

LYCOMING COUNTY PLANNING COMMISSION



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LYCOMING COUNTY PLANNING COMMISSION HANDBOOK 2026

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LCPC MEMBER ATTENDANCE POLICY

Members of the Lycoming County Planning Commission are expected to attend all scheduled public regular monthly and special LCPC meetings as well as all the meeting of all committees to which they are assigned. Members whose attendance record within a 12-month period is less than 66% of all scheduled public regular, special and committee meetings of the committees to which they are assigned will be asked to resign their position in order that the Commission is effective.

In the event that illness or other extenuating circumstances prevent such attendance the member is expected to communicate such reasons to the LCPC Chairman. Such factors will be considered. When attendance cannot be maintained but the member chooses not to resign it shall be the duty of the LCPC Chairman to contact such member and discuss the matter and report the matter to the LCPC Executive Committee who shall determine whether a report should be submitted to the Board of County Commissioners with a request that the member replaced.

Attendance at Seminars is optional as members can attend.

This policy was adopted at the July 19, 1990 Regular Lycoming County Planning Commission Meeting.

Effective January 1, 2011

LYCOMING COUNTY PLANNING COMMISSION

BY-LAWS

ARTICLE 1. NAME OF COMMISSION

The name of this organization shall be the Lycoming County Planning Commission, also referred to herein as Planning Commission.

ARTICLE II. AUTHORIZATION

The authorization for the establishment of a County Planning Commission is set forth in Article II of the Pennsylvania Municipalities Planning Code, Act 247 of 1968 as amended and reenacted by Act 170 of 1988, plus subsequent amendments and supplements thereto. Powers and duties are delegated to the County Planning Commission by Resolution of the Lycoming County Commissions and Section 209.1 of the Pennsylvania Municipalities Planning Code.

ARTICLE III. MISSION

To facilitate and promote the coordinated and harmonious management and/or development and protection of resources within Lycoming County for present and future needs. Intervene through proactive strategic planning initiatives on problems or opportunities and timely response to needs and issues identified by the County, municipalities, local agencies or community organizations and private citizens.

ARTICLE IV. MEMBERSHIP

Section 1. Membership shall consist of nine persons to be appointed by the Lycoming County Commissioners to staggered four year terms. Each member shall serve until the expiration of their term, or until a successor is appointed and qualified.

Section 2. An appointment to fill a vacancy shall be only for the unexpired portion of the term.

Section 3. All members of the Planning Commission shall reside in Lycoming County.

Section 4. Each member shall be entitled to one vote.

Section 5. An Ad Hoc Committee appointed by the Chairman shall make recommendations to the Lycoming County Commissioners regarding any

potential candidates to fill a vacancy on the Planning Commission and the Ad Hoc Committee's recommendation will be shared with the Planning Commission as a whole. To aid with this recommendation process, the Lycoming County Commissioners will provide the Ad Hoc Committee with the list and qualifications of the potential candidates for membership.

ARTICLE V. OFFICERS

Section 1. The Officers of the Planning Commission shall consist of a Chairman, Vice-Chairman and Secretary.

Section 2. The Chairman shall preside at all meetings and hearings of the Planning Commission and shall have the duties normally conferred by parliamentary usage on such officer as well as the signatory authority assigned by ordinance or statute. The Chairman, together with the Executive Director, shall sign contracts on behalf of the Planning Commission. The Chairman shall immediately notify the Board of Commissioners of any vacancy on the Planning Commission and request appointment of a replacement.

Section 3. The Vice-Chairman shall act for the Chairman in the Chairman's absence.

Section 4. The Secretary shall be responsible for the minutes and meeting records of the Commission with the assistance of Staff.

ARTICLE VI. ELECTION OF OFFICERS

Section 1. The officers shall be elected at the annual organizational meeting.

Section 2. Nominations for officers shall be recommended by a Nominating Committee appointed by the Chairman and also accepted from the floor at the annual organizational meeting. Election of the Chairman, Vice-Chairman and Secretary shall follow immediately thereafter.

Section 3. The candidate receiving a majority vote of all members of the Planning Commission shall be declared elected, and shall service for one year or until the successor shall take office.

Section 4. Vacancies in office shall be filled immediately by the election procedure specified in Sections 2 and 3 herein.

Section 5. No person shall serve more than two successive terms in any one office.

ARTICLE VII. MEETINGS

Section 1. An annual organizational meeting shall be held at the first regular meeting of each calendar year.

Section 2. Meetings will be held at the Lycoming County Executive Plaza, Williamsport, Pennsylvania, or at such other places as will facilitate the work of the Planning Commission, according to an annual schedule of regular meetings adopted at the annual organizational meeting. A majority at any meeting may change the date and place of said meeting.

Section 3. A quorum shall consist of a majority of members of the Commission. The number of votes necessary to transact business shall be a majority of the quorum, unless otherwise proved in these By-Laws or required by applicable law. Voting shall be by roll call when directed by the Chairman. A record of all votes shall be kept as a part of the Minutes.

Section 4. Special meetings may be called by the Chairman. It shall be the duty of the Chairman to call a special meeting when requested to do so by three or more members of the Commission. The Executive Director or Chairman shall send all members of the Commission written notice not less than twenty-four hours in advance of such special meeting.

Section 5. All meetings or portions of meetings at which official action is taken shall be open and advertised to the general public. However, the Commission may meet in closed session for purposes consistent with the Pennsylvania Open Meetings Act.

Section 6. Unless otherwise specified, Robert's Rules of Order shall govern the proceedings at the meetings of this Commission.

Section 7. The order of business at regular meetings shall be as directed by the Chairman, unless a majority votes to establish a specified order for a given meeting or as a standing procedure.

ARTICLE VIII. COMMITTEES

Section 1. The Planning Commission may create such standing and ad hoc committees as it may determine necessary. Committee members and the Committee Chair shall be appointed by the Planning Commission Chairman.

Section 2. Committees shall report, in summary fashion, at a regular meeting the actions taken and any recommendations needing approval by the full Planning Commission.

Section 3. All meetings or portions of meetings at which official action is taken shall be open and advertised to the general public. However, committees may meet in closed session for purposes consistent with the Pennsylvania Open Meetings Act.

ARTICLE IX.

EMPLOYEES AND CONSULTANTS

Section 1. Within the policy and budget established by the Lycoming County Commissioners, the Executive Director shall serve as the chief executive officer and be responsible for implementing LCPC policy and procedures, agency administration, management and effectiveness of programs, staff, consultants, financial affairs, contractual responsibilities, recognition of community needs and issues, agency initiatives, and duties assigned by the Planning Commission. The Executive Director shall serve as a voting representative of the County Planning Commission on the Williamsport Area Transportation Study Technical Committee and such other committees and boards as are authorized by the Planning Commission.

Section 2. The Planning Commission shall appoint and engage a Solicitor who shall advise the Planning Commission and Staff regarding matters of law and who shall represent the members and staff in the discharge of their official duties.

Section 3. The Executive Director shall hold briefing sessions with the Planning Commission to educate, inform and update the Planning Commission on the ongoing programs and activities of the Planning Department. Such briefing sessions shall be held at least quarterly or as otherwise requested by the Chairman of the Planning Commission. Such briefing sessions may be held prior to regularly scheduled Planning Commission meetings or as otherwise scheduled by the Chairman. In addition to such briefing sessions, the Executive Director and the Chairman may hold such other briefing sessions, to include participation by the Chairman in the monthly Department meetings, as are reasonably necessary, at the discretion of the Chairman, to keep the Planning Commission engaged and informed on the programs and activities of the Planning Department.

Section 4. The Planning Commission shall be consulted for its recommendations to the Lycoming County Commissioners regarding any annual or performance review of the Executive Director. Such recommendations shall focus on the interaction between the Executive Director and the Planning Commission and the Planning Commission's experience with the Executive Director's job performance. The Chairman may appoint an Ad Hoc Committee to issues recommendations regarding the Executive Director's review with input sought by the Ad Hoc Committee from all Planning Commission members.

ARTICLE X.

HEARINGS

Section 1. In addition to these required by law, the Commission may hold public hearings when it decides that such hearings will be in the public interest.

Section 2. Public Hearings shall be conducted by the Chairman or the Chairman's designee and an official record shall be maintained and reported to the Planning Commission at a regular meeting.

Section 3. Notice of the time and place of such hearings shall be publicized in accordance with applicable law, if any.

Section 4. The matter before the Commission shall be presented in summary by the Executive Director, or the Executive Director's designee, and parties in interest shall have the privilege of the floor upon recognition by the Chairman.

ARTICLE XI. OFFICIAL PLAN INTERPRETTIONS AND POLICY POSITIONS.

