDED IN ACCORDANCE  
24 WITH SECTION 908(1), AND NOTICE OF THE DECISION SHALL BE  
25 PROVIDED IN ACCORDANCE WITH SECTION 908(10). IN ALLOWING A  
26 CONDITIONAL USE, THE GOVERNING BODY MAY ATTACH SUCH  
27 REASONABLE CONDITIONS AND SAFEGUARDS, OTHER THAN THOSE  
28 RELATED TO OFF-SITE TRANSPORTATION OR ROAD IMPROVEMENTS, IN  
29 ADDITION TO THOSE EXPRESSED IN THE ORDINANCE, AS IT MAY DEEM  
30 NECESSARY TO IMPLEMENT THE PURPOSES OF THIS ACT AND THE

1 ZONING ORDINANCE;

2 (2.2) PROVISIONS FOR REGULATING TRANSFERABLE DEVELOPMENT  
3 RIGHTS, ON A VOLUNTARY BASIS, INCLUDING PROVISIONS FOR THE  
4 PROTECTION OF PERSONS ACQUIRING THE SAME, IN ACCORDANCE WITH  
5 EXPRESS STANDARDS AND CRITERIA SET FORTH IN THE ORDINANCE AND  
6 SECTION 619.1;

7 (3) PROVISIONS FOR THE ADMINISTRATION AND ENFORCEMENT OF  
8 SUCH ORDINANCES;

9 (4) SUCH OTHER PROVISIONS AS MAY BE NECESSARY TO  
10 IMPLEMENT THE PURPOSES OF THIS ACT;

11 (5) PROVISIONS TO ENCOURAGE INNOVATION AND TO PROMOTE  
12 FLEXIBILITY, ECONOMY AND INGENUITY IN DEVELOPMENT, INCLUDING  
13 SUBDIVISIONS AND LAND DEVELOPMENTS AS DEFINED IN THIS ACT;

14 (6) PROVISIONS AUTHORIZING INCREASES IN THE PERMISSIBLE  
15 DENSITY OF POPULATION OR INTENSITY OF A PARTICULAR USE BASED  
16 UPON EXPRESSED STANDARDS AND CRITERIA SET FORTH IN THE ZONING  
17 ORDINANCE; AND

18 (7) PROVISIONS TO PROMOTE AND PRESERVE PRIME  
19 AGRICULTURAL LAND, ENVIRONMENTALLY SENSITIVE AREAS AND AREAS  
20 OF HISTORIC SIGNIFICANCE.

21 \* \* \*

22 SECTION 3. SECTION 909.1(A) OF THE ACT IS AMENDED TO READ:

23 Section 909.1. Jurisdiction.--(a) The zoning hearing board  
24 shall have exclusive jurisdiction to hear and render final  
25 adjudications in the following matters:

26 (1) Substantive challenges to the validity of any land  
27 use ordinance, except those brought before the governing body  
28 pursuant to sections 609.1 and 916.1(a)(2).

29 [(2) Challenges to the validity of a land use ordinance  
30 raising procedural questions or alleged defects in the

1 process of enactment or adoption which challenges shall be  
2 raised by an appeal taken within 30 days after the effective  
3 date of said ordinance. Where the ordinance appealed from is  
4 the initial zoning ordinance of the municipality and a zoning  
5 hearing board has not been previously established, the appeal  
6 raising procedural questions shall be taken directly to  
7 court.]

8 (3) Appeals from the determination of the zoning  
9 officer, including, but not limited to, the granting or  
10 denial of any permit, or failure to act on the application  
11 therefor, the issuance of any cease and desist order or the  
12 registration or refusal to register any nonconforming use,  
13 structure or lot.

14 (4) Appeals from a determination by a municipal engineer  
15 or the zoning officer with reference to the administration of  
16 any flood plain or flood hazard ordinance or such provisions  
17 within a land use ordinance.

18 (5) Applications for variances from the terms of the  
19 zoning ordinance and flood hazard ordinance or such  
20 provisions within a land use ordinance, pursuant to section  
21 910.2.

