WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 256

(Senator Snyder, original sponsor)

[Passed April 11, 2009; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-6-4a; and to amend and reenact §8A-7-2 of said code, all relating to urban growth boundaries; definitions; providing new procedures for annexation without election and annexation by minor boundary adjustment for municipalities in growth counties that have an adopted countywide zoning ordinance which includes urban growth boundaries; setting requirements; and permitting urban growth boundaries in zoning ordinances.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-6-4a; and that §8A-7-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.
PART III - ANNEXATION WITHOUT ELECTION.

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of article twenty, chapter seven of this code that want to annex additional property without an election.

(b) For purposes of this section only:

1. “Contiguous” means property that is next to, abutting and having a boundary that is coterminous with the municipality’s designated urban growth boundary. The length of a street, highway, road or other traffic or utility easement, streams, rivers or other natural topography are not to be used to determine if a property is contiguous: Provided, That the width of a street, highway, road or other traffic or utility easement, streams, rivers or other natural topography may be used to determine contiguous boundaries.

2. “Urban growth boundary” means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective twenty-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word “boundary” shall be used in the
name of the boundary. The boundary shall be established
by the county commission in agreement with each individ-
ual municipality regarding that municipality's boundary.
If the county commission and municipality cannot agree
upon the location or size of the boundary, either party may
file for declaratory judgment relief in the circuit court
which shall submit the dispute to mediation or arbitration
prior to final resolution by the circuit court. Once a
county has adopted an urban growth boundary by its
designation on an adopted county zoning map, the gross
area inside the boundary may not be reduced without
written consent of the municipality. The county commis-
sion shall review each urban growth boundary at a period
not to exceed ten years or upon request of the individual
municipality.

(c) Procedure for a municipality to annex property
within an urban growth boundary. –

(1) If the proposed property to be annexed by a munici-
pality is entirely within the municipality's designated
urban growth boundary, then the municipality may annex
without an election the proposed property pursuant to the
provisions of section four of this article. Agreement with
the county commission is not required.

(2) If the proposed property to be annexed by minor
boundary adjustment by a municipality is entirely within
the municipality's designated urban growth boundary,
then the municipality may annex without an election the
proposed property pursuant to the provisions of section
four of this article if the provisions of section five of this
article are followed, except that agreement with the
county commission is not required.

(d) Procedure for a municipality to annex property
within urban growth boundaries of two or more municipal-
ities. –
If the proposed property to be annexed by a municipality is partially or wholly within another municipality's urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) Procedure for a municipality to annex contiguous property outside an urban growth boundary.

(1) If the proposed property to be annexed by a municipality is outside the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission's agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least fifteen days prior to the public hearing, publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.
(f) Procedure for a municipality to annex noncontiguous property outside an urban growth boundary. –

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality's designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the municipality has the county commission's agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least fifteen days prior to the public hearing, publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission in which the property is located.
(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-2. Contents of zoning ordinance.

(a) The following must be considered when enacting a zoning ordinance:

(1) Promoting general public welfare, health, safety, comfort and morals;

(2) A plan so that adequate light, air, convenience of access and safety from fire, flood and other danger is secured;

(3) Ensuring attractiveness and convenience is promoted;

(4) Lessening congestion;

(5) Preserving historic landmarks, sites, districts and buildings;

(6) Preserving agricultural land; and

(7) Promoting the orderly development of land.

(b) A zoning ordinance may include the following:

(1) Regulating the use of land and designating or prohibiting specific land uses;

(2) Authorizing flexible planning standards to create, redevelop, reuse, protect and enhance the physical qualities of the community;
(3) Designating historic districts and regulating the uses of land and the design of buildings within the historic district;

(4) Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;

(5) Establishing design standards and site plan approval procedures;

(6) Dividing the land of the governing body into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired or any combination of both;

(7) Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;

(8) Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;

(9) Authorizing a process and standards for factory-built homes: Provided, That a governing body is prohibited from establishing a process and standards for regulating factory-built homes that is more restrictive than a process and standards for site-built homes;

(10) Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;

(11) Regulating traffic flow and access, pedestrian flow and access, parking and loading;

(12) Identifying flood-prone areas subject to periodic flooding and regulating with specific control the permitted
use, type of construction and height of floor levels above
base flood elevation permitted in the area so as to lessen or
avoid the hazards to persons and damage to property
resulting from the accumulation of storm or flood waters;

(13) Designating an airport area and establishing
land-use regulations within a specific distance from the
boundaries of the airport;

(14) Authorizing planned unit developments to achieve
more efficient use of land and setting standards and
regulations for the developments; and

(15) Identifying, establishing and designating urban
growth boundaries, as defined in section four-a, article
six, chapter eight of this code, for municipalities.

(c) A zoning ordinance shall:

(1) Create a board of zoning appeals;

(2) Specify certification requirements for zoning district
maps that are consistent with the governing body’s
comprehensive plan;

(3) Adopt procedures and requirements for
nonconforming land uses;

(4) Adopt procedures and requirements for variances;
and

(5) Adopt procedures and requirements for conditional
use permits.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within.............. approved.............. this the 11th
Day of....................., 2009.

Governor