Section 1. Official Plan interpretations may be rendered by the Executive Director, subject to the review and approval of the full Planning Commission in the event of a question.

Section 2. At the direction of the Planning Commission, official policy positions on issues, proposed legislation, or other planning related matters shall be prepared by the Executive Director for review and approval by the Planning Commission. Said positions, once approved, shall be explained and negotiated on behalf of the Planning Commission by the Executive Director or a designee.

ARTICLE XII. CODE OF CONDUCT

The County Planning Commission shall adopt and each member shall sign the LCPC Code of Conduct.

ARTICLE XIII. ATTENDANCE

Attendance of members is necessary to maintain the effectiveness of the County Planning Commission. The County Planning Commission shall adopt a Member Attendance Policy, which shall be incorporated herein as an appendix. Such Policy shall establish a minimum percentage of all regular, special and assigned committee meetings to be attended and shall specify that failure to comply with that Policy shall be cause to request that member's resignation.

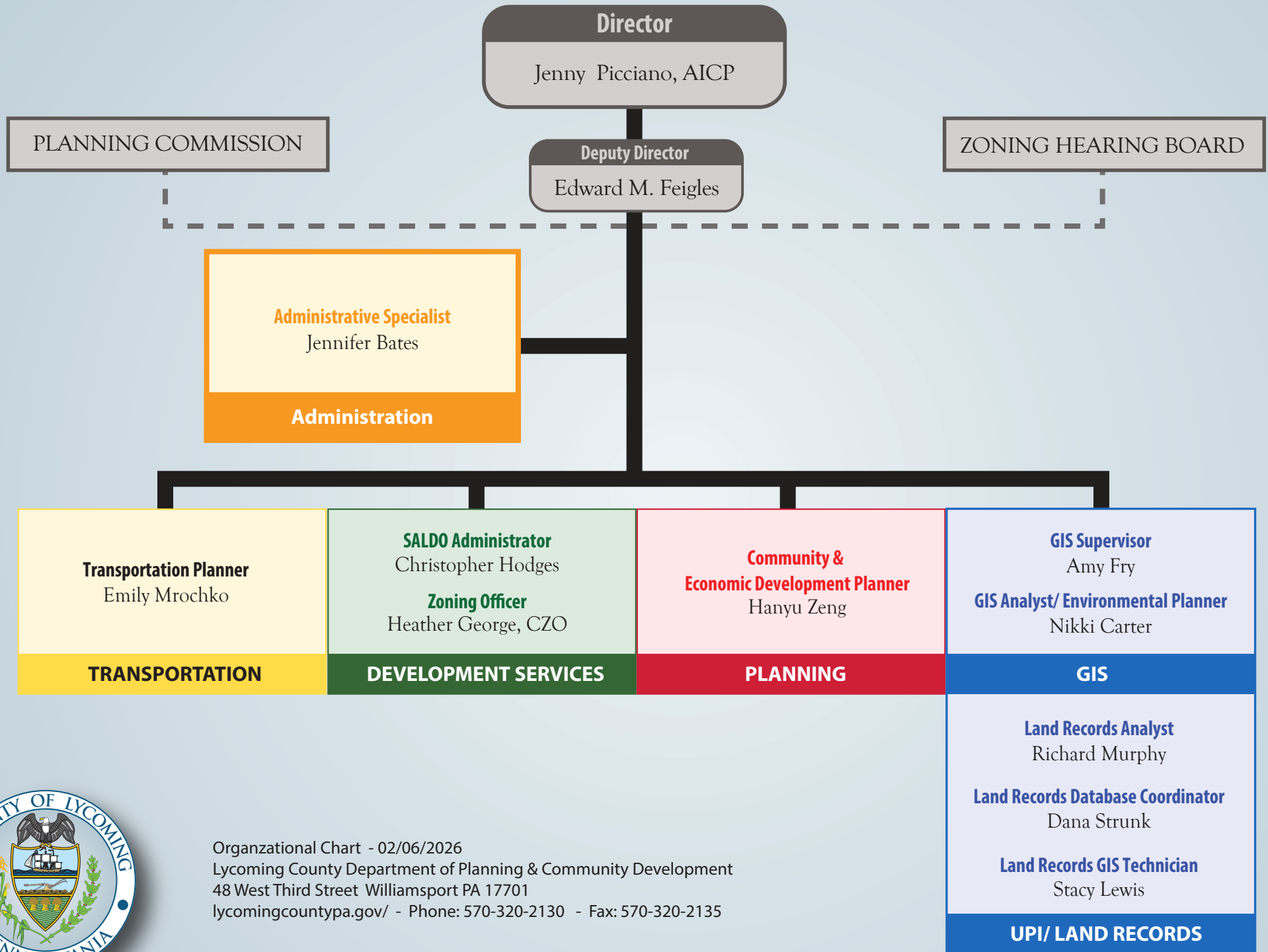
ARTICLE XIV. INDEMNIFICATION

County Planning Commission members, officers and employees are indemnified collectively and individually as County officials covered under the indemnification policy adopted by the Board of Commissioners.

ARTICLE XV. AMENDMENTS

These By-Laws may be amended by a two-thirds majority vote of the entire membership of the Planning Commission. Proposed amendments may be voted on by the Planning Commission at any regular or special meeting, provided that said amendments have been read at one prior regular or special meeting.

