

## No. 2002-43

## AN ACT

## HB 411

Amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, "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 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; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; 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 mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," further providing for purpose of act; defining "no-impact home-based business"; and further providing for ordinance provisions, for procedure for landowner curative amendments, for hearings and for governing body's functions.

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

Section 1. Section 105 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, reenacted and amended December 21, 1988 (P.L.1329, No.170) and amended June 22, 2000 (P.L.495, No.68), is amended to read:

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 coordinated development; 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; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; to promote the preservation of this Commonwealth's natural and historic resources and prime agricultural land; to encourage municipalities to adopt municipal or joint municipal comprehensive plans generally consistent with the county comprehensive plan; ***to promote small business development and foster a business-friendly environment in this Commonwealth***; to ensure that municipalities adopt zoning ordinances which are generally consistent with the municipality's comprehensive plan; to encourage the preservation of prime agricultural land and natural and historic resources through easements, transfer of development rights and rezoning; to ensure that municipalities enact zoning ordinances that

facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable; to encourage the revitalization of established urban centers; and to permit municipalities to minimize such problems as may presently exist or which may be foreseen and wherever the provisions of this act promote, encourage, require or authorize governing bodies to protect, preserve or conserve open land, consisting of natural resources, forests and woodlands, any actions taken to protect, preserve or conserve such land shall not be for the purposes of precluding access for forestry.

Section 2. Section 107(a) of the act is amended by adding a definition to read:

Section 107. Definitions.—(a) The following words and phrases when used in this act shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

\* \* \*

***“No-impact home-based business,” a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use. The business or commercial activity must satisfy the following requirements:***

***(1) The business activity shall be compatible with the residential use of the property and surrounding residential uses.***

***(2) The business shall employ no employees other than family members residing in the dwelling.***

***(3) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.***

***(4) There shall be no outside appearance of a business use, including, but not limited to, parking, signs or lights.***

***(5) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.***

***(6) The business activity may not generate any solid waste or sewage discharge in volume or type which is not normally associated with residential use in the neighborhood.***

***(7) The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.***

***(8) The business may not involve any illegal activity.***

\* \* \*

Section 3. Section 603 of the act is amended by adding a subsection to read:

Section 603. Ordinance Provisions.—\* \* \*

*(l) Zoning ordinances shall permit no-impact home-based businesses in all residential zones of the municipality as a use permitted by right, except that such permission shall not supersede any deed restriction, covenant or agreement restricting the use of land nor any master deed, bylaw or other document applicable to a common interest ownership community.*

Section 4. Sections 609.1(b), 908(1.2) and (9) and 913.2(b)(2) of the act, amended January 11, 2002 (P.L.13, No.2), are amended to read:

Section 609.1. Procedure for Landowner Curative Amendments.—\* \* \*

(b) The hearing shall be conducted in accordance with section 908 and all references therein to the zoning hearing board shall, for purposes of this section be references to the governing body: provided, however, That the [deemed approval] provisions of section 908(1.2) and (9) shall not apply and the provisions of section 916.1 shall control. If a municipality does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for the entire zoning ordinance and map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.

\* \* \*

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

\* \* \*

(1.2) The first hearing *before the board or hearing officer* shall be commenced within 60 days from the date of *receipt of* the applicant's [request] *application*, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing *before the board or hearing officer* shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant *in writing or on the record*. [Any party aggrieved by the schedule or progress of the hearings may apply to the court of common pleas for judicial relief. The hearing shall be completed no later than 100 days after the completion of the applicant's case in chief unless extended for good cause upon application to the court of common pleas.] *An applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to*

*the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.*

\* \* \*

(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 45 days after the last hearing before the board or hearing officer. 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 within 45 days 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 30 days after the report of the hearing officer. [Where] *Except for challenges filed under section 916.1 where* the board fails to render the decision within the period required by this subsection or fails to commence, *conduct* or complete the required hearing as provided in subsection (1.2), the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

\* \* \*

Section 913.2. Governing Body's Functions; Conditional Uses.—\* \* \*

(b) \* \* \*

(2) Where the governing body fails to render the decision within the period required by this subsection or fails to commence, *conduct or complete* the required hearing [within 60 days from the date of the applicant's request for a hearing or fails to complete the hearing no later than 100 days after the completion of the applicant's case in chief, unless extended for good cause upon application to the court of common pleas] *as provided in section 908(1.2)*, the decision shall be deemed to have been rendered in favor of the applicant unless the

applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the governing body to meet or render a decision as hereinabove provided, the governing body shall give public notice of the decision within ten days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this act. If the governing body shall fail to provide such notice, the applicant may do so.

\* \* \*

Section 5. This act shall take effect as follows:

- (1) The amendment of sections 609.1(b), 908(1.2) and (9) and 913.2(b)(2) of the act shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect December 1, 2002.

APPROVED—The 9th day of May, A.D. 2002.

MARK S. SCHWEIKER