

No. 2008-39

AN ACT

HB 1329

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," providing for optional notice of ordinance or decision and procedural validity challenges; further providing for ordinance provisions and for jurisdiction of the zoning hearing board and the court of common pleas in challenges to the validity of an ordinance for procedural defects in the process of enactment; and providing for time for appeal and procedural defects of decisions.

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

Section 1. 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), is amended by adding a section to read:

Section 108. *Optional Notice of Ordinance or Decision; Procedural Validity Challenges.*—(a) *It is the intent of this section to allow optional public notice of municipal action in order to provide an opportunity to challenge, in accordance with section 1002-A(b) or section 1002.1-A, the validity of an ordinance or decision on the basis that a defect in procedure resulted in a deprivation of constitutional rights, and to establish a period of limitations for raising such challenges.*

(b) *Notice that municipal action has been taken to adopt an ordinance or enter a decision, regardless of whether the municipal action was taken before or after the effective date of this section, may be provided through publication, at any time, once each week for two successive weeks in a newspaper of general circulation in the municipality by the following:*

(1) *The governing body of the municipality.*

(2) *In the case of an ordinance, any resident or landowner in the municipality.*

(3) In the case of a decision, the applicant requesting the decision or the landowner or successor in interest of the property subject to or affected by the decision.

(c) Each notice shall contain the following:

(1) If the notice relates to an ordinance:

(i) The municipality's ordinance number.

(ii) A brief statement of the general content of the ordinance.

(iii) The address of the municipal building where the full text of the ordinance may be reviewed by members of the public.

(2) If the notice relates to a decision:

(i) The name of the applicant or owner of the subject property.

(ii) The street address or location of the subject property.

(iii) The file number or docket number of the decision.

(iv) A brief description of the nature of the decision.

(v) The date upon which the decision was issued.

(vi) The address of the municipal building where the full text of the decision may be reviewed by members of the public.

(3) In addition to the requirements of paragraphs (1) and (2), the publication of each notice authorized by the section shall contain a statement that the publication is intended to provide notification of an ordinance or decision and that any person claiming a right to challenge the validity of the ordinance or decision must bring a legal action within 30 days of the publication of the second notice.

(4) The person providing notice as authorized by this section shall provide proof of publication to the municipality adopting the ordinance or decision for retention with municipal records. Failure to comply with this paragraph shall not invalidate any notice provided in accordance with this section or the applicability of the period of limitation in subsection (d).

(d) Notwithstanding this or any other act, in order to provide certainty of the validity of an ordinance or decision, any appeal or action contesting the validity of an ordinance based on a procedural defect in the process of enactment or the validity of a decision based on a procedural or substantive defect shall be dismissed, with prejudice, as untimely if not filed within the 30th day following the second publication of the notice authorized in this section.

(e) Any appeal or action filed within the 30-day period referred to in subsection (d) shall be taken to the court of common pleas and shall be conducted in accordance with and subject to the procedures set forth in 42 Pa.C.S. § 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.) in the case of challenges to ordinances or section 1002.1-A in the case of challenges to decisions.

(f) Where no appeal or action contesting the procedural validity of an ordinance or the procedural or substantive validity of a decision is filed within the period set forth in subsection (d), the ordinance or decision shall

be deemed to be reaffirmed and reissued on the date of the second publication of the optional notice permitted under this section.

(g) An appeal shall be exempt from the time limitation in subsection (d) only if the party bringing the appeal establishes that the application of the time limitation in subsection (d) would result in an unconstitutional deprivation of due process.

(h) Nothing in this section shall be construed to abrogate, repeal, extend or otherwise modify the time for appeal as set forth in section 1002-A, where the appellant was a party to proceedings prior to the entry of a decision or otherwise had an adequate opportunity to bring a timely action in accordance with section 1002-A to contest the procedural validity of an ordinance or the procedural or substantive validity of a decision.