Lycoming County Department of Planning and Community Development

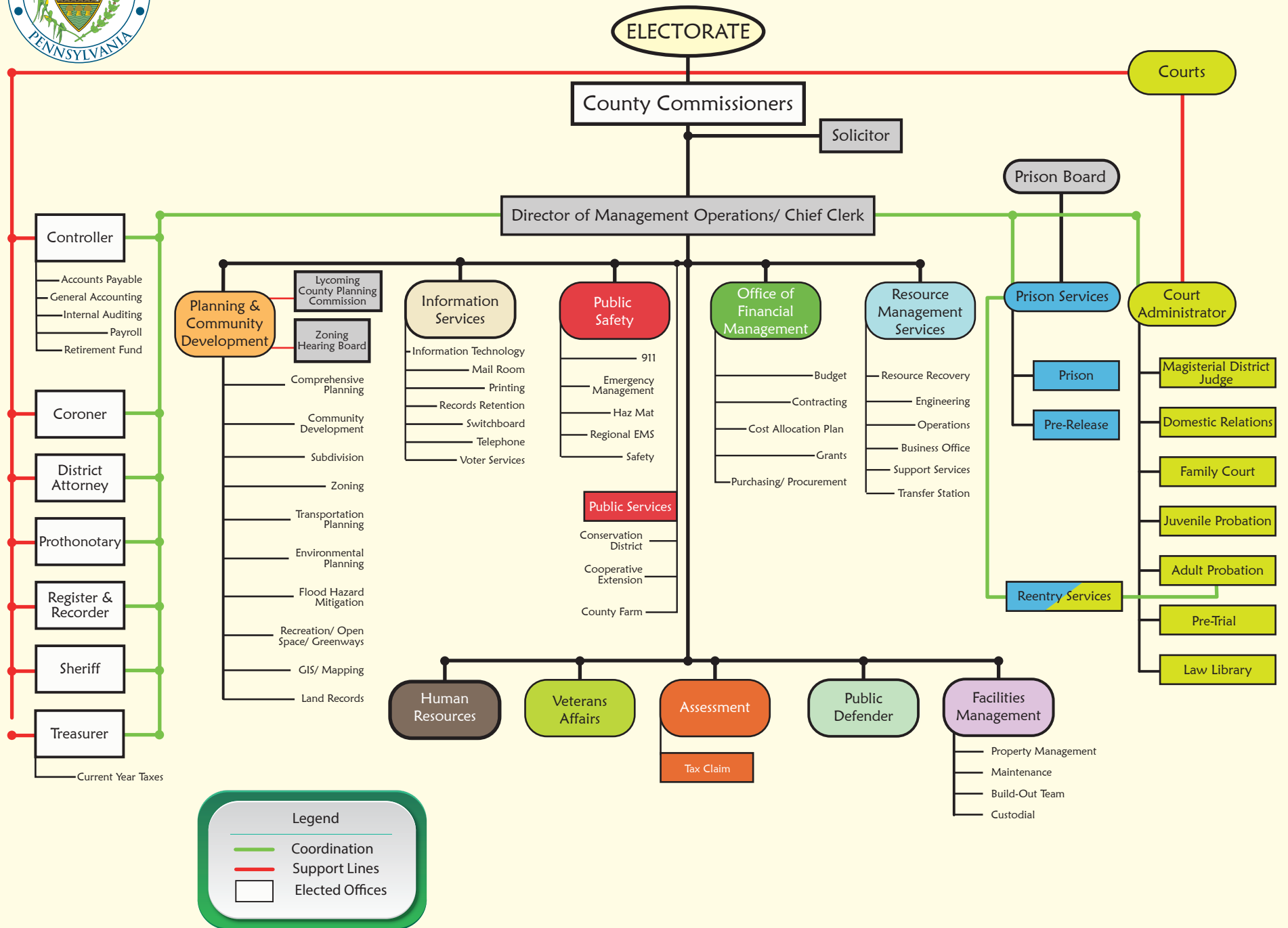


Organizational Chart - 02/06/2026
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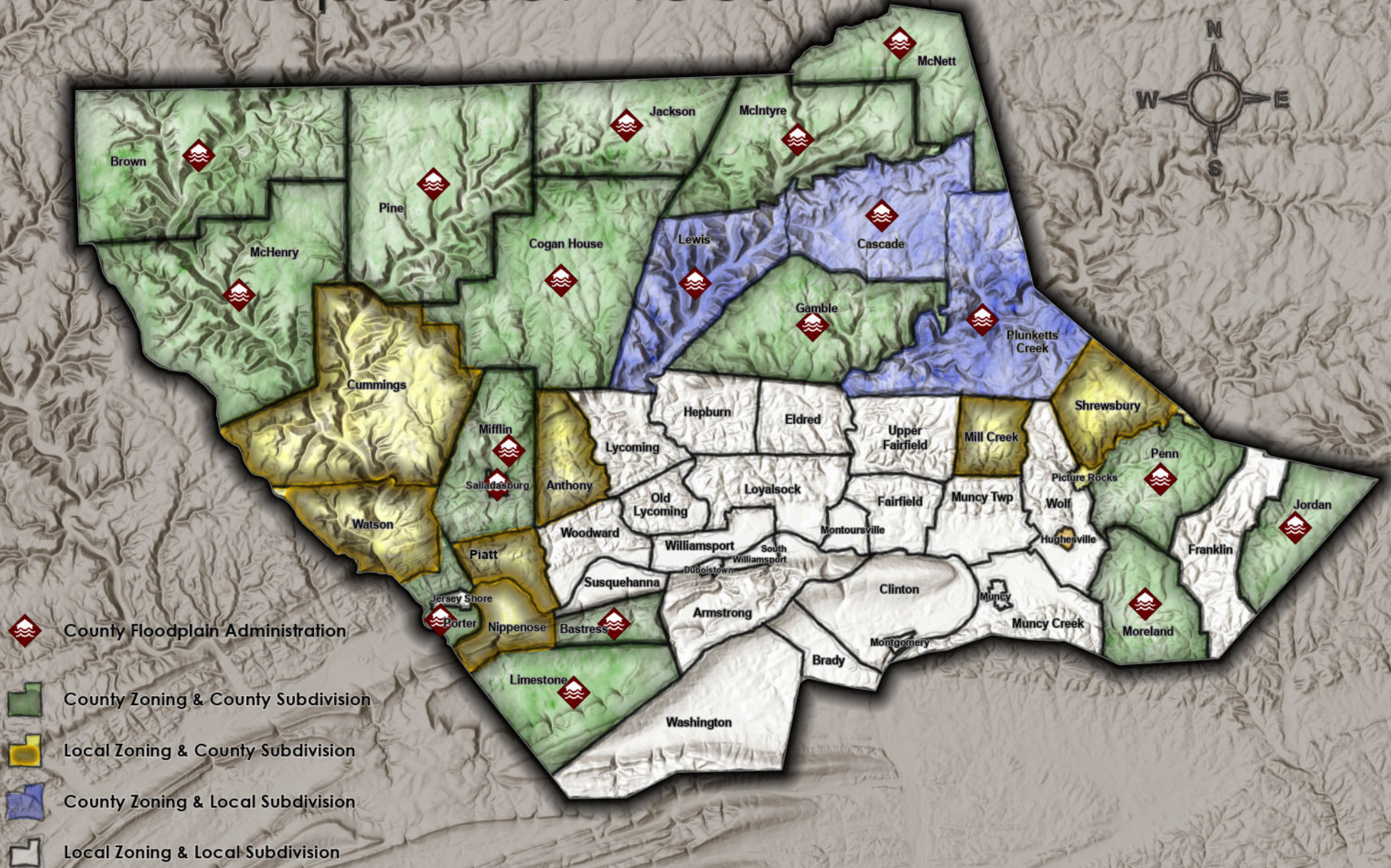




LYCOMING COUNTY ORGANIZATIONAL CHART



Lycoming County Municipal Services





SUNSHINE LAW BASICS

<https://www.openrecords.pa.gov/SunshineAct.cfm>

What agencies are subject to the Sunshine Act?

Any state or local government body and all sub-units appointed by that body that perform an essential government function and exercises authority to take official action or render advice. It can include boards, councils, authorities, commissions, and committees.

The Sunshine Act defines an "agency" as the "body and all committees thereof that are authorized to render advice or take official action" on behalf of the governing body.

What is considered a meeting?

The law defines a meeting as "any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action."

Note that the Sunshine Act applies any time a quorum deliberates agency business or takes official action, no matter the physical location of those deliberations or actions. The use of the term "prearranged" does not allow agencies to thwart the intent of the Sunshine Act simply by holding an unscheduled discussion about agency business.

What is considered an official action?

The definition of "official action" includes four categories:

1. Recommendations made by an agency pursuant to statute, ordinance or executive order.
2. The establishment of policy by an agency.
3. The decisions on agency business made by an agency.
4. The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

What is considered agency business?

The law defines agency business as "the framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities." Agency business specifically does *not* include administrative action (i.e., the execution or carrying out of previously approved official action or policies).

What is considered deliberation?

Deliberation is defined as the "discussion of agency business held for the purpose of making a decision."

What notice must an agency provide prior to public meetings?

For regular public meetings, agencies (including committees) must provide at least three days advance notice prior to the first regularly scheduled meeting of the calendar or fiscal year, along with all further scheduled meetings for the remainder of the calendar or fiscal year. The notice – which must include the date, time, and location of the meetings – must be printed in a paid newspaper of general circulation. A notice must also be posted at the location(s) where the meetings are to take place.

For a special or rescheduled public meeting, agencies must provide at least 24 hours advance notice, with the notice being printed in a paid newspaper of general circulation and posted at the location where the meeting is to take place.

Although not required by the Sunshine Act, including the purpose of a meeting, particularly a special meeting, is a good practice followed by many agencies. Some local government statutes, such as the Borough Code, require the subject to be included in special meeting notices. (See 8 Pa.C.S. §1006.)

Can the public comment during public meetings?

Yes. The Sunshine Act gives the public the right to comment on issues "that are or may be before the board." Agencies must provide a reasonable opportunity for residents and/or taxpayers to comment on an issue before a decision takes place.

Agencies are permitted to establish rules to oversee public comment by, for example, limiting the time for each commenter. The OOR encourages agencies to take care when imposing time limits on public comment. Three minutes is a common limit and may be more than enough at most public meetings. However, it may not be adequate at certain meetings, such as when a complex draft budget is being discussed. It can be a good practice to allow for flexibility in any policy imposing time limits on public comment, taking care to ensure that the agency does not show partiality to some commenters over others.

Agencies are also permitted to limit comment to residents and taxpayers of the area served by the agency.

Can the public ask questions during the comment period?

Yes. Although members of the agency are not *required* to provide an answer, it is a good practice to do so whenever possible. Answering questions can demonstrate a commitment to helping constituents and, in many cases, answering questions informally at a public meeting can reduce future requests under the Right-to-Know Law, which saves time and money for both the agency and the commenter / requester.

Can public meetings be recorded?

Yes. The Sunshine Act allows meetings to be recorded with an audio recorder or a video recorder. It also allows agencies to issue reasonable rules concerning the use of recording devices in order to avoid any disruptions. However, such rules cannot be an attempt to prevent a member of the public from recording a meeting.

The law does not require the recording of a public meeting to be announced in advance; however, it may be helpful for the chairperson in the opening statements to alert the public that the meeting might be recorded.

Must agencies keep minutes of their public meetings?

Yes. Agencies are required to record the time, date, and place of their meetings; the names of the members present, the substance of all official action taken during the meetings, and a record of how each individual voted. The minutes must also include the names of all citizens who appeared officially and the subject of their testimony.

What if a quorum is not present at the public meeting?

An agency cannot legally take official action if a quorum is not present. A quorum is the minimum number or majority of voting members of an agency that must be present in order for the agency to conduct business. The number of members needed to form a quorum varies by the type of agency involved.

Can agency members participate in a meeting via telephone or video conference?