22 (6) Applications for special exceptions under the zoning  
23 ordinance or flood plain or flood hazard ordinance or such  
24 provisions within a land use ordinance, pursuant to section  
25 912.1.

26 (7) Appeals from the determination of any officer or  
27 agency charged with the administration of any transfers of  
28 development rights or performance density provisions of the  
29 zoning ordinance.

30 (8) Appeals from the zoning officer's determination

1 under section 916.2.

2 (9) Appeals from the determination of the zoning officer  
3 or municipal engineer in the administration of any land use  
4 ordinance or provision thereof with reference to  
5 sedimentation and erosion control and storm water management  
6 insofar as the same relate to development not involving  
7 Article V or VII applications.

8 \* \* \*

9 Section 2 4. Section 1002-A of the act is amended to read: <—

10 Section 1002-A. Jurisdiction and Venue on Appeal; Time for

11 ~~Appeal; Procedural defects.~~--(a) All appeals from all land use <—

12 decisions rendered pursuant to Article IX shall be taken to the

13 court of common pleas of the judicial district wherein the land

14 is located and shall be filed within 30 days after entry of the

15 decision as provided in 42 Pa.C.S. § 5572 (relating to time of

16 entry of order) or, in the case of a deemed decision, within 30

17 days after the date upon which notice of said deemed decision is

18 given as set forth in section 908(9) of this act. IT IS THE <—

19 EXPRESS INTENT OF THE GENERAL ASSEMBLY THAT, EXCEPT IN CASES IN

20 WHICH AN UNCONSTITUTIONAL DEPRIVATION OF DUE PROCESS WOULD

21 RESULT FROM ITS APPLICATION, THE 30-DAY LIMITATION IN THIS

22 SECTION SHOULD BE APPLIED IN ALL APPEALS FROM DECISIONS.

23 (b) Challenges to the validity of a land use ordinance

24 raising procedural questions or alleged defects in the process

25 of enactment or adoption shall be raised by appeal taken

26 directly to the court of common pleas of the judicial district

27 in which the municipality adopting the ordinance is located in

28 accordance with 42 Pa.C.S. § 5571.1 (relating to appeals from

29 ordinances, resolutions, maps, etc.).

30 SECTION 5. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—



1       SECTION 1002.1-A. TIME FOR APPEAL; PROCEDURAL DEFECTS OF  
2 DECISIONS.--(A) THIS SECTION SHALL APPLY TO ALL APPEALS  
3 CHALLENGING THE VALIDITY OF A LAND USE DECISION ON THE BASIS OF  
4 A DEFECT IN PROCEDURES PRESCRIBED BY STATUTE OR ORDINANCE.

5       (B) EXCEPT AS OTHERWISE PROVIDED IN SECTION 108, ALL APPEALS  
6 CHALLENGING THE VALIDITY OF A DECISION SOLELY ON THE BASIS OF A  
7 DEFECT IN PROCEDURE SHALL BE FILED WITHIN THE TIME PERIOD  
8 PROVIDED IN SECTION 1002-A(A) UNLESS A PARTY ESTABLISHES EACH OF  
9 THE FOLLOWING:

10       (1) THAT THE PERSON FILING THE APPEAL HAD INSUFFICIENT  
11 ACTUAL OR CONSTRUCTIVE NOTICE OF THE DECISION TO PERMIT  
12 FILING AN APPEAL WITHIN THE TIME PERIOD PROVIDED IN SECTION  
13 1002-A(A). NOTICE OF A HEARING PRIOR TO THE ENTRY OF A  
14 DECISION IN ACCORDANCE WITH SECTION 908(1), NOTICE OF A  
15 DECISION IN ACCORDANCE WITH SECTION 908(10) OR NOTICE OF A  
16 DEEMED DECISION PROVIDED IN ACCORDANCE WITH THIS ACT SHALL  
17 ESTABLISH CONSTRUCTIVE NOTICE AS A MATTER OF LAW IN ANY  
18 APPEAL UNDER THIS SECTION.