Section 2. Section 603(c) of the act, amended June 22, 2000 (P.L.495, No.68), is amended to read:

Section 603. Ordinance Provisions.—* * *

(c) Zoning ordinances may contain:

(1) provisions for special exceptions and variances administered by the zoning hearing board, which provisions shall be in accordance with this act;

(2) provisions for conditional uses to be allowed or denied by the governing body [pursuant to public notice and hearing and recommendations by the planning agency and pursuant to express standards and criteria set forth in the zoning ordinances.] *after recommendations by the planning agency and hearing, pursuant to express standards and criteria set forth in the zoning ordinance. Notice of hearings on conditional uses shall be provided in accordance with section 908(1), and notice of the decision shall be provided in accordance with section 908(10).* In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance;

(2.2) provisions for regulating transferable development rights, on a voluntary basis, including provisions for the protection of persons acquiring the same, in accordance with express standards and criteria set forth in the ordinance and section 619.1;

(3) provisions for the administration and enforcement of such ordinances;

(4) such other provisions as may be necessary to implement the purposes of this act;

(5) provisions to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act;

(6) provisions 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; and

(7) provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance.

* * *

Section 3. Section 909.1(a) of the act is amended to read:

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

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

[(2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.]

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

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

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

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

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

(8) Appeals from the zoning officer's determination under section 916.2.

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

* * *

Section 4. Section 1002-A of the act is amended to read:

Section 1002-A. **Jurisdiction and Venue on Appeal; Time for Appeal.**—(a) All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order) or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 908(9) of this act. *It is the express intent of the General Assembly that, except in cases in which an unconstitutional deprivation of due process would result from its application, the 30-day limitation in this section should be applied in all appeals from decisions.*

(b) *Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption shall be raised by appeal taken directly to the court of common pleas of the judicial district in which the municipality adopting the ordinance is located in accordance with 42 Pa.C.S. § 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.).*

Section 5. The act is amended by adding a section to read:

Section 1002.1-A. Time for Appeal; Procedural Defects of Decisions.—(a) *This section shall apply to all appeals challenging the validity of a land use decision on the basis of a defect in procedures prescribed by statute or ordinance.*

(b) *Except as otherwise provided in section 108, all appeals challenging the validity of a decision solely on the basis of a defect in procedure shall be filed within the time period provided in section 1002-A(a) unless a party establishes each of the following:*

(1) *That the person filing the appeal had insufficient actual or constructive notice of the decision to permit filing an appeal within the time period provided in section 1002-A(a). Notice of a hearing prior to the entry of a decision in accordance with section 908(1), notice of a decision in accordance with section 908(10) or notice of a deemed decision provided in accordance with this act shall establish constructive notice as a matter of law in any appeal under this section.*

(2) *That because of the insufficient actual or constructive notice of the decision, the application of the time limitation in section 1002-A(a) would result in an impermissible deprivation of constitutional rights.*

(c) *Appeals under this section shall only be permitted by an aggrieved person who can establish that reliance on the validity of the challenged decision resulted or could result in a use of property that directly affects such person's substantive property rights.*

(d) *No decision challenged in an appeal pursuant to this section shall be deemed void from inception except as follows:*

(1) In the case of an appeal brought within the time period provided in section 1002-A(a), the party alleging the defect must meet the burden of proving that there was a failure to strictly comply with procedure.

(2) In the case of an appeal exempt from the time period provided in section 1002-A(a) or brought pursuant to section 108, the party alleging the defect must meet the burden of proving that because of the alleged defect in procedure alone:

(i) the public was denied notice sufficient to permit participation in the proceedings prior to the entry of the decision to the extent such participation was authorized by statute or ordinance; or

(ii) those whose substantive property rights were or could be directly affected by the entry of the decision were denied an opportunity to participate in proceedings prior to the entry of the decision.

(e) Substantial compliance with notice of a hearing required prior to the entry of a decision in accordance with section 908(1) shall establish notice adequate to permit public participation as a matter of law in any appeal under this section.

(f) An adjudication that a decision is void from inception shall not affect any previously acquired rights of property owners who have exercised good faith reliance on the validity of the decision prior to the determination.

Section 6. The addition of sections 108 and 1002.1-A of the act shall apply beginning on the effective date of an amendment to 42 Pa.C.S. that provides for appeals from ordinances, resolutions, maps and similar actions of a political subdivision.

Section 7. This act shall take effect immediately.

APPROVED—The 4th day of July, A.D. 2008.

EDWARD G. RENDELL