Yes. Agency members may participate in meetings by telephone or video conference. In addition, members participating in this manner count for purposes of determining whether a quorum is present. See *Babac v. Penn. Milk Marketing Bd.*, 613 A.2d 551 (Pa. 1992). ("[A] quorum of members can consist of members not physically present at the meeting but who nonetheless participate in the meeting and ... such quorum can take official action, provided that, the absent

members are able to hear the comments of and speak to all those present at the meeting and all those present at the meeting are able to hear the comments of and speak to such absent members contemporaneously[.]")

The above does not apply to boroughs and First Class Townships. Per the codes governing those municipalities, a quorum of the council/commission must be physically present to conduct official business. Once the quorum is met, however, any additional members may participate remotely.

Relevant Codes:

First Class Township Code: 53 P.S. §§ 55702(b)-(b.1).

Borough Code: 8 Pa. C.S. §§ 1001(b)-(c).

Can an agency have a closed meeting?

An agency may discuss certain matters in Executive Session, which is not held in public. Section 708 of the Sunshine Act enumerates seven reasons an agency may hold an Executive Session:

1. Discussing personnel matters;
2. Holding an information, strategy and negotiation session related to the negotiation of a collective bargaining agreement;
3. Considering the purchase or lease of real property;
4. Consulting with an attorney about active or pending litigation;
5. Discussing agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law;
6. Discussing certain academic matters (this reason is specifically limited to certain institutions of higher education); and
7. Discussing certain public safety issues if disclosure of the information discussed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection.

The specific reason for an Executive Session must be announced in the public meeting either before or directly after the Executive Session. See *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305 (Pa. Cmwlth. 1993), ("[T]he reasons stated by the public agency must be specific, indicating a real, discrete matter").

Closed gatherings may also be held "solely for the purpose of collecting information or educating agency members about an issue." See *Smith v. Township of Richmond*, 623 Pa. 209, 223 (Pa. 2013) ("[T]he Supervisors' four closed-door gatherings did not violate the [Sunshine] Act because they were held for informational purposes only and did not involve deliberations").

Can an official action be taken at a closed meeting?

No. Official action cannot be taken during Executive Session or a closed gathering. All official actions must be taken during the public portion of a meeting.

Can agency members discuss agency business via email and/or social media?

It's important to draw a distinction between an individual agency member discussing agency business with members of the public and multiple agency members discussing agency business among themselves.

An agency member is permitted to discuss agency business with members of the public, whether by email or social media (or in person, on the telephone, via postal mail, etc.). In many cases, such communications are public records available under the Right-to-Know Law.

However, voting members of an agency are not permitted to deliberate except at a public meeting. In other words, agency members exchanging opinions about an upcoming vote or encouraging other agency members to vote a particular way in an email discussion or a discussion held via social media would violate the Sunshine Act.

What legal remedies are available for violations of the Sunshine Act?

Section 710.1(c) of the Sunshine Act permits anyone attending a public meeting to object to a perceived violation at any time during the meeting. Additionally, for state agencies, a member of the public can file a legal challenge with the Commonwealth Court. For local agencies, a member of the public can file a legal challenge with the local Court of Common Pleas.

Any legal challenge must be filed with the appropriate court within 30 days of the public meeting in which the alleged infraction occurred. If the alleged infraction occurred during a closed meeting, the legal challenge must be filed within 30 days of the discovery of the infraction, as long as it is no longer than one year from when the meeting was held.

The person alleging the infraction bears the burden of proof. See *Smith v. Township of Richmond*, 623 Pa. 209, 223 (Pa. 2013) ("[I]n view of the presumption of regularity and legality that obtains in connection with proceedings of local agencies, the challenger [of an agency meeting] bears the burden to prove a violation") (internal quotation and citation omitted).

In December 2020, a Judge in Westmoreland County found that agency officials violated the Sunshine Act and ordered them to take a training course from the OOR.

Are there penalties for violating the Sunshine Act?

Yes. In addition to being assessed attorneys' fees, any member of an agency who is found to have willfully violated the Act can face criminal charges and subject to fines of \$100 to \$1,000

for the first offense, and \$500 to \$2,000 for the second offense. Any fine must be paid personally; an agency cannot pay the fine.

A court can also award attorney fees to the prevailing party if the court determines that either (1) an agency willfully or with wanton disregard violated the Sunshine Act or (2) the legal challenge was of a frivolous nature or was brought with no substantial justification.

To the extent anyone knows or suspects that a criminal violation of the Sunshine Act occurred, the County District Attorney in which the agency is located has jurisdiction to decide whether prosecution of such complaints is appropriate.

What are the agenda requirements for the Sunshine Act?

Senate Bill 554 amended the Pennsylvania Sunshine Act to include the requirement that agencies post the agenda for all public meetings at least 24 hours in advance. This change took effect August 29 2021 and applies to all agencies covered by the Act.

The agenda requirement applies to all regular and Special public meetings, but does not include work sessions, conferences and Executive sessions where official action is not permitted.

The agenda should include all issues to be deliberated on and any planned official action, such as votes.

If the agency has a website or other social media platform that is publicly accessible, the agenda must be posted there. Postings are also required at the agency's offices, at the meeting site; and copies of the agenda must be available for the public at the meeting itself.

An agency can change the agenda within the 24-hour threshold if the changes are de minimus, involve no expenditure of funds, and don't entail entering into a contract, or if an agency agrees to make changes by majority vote, announcing the reasons for the change prior to the vote and posting an updated agenda within one business day.

The reason for the change must be announced prior to any official action, including a vote, the amended agenda must be posted within 24 hours after the meeting, and the meeting minutes must reflect that the change was made. For recent changes to the law surrounding agendas, see *Coleman v Parkland School District*.

How specific should agenda items be to conform with the new Sunshine Act requirements?

Until the courts weigh in further, Senate Bill 554 combined with existing Sunshine Act-related case law provides some initial perspective and guidance. What is often referred to as the "Reading Eagle Case", cited below, addresses the specificity of an agenda used by the agency when announcing the reasons for entering into Executive Sessions. Perhaps the best reference

is the words of the Commonwealth Court, which, in its ruling, cited language from a similar decision from the Supreme Court of Mississippi (highlighting added):

“The reason given, of course, must be meaningful. It must be more than some generalized term which in reality tells the public nothing. To simply say "personnel matters" or "litigation" tells nothing. *The reason stated must be of sufficient specificity to inform those present that there is, in reality, a specific, discrete matter or area which the board had determined should be discussed in executive session.* . . . When a board chairman tells a citizen he may not hear the board discuss certain business, he is taking liberties with the rights of that citizen, and the reason given for this interference must be genuine and meaningful, and one the citizen can understand. To permit generalized fluff would frustrate the very purpose of the Act.”

Reading Eagle Co. v. Council, 156 Pa. Commw. 412, 416-17 (Pa. Cmmw. Ct. 1993)

It is advisable to use the same standard for agendas, whereby the description of the agenda item must be “of sufficient specificity to inform...that there is, in reality, a specific, discrete matter or area which the board has determined should be discussed (deliberated and/or decided by official action).” In sum, avoid general cryptic terms and provide as many specific concrete details as possible.

LOCAL LAND USE CONTROLS IN PENNSYLVANIA

PLANNING SERIES #1

Sixth Edition | October 2020



Harrisburg, PA

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I. Local Land Use Controls in Pennsylvania

Preface

The *Local Land Use Controls in Pennsylvania (Planning Series Publication #1)* is one of a series of 10 planning publications produced by the Governor's Center for Local Government Services (Center) as a means to educate and train both professionals and non-professionals on the ways that planning and land use management are achieved within the commonwealth. The planning publications were first developed in the 1970s and in subsequent editions have been revised to incorporate differences in the overall planning viewpoint, offer up-to-date best practices and reflect the latest changes in Pennsylvania planning law. Each publication addresses a specific planning or land use method enabled through the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as *reenacted and amended*, 53 P.S. § 10101, *et seq.*, and used by municipalities throughout the commonwealth.

The Center's 10 Planning Series Publications are as follows:

- **No. 1 – Local Land Use Controls in Pennsylvania**
- No. 2 – The Planning Commission
- No. 3 – The Comprehensive Plan
- No. 4 – Zoning
- No. 5 – Technical Information on Floodplain Management
- No. 6 – The Zoning Hearing Board
- No. 7 – Special Exceptions, Conditional Uses and Variances
- No. 8 – Subdivision and Land Development in Pennsylvania
- No. 9 – The Zoning Officer
- No. 10 – Reducing Land Use Barriers to Affordable Housing

The *Local Land Use Controls in Pennsylvania* publication provides an inventory and a basic summary of the fundamental community planning and land use regulatory tools that are available to Pennsylvania municipalities as a means to help achieve their community planning and development objectives as expressed in their comprehensive plans. Such tools are summarized based on the authority granted to municipalities under the Pennsylvania Municipalities Planning Code (MPC). However, related land use regulatory tools authorized through other enabling authorities are discussed given their applicability to community planning and development activities as authorized under the MPC.

