

Safeguards Against Adverse Zoning Ordinance Activities; Land Use and Planning

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Body

In an effort to provide better safeguards to surface and mineral rights owners who might not otherwise become aware of proposed municipal actions that could affect their property interests, such as a municipality's consideration and adoption of a new zoning ordinance or zoning ordinance amendment, Gov. Tom Corbett signed Act 36 of 2013 into law July 2, 2013. Act 36, which took effect Aug. 31, 2013, amended the Pennsylvania Municipalities Planning Code to add a requirement that municipalities provide "mailed notice" or "electronic notice" of public hearings concerning proposed zoning ordinances and zoning ordinance amendments to the owners of tracts or parcels of land or the owners of mineral rights in tracts or parcels of land located within their borders upon request by those owners.

Prior to the enactment of Act 36, the MPC imposed upon municipalities a number of notice and distribution requirements for the adoption of land use ordinances. For zoning ordinances and zoning ordinance amendments, these requirements included: (1) a public hearing; (2) publication of notice of the hearing for two successive weeks in a newspaper of general circulation in the municipality, with the first publication being no more than 30 days and the second publication being no less than seven days from the date of the hearing; (3) publication of notice of the proposed enactment of the ordinance at least once no more than 60 nor less than seven days prior to passage, with either publication of the full text or a summary of the proposed ordinance, in which case copies also must be provided to the newspaper publishing the notice and to the county law library; (4) transmittal of a copy to the county planning agency for review and comment at least 30 days prior to the public hearing; and (5) in the case of an amendment involving a zoning map change, posting of the property and mailing of notice to the addresses to which real estate tax bills are sent for all real property located within the area to be rezoned.

However, absentee surface and mineral rights owners frequently do not have access to local newspapers and therefore have no way of seeing the public notices regarding proposed zoning ordinances or zoning ordinance text amendments (as opposed to proposed rezoning of specific properties) affecting their property rights. Act 36 was enacted to provide additional safeguards to these absentee owners in the form of individual notice regarding public hearings on proposed zoning ordinances and amendments.

Specifically, Act 36 amends Section 608 of the MPC, dealing with the initial adoption of zoning ordinances, and Section 609, dealing with the adoption of amendments to zoning ordinances, to require that mailed notice or electronic notice of a proposed ordinance be provided to "any owner of a tract or

Safeguards Against Adverse Zoning Ordinance Activities; Land Use and Planning

parcel of land located within a municipality, or an owner of the mineral rights in a tract or parcel of land within the municipality who has made a timely request in accordance with Section 109" of the MPC. Act 36 defines electronic notice as notice "given by a municipality through the Internet" and defines mailed notice as "notice given by a municipality by first-class mail."

Act 36 also adds a new Section 109 to the MPC, which establishes the procedures and parameters for requesting and receiving mailed and electronic notices. Mailed notice is required if the owner has made a written request that the notice be mailed and has supplied the municipality with a stamped, self-addressed envelope prior to a public hearing. Electronic notice is required if the owner has made a written request that notice be sent electronically and has supplied the municipality with an electronic address prior to the public hearing, and only if the municipality maintains the capability of generating an electronic notice.

With respect to mailed notice, the property owner is responsible for the number, accuracy and sufficiency of the envelopes supplied and the municipality is not responsible or liable if the owner does not provide to the municipality notice of any changes in the owner's mailing address or if the owner fails to replenish the supply of stamped, self-addressed envelopes. One written request for mailed notice is sufficient.

With respect to electronic notice, an owner is responsible for the accuracy and sufficiency of the information provided in connection with requests for electronic notice and the municipality is not responsible or liable if the owner does not provide to the municipality notice of any changes in the owner's information. Again, one written request for electronic notice is sufficient and it is the owner's responsibility to notify a municipality of any change in the electronic address.

When there is a proposed zoning ordinance or zoning ordinance amendment, the municipality must mail or provide electronic notice not more than 30 days and not less than seven days prior to the scheduled date of the hearing. For each public hearing, "the municipal secretary or zoning officer shall prepare, sign and maintain a list of all mailed notices, mailing dates, electronic notices and electronic notice dates. The signed lists shall constitute a presumption that the notice was given." A mailed notice is "deemed received" by the owner on the date it is deposited in the U.S. mail and electronic notice is deemed received on the date the municipality electronically notifies the owner. Generally speaking, a municipality's failure to comply strictly with the publication and distribution requirements of the MPC is fatal, and a timely filed procedural validity challenge will result in invalidation of the ordinance, as in [*Messina v. East Penn Township*, 62 A.3d 363, 372 \(Pa. 2012\)](#).

However, this may not be the case with respect to noncompliance with the requirements of Act 36, as Section 109(10) provides that "failure of an owner ... to receive a requested mailed notice or electronic notice shall not be deemed to invalidate any action or proceedings under this act."

The significance of Act 36 may have been heightened by the Pennsylvania Supreme Court's recent decision in [*Robinson Township v. Commonwealth*, 2013 Pa. LEXIS 3068 \(Pa. 2013\)](#), in which the court concluded that several provisions of Act 13, the General Assembly's 2012 comprehensive update to the former Oil and Gas Act, were unconstitutional. One of the provisions invalidated by the court was Section 3304, which imposed certain limitations on a municipality's authority to regulate, by ordinance, oil and gas development within its borders. As a result of the court's ruling, it is reasonable to expect an increase in municipal ordinance activity regulating the oil and gas industry.

Safeguards Against Adverse Zoning Ordinance Activities; Land Use and Planning

Act 36 will increase the likelihood that absentee surface and mineral rights owners will become aware of and participate in public hearings on new, potentially adverse proposed ordinances before they are adopted.

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