



## Proposed Legislation Amending the Pennsylvania Municipalities Planning Code

By Kimberly A. Freimuth

### House Bill 780

#### *1. Providing Residents an Opportunity to be Appointed as Alternates on the Planning Commission*

House Bill 780 proposes to amend the Pennsylvania Municipalities Planning Code (MPC) by allowing the governing body to appoint residents of the municipality to serve as alternate members of the municipal planning commission and, in some cases, the power to vote.

The bill proposes to add Section 203 to the MPC, which states that the governing body may appoint, by resolution, at least one, but no more than three, residents of the municipality to serve as alternate members of the planning commission for a term of four years. The alternate resident member would be permitted to participate in all proceedings and discussions of the commission to the same extent as other members and would have the right to vote when designated as a voting alternate member.

The bill also proposes to amend Section 207 of the MPC to add a new subsection permitting the chairman of the planning commission to designate alternate members of the planning commission to substitute for any member who is absent, recused, or disqualified so that a quorum may be reached. The alternate member so designated would continue to serve on the commission in all proceedings involving the matter for which the alternate was initially appointed and until the commission made a final decision on the matter. Designation of the alternate, which could include a resident alternate as permitted by Section 203, is to be made on a case-by-case basis in rotation according to declining seniority among all alternates.

#### *2. Ambiguous Provisions in Subdivision and Land Development Ordinances*

House Bill 780 proposes to add Section 507.1 to the MPC, which provides that in interpreting the language of subdivision and land development ordinances, the language shall be interpreted, where doubt exists as to the intended meaning of the language written, in favor of the property owner and against any implied extension or application of the provision of the ordinance. The proposed language in Section 507.1 mirrors the language currently set forth in Section 603.1 of the MPC regarding ambiguities in zoning ordinances. These provisions favor the applicant in that they prevent a municipality from making more restrictive interpretations where an ambiguity exists.

#### *3. Governing Body Granted Greater Powers in Considering Conditional Use Applications*

House Bill 780 also proposes to amend Section 909.1(b) of the MPC, which sets forth the exclusive jurisdiction of the governing body. The governing body always had exclusive jurisdiction to

---

hear and render final decisions on conditional applications. However, House Bill 780 now provides that such jurisdiction shall include the power to consider variances requested by the conditional use applicant where the variances are related and subordinate to the conditional use.

This amendment could substantially decrease the time period for a developer to obtain all required zoning relief in that the developer would now only be required to appear before the governing body for both conditional use approval and any related variances, rather than having to also appear before the Zoning Hearing Board for such variances.

House Bill 780 was re-referred to the Senate Appropriations Committee on April 28, 2008.

### **House Bills 1329 and 1330: Time Period to File Procedural Challenge to Land Use Decision or Ordinance Adoption**

House Bill 1329 proposes to provide a time period in the MPC within which to bring procedural challenges to the adoption of an ordinance or to a land use decision. This bill is in direct response to Pennsylvania case law, which currently holds that there is no 30-day time limit within which to bring a procedural challenge to an ordinance or decision where there is a failure to provide notice or hold a hearing because the ordinance or decision is considered void *ab initio*. See *Glen-Gery Corp. v. Zoning Hearing Bd. of Dover Township*, 907 A.2d 1033 (Pa. 2006); *Luke v. Cataldi*, 932 A.2d 45 (Pa. 2007). The Supreme Court held that because of the procedural defect, the ordinance or decision is considered void in its entirety and inoperative as if it had no existence from the time of its enactment. Because the ordinance or decision had no existence, there is no effective date to trigger the 30-day time limit under the MPC. Therefore, there is no required time period within which to bring a procedural challenge to an ordinance adoption or decision.

House Bill 1329 proposes to add Section 108 titled, “Optional Notice of Ordinance or Decision; Procedural Validity Challenges,” which provides for optional public notice of municipal action in order to provide an opportunity to bring a procedural challenge to the validity of an ordinance or decision. Notice that municipal action has been taken to adopt an ordinance or enter a decision 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 either: (i) the governing body; (ii) in the case of an ordinance, any resident or landowner in the municipality; or (iii) 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.

Specific requirements for the content of the notice are enumerated, as well as the requirement that the notice contain a statement that the publication is intended to provide notification of an ordinance or decision and 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. Any appeal or action filed within the 30-day time period shall be taken directly to the Court of Common Pleas. Where no appeal or action is filed, the ordinance or decision shall be deemed reaffirmed and reissued on the date of the second publication of the optional notice. An appeal is only exempt from the 30-day time limitation if the party bringing the appeal establishes that the application of the time limitation would result in an unconstitutional deprivation of due process.

The bill also proposes to add Section 1002.1-A of the MPC dealing specifically with procedural defects to the issuance of decisions. This section confirms that all appeals procedurally challenging the validity of a decision shall be filed within the 30-day time limitation unless a party establishes: (i) that the person filing the appeal had insufficient actual or constructive notice of the decision to permit filing an appeal within the 30-day time period; and (ii) that because of the insufficient actual or constructive notice, the application of the time limitation would result in an impermissible deprivation of constitutional rights. Furthermore, appeals under this section are only permitted to be

---

brought by aggrieved persons who can establish that reliance on the validity of the challenged decision resulted in or could result in a use of property that directly affects such person's substantive property rights.

House Bill 1330 deals with procedural challenges to the enactment or adoption of an ordinance, resolution, or map and adds Section 5571.1 to Title 42 of the Pennsylvania Statutes. Section 1002-A of the MPC would be amended under House Bill 1329 to refer to Section 5571.1 of Title 42 with regard to procedural challenges to the enactment of an ordinance.

Section 5571.1 provides that any appeal relating to an alleged procedural defect in the adoption of any ordinance shall be brought directly to the Court of Common Pleas within 30 days of the intended effective date of the ordinance. The 30-day limitation applies regardless of the ultimate validity of the challenged ordinance. However, an appeal is exempt from the 30-day time limitation if the party bringing the appeal establishes that, because of the particular nature of the alleged defect in procedure, the application of the time limitation would result in an impermissible deprivation of constitutional rights.

House Bill 1329 and House Bill 1330 were passed by the Senate on June 30, 2008, and referred to the House Rules Committee on June 30, 2008.

For more information or an update on the legislation, please contact Kimberly Freimuth at 215.918.3627 or [kfreimuth@foxrothschild.com](mailto:kfreimuth@foxrothschild.com).



Fox Rothschild LLP  
ATTORNEYS AT LAW

© 2008 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.

---

California Delaware Florida Nevada New Jersey New York Pennsylvania

[www.foxrothschild.com](http://www.foxrothschild.com)