II. Introduction

Land use is a fundamental planning issue that has a profound impact on communities and citizens. The use of land (i.e., natural and manmade and for public and private enjoyment) and its arrangement and intensity determines the character and identity of the community, and contributes to its citizens' health, safety, and well-being. Development represents a significant private investment, and it impacts the fiscal health of government as a generator of tax revenue and a cost burden for utilities and public services.

Land use is also inextricably tied to the ownership of property and the ability to adapt or develop it for some profitable or desirable use is a fundamental right. However, states have the power under the U.S. system of government, in order to protect the public interest, to define and limit property rights, including the right to use the land and its natural resources. Derived from this authority, local governments are empowered to regulate the use of land through zoning and to review and approve land subdivision and development.¹

To this end, Pennsylvania municipalities are empowered through their governing codes and the MPC to exercise their land use planning and regulation authorities, and the tools in this publication outline the various technical means to do so.

Statutory Overview of Authority

In Pennsylvania, the power and responsibility to plan for land use and its regulation lies substantially with local government, including counties, given that the General Assembly delegated to local governments a portion of the "police power" with respect to planning and land use controls to protect public health, safety, and general welfare. Much of this power and responsibility is granted through the Municipalities Planning Code (MPC), however, a number of other state enabling legislation provide additional forms of land use controls to municipalities. These include, but are not limited to, the following:

- Pennsylvania Construction Code Act (Act 45 of 1999, 35 P.S. §§7210.101- 7210.1103) – The Pennsylvania Legislature's passing of the Pennsylvania Construction Code Act paved the way for the enactment of the Uniform Construction Code (UCC) in April 2004 that replaced and standardized the various forms of building codes administered by municipalities.
- Pennsylvania Sewage Facilities Planning Act (Act 537 of 1966, 35 P.S. § 750.1, et seq.) – Act 537 requires that official sewage plans provide for the orderly extension of community interceptor sewers in a manner consistent with the comprehensive plan developed under the MPC.
- Pennsylvania Storm Water Management Act (Act 167 of 1978 P.L. 864, 32 P.S. § 680.1, et seq.) – Act 167 requires counties to prepare and adopt watershed based stormwater management plans, and it also requires municipalities to adopt and implement ordinances to regulate development consistent with these plans.
- Pennsylvania Flood Plain Management Act (Act 166 of 1978 P.L. 851, No. 166, 32 P.S. § 679.101, et seq.) – Act 166 authorizes a comprehensive and coordinated program of floodplain management, based upon the National Flood Insurance Program, designed to preserve and restore the efficiency and carrying capacity of the streams and floodplains of the commonwealth;

The MPC is, for the most part, a community planning "enabling" act and gives certain powers with flexibility to a municipality in shaping its own planning and land use programs.

In Pennsylvania, the Municipalities Planning Code is the uniform planning and land use enabling law for all municipalities and counties, including those under home rule , but not for the cities of Philadelphia (consolidated with Philadelphia County) and Pittsburgh.²

No municipality is mandated by the MPC to plan or zone, although Section 301.4 of the MPC requires counties to adopt a comprehensive plan. Many provisions in the MPC are devoted to procedural matters largely guaranteeing that public notice is given. This aids in increasing citizen awareness and participation in land use matters. If a municipality misuses any delegated power, the MPC outlines the steps landowners or persons aggrieved can follow to have their day in court.

A municipality may only exercise such powers and authorities as are granted to it by Pennsylvania's legislature and such powers are to be strictly construed. This principle of strict construction of municipal powers is commonly known as "Dillon's Rule," a name derived from a 19th century legal treatise titled *Municipal Corporations* authored by the Pennsylvania Supreme Court as follows:

Nothing is better settled than that a municipal corporation does not possess and cannot exercise any other than the following powers: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable. Any fair, reasonable doubt as to the existence of power is resolved by the courts against its existence in the corporation, and therefore denied.

Authorized powers of a municipality also are limited by operation of an equally important legal doctrine known as preemption. Preemption generally takes one of three forms: (i) express or explicit preemption where the language of the law specifically bars local authorities from acting on a particular subject matter; (ii) conflict preemption where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the state statute, and (iii) field preemption, where analysis of the entire statute reveals the legislature's implicit intent to occupy the field completely and to permit no local enactments. The MPC expressly provides for the preemption of local zoning regulation by certain state laws listed in Section 603(6). The MPC identifies the state laws and the subjects regulated by those laws to include surface mining, coal extraction, oil and gas operation, nutrient management plans for concentrated animal operations, agricultural security areas, and protection of agricultural uses from nuisance suits.

One important point to be made is that, even though the authority to adopt and administer planning control measures or regulations has been delegated to municipalities under the police powers, it is required that there be a connection between the specific purpose of a regulation or ordinance provision and the police power objective. A municipality must be prepared to document that the regulation bears a reasonable relationship to the welfare of the public and that the measure or control in fact advances a legitimate public interest. That interest must not be arbitrary, but rather supported by comprehensive analysis of community development goals and objectives.

Private Property Rights, Regulations, and Environmental Stewardship

The right of an individual to own and use real property is fundamental and constitutionally protected. Such right is not unlimited. Under common law, the right to use one's property is limited by two companion principles. "So use your own property as not to injure your neighbors" and "no individual has a right to use his property so as to create a nuisance or otherwise harm others." In addition to these common law principles, private property rights must yield to the municipality's exercise of its police powers to protect the public health, safety, morals, and welfare.

However, regulation that "goes too far" is an unreasonable exercise of police powers and not permitted. In establishing its land use regulations, a municipality must strike a balance between the preservation and exercise of private property rights and the municipal exercise of police powers in a constitutionally-permissive manner.

Not only must regulations be authorized, reasonably, and not excessive, such regulations must be capable of being understood by the regulated public. Section 603.1 of the MPC provides that "[i]n interpreting a zoning ordinance to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction."

Land use regulation does not simply regulate the built or developing environment. Another key element of land use regulation is the protection and preservation of natural and historic resources. Sections 603(b)(5), 603(c)(7), 603(g)(2), 604(1), 605(2)(iii), and 605(2)(vi) of the MPC specifically authorize municipalities to address valuable natural and historic resources in land use planning and regulation. As discussed above, such regulation must be balanced with the right of a property owner to develop property as he or she desires.

Protection and preservation of the natural and historic resources also has a constitutional dimension. In 1968, in an unprecedented demonstration of public support, Pennsylvania's voters ratified the addition of Article I, Section 27 to Pennsylvania's Constitution. Commonly known as the "Environmental Rights Amendment," it states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources the commonwealth shall conserve and maintain them for the benefit of all the people.

Application of the Environmental Rights Amendment was recently tested before the Pennsylvania Supreme Court in *Robinson Township et al v. Commonwealth of Pennsylvania*, 2013 Pa. LEXIS 3068 (Pa. 2013). The Supreme Court concluded that sections of Act 13 that sought to establish statewide uniform zoning of oil and gas operations and preemption of conflicting local zoning were "incompatible with the commonwealth's duty as trustee of Pennsylvania's public natural resources" under the Environmental Rights Amendment and unconstitutional.

Long before Robinson, Pennsylvania courts had established that the duty of trustee under the Environmental Rights Amendment extends equally to the municipality. In light of the Supreme Court's recent decision in Robinson and expected future litigation of the Environmental Rights Amendment against either state or municipal land use regulation (or lack thereof), municipalities are strongly encouraged to consult with their solicitors regarding local regulation impacting natural and historic resources.

Comprehensive Plan

As stated earlier, land use regulations must serve the public health, safety, and welfare, and advance a legitimate public interest which must not be arbitrary. A comprehensive plan is the principal means for a municipality to set forth community development goals and objectives, based on a comprehensive analysis, to articulate the public interest. A comprehensive plan is the foundation on which the various land use tools discussed in this publication can be built.

A comprehensive plan involves a process of analysis of a municipality's population, economy, land use, housing, transportation, and community facilities; proposal of recommendations for the municipality's future development, growth, and well-being; and work sessions with municipal officials, community groups, and citizens to determine the community goals and objectives. A comprehensive plan also involves preparation of a document containing text, charts, and maps which show the analysis done and the public interest stated in community goals and objectives and recommended policies and principals.

The governing body of a municipality may adopt the comprehensive plan and give it status as an official statement of the municipality. That said, a comprehensive plan itself is not law or regulations. In its traditional form the plan is a guide; it is only advisory or, in the term used by Pennsylvania courts, "recommendatory." The MPC reinforces this in Section 303(c) which states, "Notwithstanding any other provision of this act, no action by the governing body of a municipality shall be invalid nor shall the same be subject to challenge or appeal on the basis that such action is inconsistent with, or fails to comply with, the provision of a comprehensive plan." However, adopted comprehensive plans do have legal strength in that courts rely on them as an expression of public interest and community goals in support of land use regulations.