19       (2) THAT BECAUSE OF THE INSUFFICIENT ACTUAL OR  
20 CONSTRUCTIVE NOTICE OF THE DECISION, THE APPLICATION OF THE  
21 TIME LIMITATION IN SECTION 1002-A(A) WOULD RESULT IN AN  
22 IMPERMISSIBLE DEPRIVATION OF CONSTITUTIONAL RIGHTS.

23       (C) APPEALS UNDER THIS SECTION SHALL ONLY BE PERMITTED BY AN  
24 AGGRIEVED PERSON WHO CAN ESTABLISH THAT RELIANCE ON THE VALIDITY  
25 OF THE CHALLENGED DECISION RESULTED OR COULD RESULT IN A USE OF  
26 PROPERTY THAT DIRECTLY AFFECTS SUCH PERSON'S SUBSTANTIVE  
27 PROPERTY RIGHTS.

28       (D) NO DECISION CHALLENGED IN AN APPEAL PURSUANT TO THIS  
29 SECTION SHALL BE DEEMED VOID FROM INCEPTION EXCEPT AS FOLLOWS:

30       (1) IN THE CASE OF AN APPEAL BROUGHT WITHIN THE TIME

1 PERIOD PROVIDED IN SECTION 1002-A(A), THE PARTY ALLEGING THE  
2 DEFECT MUST MEET THE BURDEN OF PROVING THAT THERE WAS A  
3 FAILURE TO STRICTLY COMPLY WITH PROCEDURE.

4 (2) IN THE CASE OF AN APPEAL EXEMPT FROM THE TIME PERIOD  
5 PROVIDED IN SECTION 1002-A(A) OR BROUGHT PURSUANT TO SECTION  
6 108, THE PARTY ALLEGING THE DEFECT MUST MEET THE BURDEN OF  
7 PROVING THAT BECAUSE OF THE ALLEGED DEFECT IN PROCEDURE  
8 ALONE:

9 (I) THE PUBLIC WAS DENIED NOTICE SUFFICIENT TO  
10 PERMIT PARTICIPATION IN THE PROCEEDINGS PRIOR TO THE  
11 ENTRY OF THE DECISION TO THE EXTENT SUCH PARTICIPATION  
12 WAS AUTHORIZED BY STATUTE OR ORDINANCE; OR

13 (II) THOSE WHOSE SUBSTANTIVE PROPERTY RIGHTS WERE OR  
14 COULD BE DIRECTLY AFFECTED BY THE ENTRY OF THE DECISION  
15 WERE DENIED AN OPPORTUNITY TO PARTICIPATE IN PROCEEDINGS  
16 PRIOR TO THE ENTRY OF THE DECISION.

17 (E) SUBSTANTIAL COMPLIANCE WITH NOTICE OF A HEARING REQUIRED  
18 PRIOR TO THE ENTRY OF A DECISION IN ACCORDANCE WITH SECTION  
19 908(1) SHALL ESTABLISH NOTICE ADEQUATE TO PERMIT PUBLIC  
20 PARTICIPATION AS A MATTER OF LAW IN ANY APPEAL UNDER THIS  
21 SECTION.

22 (F) AN ADJUDICATION THAT A DECISION IS VOID FROM INCEPTION  
23 SHALL NOT AFFECT ANY PREVIOUSLY ACQUIRED RIGHTS OF PROPERTY  
24 OWNERS WHO HAVE EXERCISED GOOD FAITH RELIANCE ON THE VALIDITY OF  
25 THE DECISION PRIOR TO THE DETERMINATION.

26 SECTION 6. THE ADDITION OF SECTIONS 108 AND 1002.1-A OF THE  
27 ACT SHALL APPLY BEGINNING ON THE EFFECTIVE DATE OF AN AMENDMENT  
28 TO 42 PA.C.S. THAT PROVIDES FOR APPEALS FROM ORDINANCES,  
29 RESOLUTIONS, MAPS AND SIMILAR ACTIONS OF A POLITICAL  
30 SUBDIVISION.

1 Section 3 7. This act shall take effect immediately.

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