

Municipal Hearings and COVID-19

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In light of the COVID-19 pandemic, most Pennsylvania municipalities are delaying or canceling upcoming hearings and meetings. This raises the question of how applicants should approach hearing delays and cancellations, and how to keep their projects on track for approval.

The Pennsylvania Municipalities Planning Code (MPC) establishes certain timeframes for municipal bodies - such as zoning hearing boards - to conduct hearings and issue decisions. Specifically, a zoning hearing board must commence a hearing within 60 days from the date of receipt of the zoning application. From there, each subsequent zoning hearing must be held within 45 days of the prior hearing. The applicant's entire case must be concluded within 100 days of the first hearing. Opponents to an application must follow the same timeline when presenting their case. The board must then issue a decision within 45 days of the last hearing on the application. Exceptions to this timeline are only permitted if the applicant agrees to an extension in writing. If the timeline for hearings or decision announcement is not followed, it could result in a "deemed approval" of the application. That means the board is deemed to have approved the application for failure to follow the timeline requirements prescribed by the MPC.

COVID-19 is forcing municipalities to request written extensions of time from applicants and developers. Many zoning hearing boards are postponing their hearings to dates that do not fall within the permitted MPC timeframes. These postponements, delays, and cancellations are causing concerns from developers about the status of their projects and from municipalities about the potential for deemed approvals.

If a municipality has reached out to the applicant to secure a reasonable continuance of the hearing or proceeding and the applicant refuses to consent to such a delay, there could still be some assistance for the municipality.

There is some language in a few court cases to suggest that extenuating circumstances may permit a municipality to delay hearings outside of MPC requirements without resulting in a deemed approval.

However, there is no case law that addresses extenuating circumstances which warranted the unilateral delay of an MPC-required hearing by the municipality.

With the issues concerning municipalities and meetings, the Pennsylvania General Assembly is [considering a bill to address hearing and approval delays](#) during the COVID-19 crisis and other emergencies. The proposed bill would permit meetings to occur electronically during an emergency, as long as certain requirements are met in advertising and allowing public participation in the electronic meeting. In addition, if a municipality is unable to conduct meetings electronically, the bill would require that the statutory time limits for review, hearing and decision on any application be suspended or tolled as of the date of the emergency. If passed,

the bill would require municipalities to notify applicants of the emergency and suspension of its review, hearing or decision on the application during the emergency, and give applicants the right to request that meetings be held electronically. If the municipality agrees the meetings may be held electronically, then the timeline for review, hearing, and decision continues unaltered, but the applicant, municipality, and any other party receiving actual notice of the meeting must agree to waive any rights to challenge the proceedings under Section 5571.1 of the Judicial Code. It is unclear at this time whether this waiver applies only to procedural deficiency challenges or other more substantive challenges.

In the meantime, unless and until the bill is signed into law, we recommend municipalities continue hearings and proceedings within statutory time frames, even in these dire circumstances, unless the applicant or party to a hearing or proceeding grants an extension of time.

Importantly, applicants should work with the municipality in rescheduling hearings or other meetings to keep their project on track. Entering into a written agreement regarding the extension gives applicants the ability to spell out finite deadlines and hearing dates for their project and to have a better sense of when their project may be approved.

We are closely monitoring the proposed bill and will continue to update this alert with pertinent information.

If you are a developer wondering about how MPC regulations and the [COVID-19 pandemic](#) could affect your project, please contact [Reilly Noetzel](#) or anyone in the [Barley Snyder Real Estate Practice Group](#). If you are a municipality with questions on how to conduct and continue your legally required meetings during the pandemic, please contact [Keith Mooney](#) or anyone in the [Barley Snyder Municipal Industry Group](#).

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