Article III of the MPC prescribes the content for a comprehensive plan which must include:

- A statement of community development objectives
- Plans for a variety of subject matters, including land use, housing, transportation, community facilities and utilities (including water supply), and natural and historic resources, plus how these plans interrelate to each other
- Short- and long-range implementation strategies
- Compatibility of the plan with neighboring municipalities, and consistency of the plan with the county comprehensive plan

A municipal planning commission, planning department, or where neither exist a planning committee of the governing body is responsible for preparing the comprehensive plan. Municipalities typically employ professional planning help in the form of in-house staff or contracted consultants to undertake the work.

Before adopting a plan, the planning agency must hold at least one public meeting and the governing body must hold at least one public hearing, each pursuant to public notice. (The MPC has specific definitions and requirements for public meeting, public hearing, and public notice.) Beyond the minimum requirements, a municipality and its planning agency will do well to have an inclusive process that welcomes input and ideas from citizens, businesses, and community groups in order to result in a plan that best reflects the public interest and aspirations.

In addition to stating goals and objectives to serve as the legal foundation for land use regulations, comprehensive plans also provide practical action plans to solve current problems, meet pressing needs, and capitalize on opportunities to improve the community for the future as a place to live or have a successful business. The best comprehensive plans outline detailed action steps and how to finance them, and recruit partners with expertise and resources to help implement the plan.

For more information on comprehensive plans, please see Planning Series Publication #3 The Comprehensive Plan.

REFERENCES

1. John R. Nolon, Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control, 23 Pace Envtl. L. Rev. 821 (2006). Accessed online on June 7, 2014 at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1458&context=lawfaculty>.
2. Article XV, Section 1 of the Pennsylvania Constitution of 1874, the First Class City Home Rule Act, Act of April 21, 1949, as amended by the Act of June 1, 1995, 53 P.S. §§ 13101 et seq., and the home rule charter adopted under those enabling authorities are the source of authority for Philadelphia's municipal planning and land use regulation.

III. Land Use Ordinances

The MPC defines “land use ordinance” as “any ordinance or map adopted pursuant to the authority granted in Articles IV [Official Map], V [Subdivision and Land Development], VI [Zoning], and VII [Planned Residential Development].” Land use ordinances are legislative actions exercised by the governing body of a municipality. To enact or adopt a land use ordinance requires that a simple majority of the governing body, present and participating in the voting, vote in the affirmative to adopt an ordinance. With proper notice to the public, required reviews, and adherence to the procedures prescribed in the MPC, a governing body can take legislative action to adopt, amend, or repeal a land use ordinance anytime.

Land use ordinances should be the end product of a public planning process that results in establishing goals and objectives for the community. Citizen participation is an essential ingredient in formulating goals and objectives. Preparation of a comprehensive plan helps to defend against charges of arbitrariness or unreasonableness as land use regulations are implemented. A comprehensive plan can provide documentation as to why a municipality enacted certain restrictions. Land use ordinances and other local ordinances are utilized to help implement the comprehensive plan for the community.

Subdivision and Land Development

The subdivision and land development ordinance is the most commonly used land use ordinance in Pennsylvania. “Subdivision” refers to the creation of new lots or changes in property lines, while “land development” involves construction of public or private improvements to land. Subdivision and land development regulations offer municipalities a degree of protection against unwise, poorly planned growth. The community ensures proper placement of public improvements such as new roads, water and sewer lines, and drainage systems. Regulations also provide that improvements are installed and paid for by the developer and not the taxpayers. By requiring review and inspection reports from the municipal engineer, local officials guarantee that public improvements are properly designed and constructed.

Ninety percent of the municipalities in the state regulate the subdivision of land or are covered by a county ordinance. Just over half of the municipalities have enacted their own ordinance, and about 1,000 rely on a county level ordinance for protection.

Under its authority to regulate “land development,” a municipality can regulate any improvement of land involving two or more residential buildings or any nonresidential building even if they are located on an existing lot. Different types of development require different standards (i.e., manufactured home parks, office complexes, shopping centers, multifamily residential, etc.). Therefore, standards should be established for each type of development. To be valid, standards must be reasonable, objective, and whenever possible, quantifiable.

In recent decisions, the Commonwealth Court has determined that certain development of land (telecommunication towers, billboards) does not qualify as “land development” because they do not involve traditional indices of development (large-scale development, roads, parking facilities, common open space, utilities, etc.). See *Upper Southampton Twp v. Upper Southampton Township Zoning Hearing Board*, 934 A.2d 1162 (Pa. 2007).

By adopting standards for land development, communities can avert complaints about stormwater runoff, hazardous traffic patterns, limited parking, and dangerous egress and ingress locations. It is less expensive and much easier to identify potential problems prior to construction rather than taking expensive corrective actions after construction is completed. Failure to control development today creates problems that must be coped with for decades. Municipalities can require the developer to do it right and pay for public facilities located on the site if specific provisions and requirements are spelled out in the local ordinance.

Poorly planned and constructed developments are painful to live with and expensive to correct. Lack of municipal inspections can result in substandard public improvements that could prove to be a subsequent financial hardship to the municipality. A well informed governing body and planning agency can avoid these pitfalls and can encourage sound development practices.

No municipality should strive to unnecessarily increase housing costs. However, housing can be greatly impacted by excessive, redundant and unreasonable standards that add unnecessary costs to residential developments. For example, excessive street widths and construction standards add costs to each dwelling unit. Development standards should be tailored to meet the size and intensity of the development. By downsizing the street width, costs of other improvements such as utilities and stormwater control, can be reduced. Downsizing also means that there is less to maintain, thus enabling a municipality to reduce the costs of maintenance such as snow plowing wide streets.

Manufactured Home and Manufactured Home Park Regulations

Manufactured home parks differ significantly from traditional single-family subdivisions. A manufactured home park is a land development that may be under single ownership or control much like a planned residential development. Common areas for open space, recreation, or other services may be provided and maintained by the owner. Lot sizes are usually smaller, and lots are usually leased or rented rather than purchased. Water and sewer systems that are not public are centralized for the entire park. These design and layout considerations or factors make it advisable to prepare and enact separate and distinct standards for regulating manufactured home parks.

Each municipality has a responsibility to provide for a range of housing opportunities. Each municipality should ensure that adequate manufactured home park provisions are enacted to accommodate this type of affordable housing.

Section 501 of the MPC requires that provisions regulating manufactured home parks must be set forth in separate and distinct articles of any subdivision and land development ordinance. Manufactured home parks can also be accommodated by planned residential development provisions incorporated in zoning ordinances. However, most manufactured home park provisions are, in fact, used in conjunction with subdivision and land development regulations.

A single manufactured home that is to be erected on a privately owned lot deserves to be treated as a single-family detached residence subject only to those standards that otherwise apply to conventionally built homes.

Zoning

Zoning is the second most common type of land use ordinance. Approximately sixty-eight percent of Pennsylvania's municipalities have enacted zoning regulations. Thirteen counties have enacted some type of county level zoning. In total 1,740 municipalities have zoning regulations in effect.

MUNICIPAL ZONING IN PA (2019 DCED Survey)

As of 2019	Number	% of Total
Total municipalities with zoning	1740	67.9%
Municipalities with own zoning ordinance	1603	62.6%
Municipalities under county zoning ordinance	137	5.3%
Total municipalities without zoning	820	32.1%

Zoning is a tool a community may utilize to regulate the use of land and the location and intensity of development. It is initiated by the adoption of a zoning ordinance designed to protect public health, safety, and welfare and to guide growth. A zoning ordinance consists of two parts - the written ordinance and a map of the various zoning districts. The text of the ordinance contains community development objectives and necessary technical provisions to regulate the use of land and structures. The text also contains written provisions for bulk, height, area, setback, density, and other standards. The zoning map delineates the boundaries of the specific districts or zones created by the ordinance.

In basic terms, a zoning ordinance divides all land within a municipality into zones or districts, and creates regulations that apply generally to the municipality as a whole, as well as specific individual districts. In its preparation stage, the zoning ordinance should incorporate the existing and future needs documented in the comprehensive plan. Zoning should allow all lawful types of land uses and developments, including new or evolving uses.

This does not mean that all development, regardless of potential negative impacts, must be given approvals and cannot be required to meet standards. However, zoning standards should be reasonable and not excessive. Unnecessarily stringent standards often contribute to unhealthy community trends such as unaffordable housing. Restrictions should be scrutinized for reasonableness before they are enacted.

