

Rezoning and Text Amendments in Pennsylvania: Procedural and Substantive Considerations

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Rezoning and text amendments are very effective procedures to increase the development rights on, and the value of, a property.

Often a real estate developer will encounter a zoning ordinance that does not permit the developer's desired use or physical structure on the property. In these circumstances, the developer may pursue a rezoning of the property or a text amendment to the municipality's zoning ordinance. Under the Pennsylvania Municipalities Planning Code (MPC), rezonings and text amendments in Pennsylvania have similar, but not identical, procedural requirements. However, both are political in nature and are at the legislative discretion of the municipality's elected officials.

A rezoning is an ordinance adopted by the municipality's governing body (e.g., city council, borough council, township commissioners or township supervisors) amending the zoning map to redesignate one or several lots from one zoning district to another. For example, under the applicable statutory procedures, a municipality may rezone a property from a district that generally only allows for residential uses to one that permits commercial uses.

A text amendment, on the other hand, is an ordinance amending the text of a zoning ordinance without any facial effect on the zoning map. Text amendments can add or remove permitted uses within a zoning district or change the dimensional requirements applicable to buildings and other structures. Sometimes a rezoning and text amendment are done simultaneously to create an entirely new zoning district within a municipality to allow for a specific type of unique development in a certain location.

Rezoning and text amendments differ from zoning variances. A variance, which is essentially an authorization to violate a provision of the zoning ordinance, is granted by a zoning hearing board following a quasi-judicial hearing in which the applicant satisfies the statutory criteria to be granted a variance, including a demonstration of hardship. Conversely, a rezoning or a text amendment is a legislative change as to what is permitted under the zoning ordinance. Requests for rezonings and text amendments should not be confused with petitions for curative amendments, which are challenges to the legal validity of zoning maps and ordinances.

In most situations, a landowner or a developer initiates the rezoning or text amendment process by requesting that the municipality's governing body take legislative action. Many zoning ordinances include a rezoning and text amendment application process, which may include submitting a prescribed form and an application fee to cover the municipality's costs. The municipality's planning commission may also initiate the process, and the

Commonwealth Court of Pennsylvania has even held that a municipality may consider a request for a rezoning of a property presented by a person or an entity that does not own the property at issue.

Following the initial request from a landowner or a developer, the governing body, if it chooses to proceed (which it is not required to do), must refer the proposed ordinance to the municipality's planning commission and the county's planning commission. The proposed ordinance may not be voted on and adopted by the municipality's governing body until after the governing body has held a public hearing on the proposed ordinance. The public hearing may not occur before the municipality's planning commission and the county's planning commission have had at least 30 days to review and provide comments to the proposed ordinance, and the public hearing must be advertised two times in a newspaper of general circulation in the municipality. If a rezoning is being requested, notices of the public hearing must be sent to the owners of the property within the area being rezoned, and a notice of the public hearing must be conspicuously posted at points deemed sufficient by the municipality along the tract to notify potentially interested citizens. The Commonwealth Court of Pennsylvania has recently ruled that some text amendments must be noticed in a manner similar to rezonings when the proposed ordinance, while not amending any portion of the zoning map, clearly limits the practical effect of the ordinance to only one property or a small group of properties.

During the public hearing, the governing body receives comments and presentations from the requesting party and interested persons who may be in favor of or opposed to the proposed ordinance. While the public hearing does not often resemble a formal judicial hearing, many municipalities create a stenographic record of the public hearing, and documentary evidence is often received and indexed for a record to be created. If changes are made to the draft of the proposed ordinance as a result of the review and comments of the planning commissions or comments received by the governing body during the public hearing, the revised proposed ordinance must be referred again to the municipality's and the county's planning commissions, and a subsequent public hearing pursuant to public notice must be held.

Assuming that there are no additional changes to the draft of the proposed ordinance, it is ripe for adoption. The proposed ordinance must be voted on during an advertised public session of the governing body, and notice of the proposed enactment of the ordinance must be advertised in a newspaper of general circulation within the municipality. An attested copy of the proposed ordinance must be filed in the county's law library for public inspection. Following adoption of the ordinance, the municipality or any resident or landowner in the municipality has the option of advertising a notice of the adopted ordinance twice to limit the time period within which a challenge to the procedure in adopting the ordinance may be filed with the applicable court of common pleas. This limits the time period to 30 days from the date of the second notice being advertised.

Although the municipality is generally responsible for the procedural aspects of a rezoning or text amendment request, it is very important for the applicant, especially a developer, to monitor the procedure to ensure that it is done correctly. This will help applicants avoid procedural challenges to the rezoning or text amendment and the resulting project that is developed in accordance with the rezoning or text amendment in the future. Also, the applicant must consider the substance of its arguments to support the rezoning or text amendment. Keeping in mind that the adoption of the proposed ordinance is within the governing body's broad legislative discretion, and generally not subject to judicial review, the following should be considered in fashioning a rezoning or text amendment request:

- Is the proposed ordinance consistent with the municipality's comprehensive plan?
- Will the proposed ordinance, if adopted, constitute impermissible "spot zoning," which is generally the creation of a small island of property zoned inconsistently with its surrounding properties?
- In the context of a text amendment, will the proposed ordinance allow for noxious or other objectionable uses of property that are wholly unrelated to the applicant's property?
- Will the rezoning and subsequent development of the rezoned property create objectionable traffic or environmental conditions, and will those conditions be remedied through the land development plan approval process?
- How will the rezoning or text amendment and subsequent development of the property affect the municipality's tax revenue?

In sum, rezonings and text amendments are very effective procedures to increase the development rights on, and the value of, a property. However, due to the strict procedures in adopting these ordinances and their legislative nature, it is paramount for a developer to focus on both the procedural and substantive aspects of the adoption to ensure both legal and successful adoption of its proposed ordinance.

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