A zoning ordinance is enacted – or amended – by the elected governing body of the municipality. The MPC contains requirements for notification and review by the public and other parties specified in the MPC before enactment or amendment of the ordinance. Day-to-day administration is handled by a duly appointed zoning officer who determines if proposed uses of property are permitted by the zoning district in which they are located, and if proposed buildings and structures comply with lot size and lot requirements and any other requirements in the zoning ordinance. Zoning administration also involves a zoning hearing board, which meets as needed to hear and decide requests for relief from strict application of the requirements (variances), uses that require special approval, appeals from zoning officer determinations, and certain substantive validity challenges to a zoning ordinance.

Zoning Techniques

The MPC authorizes a variety of zoning techniques to help Pennsylvania's diverse municipalities achieve the unique community character and development goals they desire. The MPC contains provisions to encourage innovation and promote flexibility, economy, and ingenuity in development or redevelopment. Municipalities are making greater use of these creative techniques and moving away from traditional zoning that segregates uses by district (e.g., R – Residential, C – Commercial, I – Industrial, etc.) and generally requires a rigid minimum lot size for each use permitted within a defined district. Several of these techniques are summarized below and discussed in more detail later in this publication.

- **Mixed Use Zoning** – Mixed use zoning permits and encourages the combination of residential, commercial, cultural, institutional – and where appropriate, industrial uses – not only within the same zoning district area, but often within the same building. Mixed use zoning is generally closely linked to increased density and more compact urban development. The American Planning Association has published a model mixed use zoning district ordinance at www.planning.org/research/smartgrowth/pdf/section41.pdf. In addition, the Montgomery County Planning Commission has published a New Town Mixed Use District guide at www.montcopa.org/DocumentCenter/View/4101.
- **Clustering, lot averaging, and flexible building setbacks** – Clustering involves the arrangement of residential building sites in groups through a reduction in lot area and building setback requirements. Lot averaging is similar to clustering in that both methods allow some variation in minimum lot size regulations. Flexible building setbacks allow greater freedom in placement of the structure on a lot. All three techniques add a degree of flexibility to the design of a development by providing for variations in lot sizes.
- **Performance zoning** – Performance zoning relies on a list of specific quantifiable criteria, which must be met by any proposed use. Standards are established for such elements as particle emissions, noise, glare, vibration, sensitive environmental features. When a particular use meets these standards, it then becomes a permitted use in that district. Performance standards provide the municipality a greater degree of specific control while also affording developers increased design flexibility.
- **Planned Residential Development (PRD)** – Planned residential development provisions combine elements of zoning and subdivision and land development regulation. They bring together and mix residential, nonresidential, open space, and recreational uses in the same development.
- **Traditional Neighborhood Development (TND)** – Article VII-A of the MPC authorizes municipalities to utilize traditional neighborhood development (TND) as a means – among other objectives – to encourage innovations in residential and non-residential development and renewal.

- **Form-based zoning** – Form-based zoning (a.k.a., form-based codes) focuses primarily on the physical form and design of the built and non-built environments, and deemphasizes the conventional zoning methods for regulating land use. It provides for an appropriate mix of uses based on the existing development framework by emphasizing the design context form and functional relationships between and among buildings and surrounding land uses and their specific functional uses.
- **Transfer of Development Rights (TDR)** – Transfer of development rights is a land conservation tool that transfers the property's permitted use value (e.g., medium and high density residential) from its location where the use is prohibited to a location where use is encouraged and permitted.

For more information on zoning, please see the Planning Series #4 Zoning.

Planned Residential Development Provisions

Article VII of the MPC authorizes municipalities to enact, amend, and repeal provisions within a zoning ordinance fixing standards and conditions for planned residential development (PRD). The enactment of the PRD provisions of a zoning ordinance and the consideration of PRD plans is subject to specific requirements in Article VII of the MPC.

PRD provisions combine elements of zoning and subdivision and land development regulation. They bring together and mix residential, nonresidential, open space, and recreational uses in the same development. PRD provisions are special and unique and they encourage a variety of designs and types of housing arranged in an efficient manner on the land. They also encourage conserving land to use as common open space and for recreational purposes, as well as reducing the amount of street and utility infrastructure needed to serve the development.

Since design is flexible, PRDs can have grid systems of streets, if desired, instead of the more common curvilinear streets. In some situations, rectilinear streets may be more appropriate, for instance, as extensions to an existing village. A properly designed PRD can benefit both the developer and the municipality. The developer may benefit by having to install fewer linear feet of roads and utility lines, while the municipality benefits by centralization of service areas and less maintenance. In addition, the developer is permitted greater design flexibility and density can often be increased in some areas. Sensitive lands that should not be developed can be left untouched (e.g., wetlands, floodplains, or steeply sloped areas). It is conceivable that the municipality or homeowners association may gain title to some or all of the common open space, adding further to the community benefit from utilizing PRD provisions.

To summarize, PRD is a concept with several advantages over typical or traditional development practices. PRD regulations provide for flexibility in site and lot design. For that reason, PRD enhances the opportunities for quality residential and nonresidential development while at the same time reducing the cost of installing improvements. However, considerable time and effort must be devoted to both its development and to its ultimate administration. Finally, special plan procedures are mandated by the MPC, including requirement for public hearing subject to public notice. PRD provisions allow the community to combine the municipal subdivision and land development and zoning approval processes. According to the most recent survey of land use techniques, 487 municipalities in 45 counties have enacted PRD provisions.

Traditional Neighborhood Development (TND)

Article VII-A of the MPC authorizes municipalities to utilize traditional neighborhood development (TND) as a means – among other objectives – to encourage innovations in residential and non-residential development and renewal. Traditional neighborhood development utilizes a mixed use form of development, so that the growing demand for housing and other development may be met by a greater variety in type, design, and layout of dwellings and other buildings and structures. In addition, TND promotes conservation and more efficient use of open space ancillary to said dwellings and uses.

Although not specifically expressed by the MPC, the TND provisions are in many ways supportive of a form-based zoning approach. Section 708-A of the MPC authorizes the development of a manual of written and graphic design guidelines, which may be amended to the county or municipal zoning ordinance, the subdivision and land development ordinance, or both.

Many municipalities have searched for a way to reintroduce traditional neighborhood and small town character to their respective areas. The concept of TND provides a solution through zoning. The TND attempts to recapture the village and town square flavor of a pedestrian oriented setting. Traditional neighborhood development regulations can encourage a pleasant mix of housing, businesses, and services in proximity to each other, and traffic calming measures such as narrow streets, frequent intersections, and on-street parking.

Sidewalks, parks, and ample open space along with the opportunity for viable public transportation are essential elements to the success of the TND. This form of development can occur either as an extension of existing areas, as a form of urban infill, or as an independent entity. As with many of these alternative approaches to zoning, modifications to otherwise strict density and dimensional requirements may be necessary. Large tracts of land are usually required to accommodate TND development along with coordination with adjacent developments. Overall, the positive impacts of a TND can be felt through an increase in safety and a resulting enhancement in community camaraderie.

Form-Based Zoning

Form-based zoning (a.k.a. form-based codes) is an alternative to conventional, Euclidean zoning. Euclidean zoning focuses on the segregation of land-use types, permissible land uses, and the control of these uses and their development intensity through numerical parameters such as floor area ratio, dwelling units per acre, height limits, setback, parking ratios, etc.¹ Form-based zoning instead focuses on the physical form and design of the community and new development.

Rooted in the neo-traditional urban design principles, form-based zoning has been developed by planning and urban design professionals over the last twenty years to overcome the challenges associated with suburban development that proliferated during the post-World War II period. Prior to this period, cities were generally organized into and developed around mixed-use walkable neighborhoods.

Form-based zoning focuses primarily on the physical form and design of the built and non-built environments, and deemphasizes the conventional zoning methods for regulating land use. It provides for an appropriate mix of uses based on the existing development framework by emphasizing the design context form and functional relationships between and among buildings and surrounding land uses and their specific functional uses. As a result, form-based codes are often expressed through visual techniques including illustrations, conceptual drawings and renderings, and even pictures of comparable developments to convey the community's desired development objectives.

According to the Form Based Codes Institute (FCBI), "Form-based codes foster predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code. They are regulations, not mere guidelines, adopted into city or county law. Form-based codes offer a powerful alternative to conventional zoning."²

Many Pennsylvania municipalities in their quest to utilize a form-based zoning approach have relied on the following provisions of the MPC to do so:

- Article VII, Traditional Neighborhood Development (TND), as discussed above.
- Section 603(c)(5) authorizes the use of zoning to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined by the MPC.
- Section 603(g)(2) specifies that zoning ordinances "shall provide for protection of natural and historic features and resources," which consist of the historic structures and features comprising many of Pennsylvania's boroughs, cities, and unincorporated villages. In the context of form-based zoning, this provision is used to reinforce and emulate a community's historic resources and their contributing historic design elements and features through infill development or new land development.

Pennsylvania courts have not addressed the question whether form-based zoning is authorized by the MPC. As background, Pennsylvania courts concluded that PRD ordinances were ultra vires and void prior to the enactment of Article VII of the MPC specifically enabling PRDs. Municipalities should further consult with their solicitors.

Two contrasting examples in the use of form-based zoning are Lititz Borough and Penn Township in Lancaster County. In Lititz, “borough planners looked for a way to ensure conformity and consistency without quashing creativity,” to preserve the borough’s historic charm and pedestrian-oriented development patterns. In nearby rural Penn Township, form-based zoning was adopted to reverse the trend of suburban development and achieve “a clear vision for quality future development.”³

Transferable Development Rights (TDRs)

According to the Brandywine Conservancy, “TDR provides municipalities with a mechanism for encouraging the protection of their rural character, natural resources, and historic areas and scenic views, while protecting property values and allowing future growth to occur....Under TDR, development rights are transferred from areas designated for protection (sending zones) to areas designated for future growth (receiving zones). Incentives to choose TDR over conventional development are built into the program. Sending areas are permanently protected by deed restrictions or conservation easements.”⁴

The underlying principle is that real property is a bundle of rights rather than a single entity. Just as mineral rights can be separated from the land, so can the right to develop. The development right can be transferred from one site to another, from an area to be preserved or protected to a receiving area where growth can be accommodated and is desirable. A willing developer would pay for the development rights, and the property owner whose land is being restricted would therefore be fairly compensated. The taking issue would be avoided. See the section entitled Constitutional Constraints on Controls for a word about “takings.” The TDR concept can create benefits that conventional zoning cannot; it can create a permanent preservation of the features it was enacted to protect.

Generally, development rights are not transferable beyond the boundaries of the municipality from which the rights originate. However, the MPC permits transfer of rights between or among the boundaries of two or more municipalities that provide for TDRs in the context of a joint municipal zoning ordinance and as a means to implement a cooperative multimunicipal comprehensive plan (MPC Section 1105). The MPC also authorizes TDRs across municipal boundaries by written agreement among the parties. Development rights are conveyed by a deed recorded in the county recorder of deeds office.

Implementation of a successful TDR program requires the designation of both sending and receiving areas. Preservation programs, transferable development rights, and planned residential development provisions work well together when incorporated in a municipal zoning ordinance. It is both logical and reasonable to establish preservation areas as sending areas and planned residential development districts as growth areas for development. By using this approach it is convenient for a municipality to coordinate transferable development rights within its provisions for planned residential developments in a zoning ordinance. However, any zoning districts, which accommodate higher density, would be logical receiving areas.

Official Map

An official map is a community planning tool that identifies specific parcels or portions of private property within a municipality where public rights-of-ways, public easements, or public open spaces are envisioned. More specifically, Article IV of the MPC provides the authority to governing bodies to “make or cause to be made an official map of all or a portion of the municipality which may show appropriate elements or portions of elements of the comprehensive plan adopted pursuant to Section 302 with regard to public lands and facilities, and which may include, but need not be limited to:

1. Existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same.
2. Existing and proposed public parks, playgrounds and open space reservations.
3. Pedestrian ways and easements.
4. Railroad and transit rights-of-way and easements.
5. Flood control basins, floodways and flood plains, storm water management areas and drainage easements.
6. Support facilities, easements and other properties held by public bodies undertaking the elements described in section 301.”

Adopted by ordinance, the official map is a municipality's declaration to reserve private land for future public acquisition and use. While it can be used to set aside land for future use, an official map does not impose eminent domain on property. A municipality must use methods authorized under law to acquire property reserved on an official map. Methods may include friendly negotiation or condemnation proceedings.

To prepare an official map a municipality may utilize aerial photography, photogrammetric mapping, or other suitable method to identify the location of property sufficient for description and publication in map form. County and municipal GIS programs have become more prevalent for land records management applications and therefore have become essential tools in the official map development process. To acquire property reserved on an official map, the municipality must prepare a metes and bounds survey done by a professional licensed surveyor.

Municipalities must follow the adoption process to enact an official map specified under Section 402 of the MPC. The adoption process is similar to standard land use ordinance adoption processes, but also requires additional specific steps. As with most land use regulations, it requires referral to the municipal and county planning agencies for review, but also requires the review of adjacent municipalities in certain circumstances. Once adopted by the governing body, the official map is required to be recorded in the county recorder of deeds office. The adoption of an official map serves as a notice of reservation and intent of the governing body to acquire land for future public improvements. The reservation put in place by the official map does not exist in perpetuity. The official map functions like a "right of first refusal" for the local government to purchase private property. The governing body must act to purchase private property reserved by the official map for public purpose or give up its right after a property owner announces his or her intention to develop a property subject to the official map. The ordinance fixes the time, up to one year, within which acquisition must occur or condemnation must begin.

Some caution is warranted here; an official map is a type of a land use ordinance. It must not be confused with a municipal base map, an existing or future land use map, a zoning map or any map in a comprehensive plan. A comprehensive plan, an existing or future land use map, and a municipal base map are all good references to have on hand, but none is an official map ordinance nor is any of these a land use ordinance.

An official map provides a focus for various agencies and boards to identify needed road improvements or widenings, wellhead protection areas, parks, playgrounds, and sites for other public purposes. Thus, the official map complements zoning and serves as a valuable tool to help implement the comprehensive plan and a capital improvement program.

For example, in southeastern Pennsylvania, East Bradford Township in Chester County has used an official map since 2002 as a primary tool for achieving its goals for open space, active and passive recreation, and trail development. Similarly, growth in Millcreek Township, Erie County, has necessitated focused growth management measures. There, the official map is used to delineate intersections and roadway improvements, reserve open space and farmland, and identify flood control basins. Chambersburg Borough in Franklin County utilized their official map to help implement a robust plan of future traffic improvements including street widenings, extensions, new connectors, realignments and traffic pattern changes throughout the borough.

Additional resources on the official map include the following:

- Pennsylvania Local Government Training Academy Official Map Fact Sheet – https://palocalgovtraining.org/pdfs/factsheets/OfficialMap-LandUse_2013.pdf
- The Official Map: A Handbook for Preserving and Providing for Public Facilities – www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_006241.pdf

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IV. Related Ordinances and Implementation Techniques

Impact Fees

Municipal Capital Improvement (Transportation Impact Fee) Ordinance

Municipalities in Pennsylvania have very limited authority to impose impact fees. The notable exception is Article V-A of the MPC which authorizes “impact fees” for off-site transportation improvements.

Municipalities have enabling authority to regulate on-site improvements necessary for a proposed development. Except as provided for in the MPC, municipalities may not regulate or require off-site improvements. Article V-A of the MPC authorizes off-site transportation improvement improvements. Section 503 of the MPC authorizes recreation impact fees or land in lieu of.

Article V-A of the MPC mandates very specific procedures that a municipality must follow in order to enact an impact fee ordinance. A recent survey indicates that only 34 municipalities have enacted Transportation Impact Fee Ordinances. Counties are prohibited from adopting this type of ordinance, but there are 1,044 municipalities that satisfy the prerequisites of having a comprehensive plan, subdivision and land development regulations, and zoning ordinance in place in order to enact a Transportation Impact Fee Ordinance.

In order to enact impact fees for on-site transportation improvements, the municipality must establish an impact fee advisory committee, designate transportation service areas, and conduct a series of studies. These studies, consisting of a land use assumption report, a roadway sufficiency analysis, and transportation capital improvements plan must be prepared and approved by the governing body in order to enact an impact fee ordinance.

Municipalities participating and having adopted a joint municipal (multimunicipal) comprehensive plan consistent with Article XI of the MPC can administer an Article V-A impact fee cooperatively through a joint authority.

Don't be misled. Impact fees will only cover a percentage of total needs and costs. Working together can significantly reduce the costs to cooperating municipalities. Engineering and planning studies can be shared and cover a greater area. Collective resources and cooperative efforts make government more efficient.

Impact fees cannot be used to pay for costs associated with operation and maintenance expenses, repairs, pass-through trips, or trips attributable to existing development. Growth, and the pace of growth, is among the factors to be weighed when deliberating whether to enact an impact fee ordinance. Such an ordinance represents just one more tool available to a municipality to promote orderly development. However, each municipality will have to make a cost-benefit determination to see if enacting an impact fee ordinance will likely be a net revenue producer over a given period of years. Professional assistance with pre-enactment studies and analysis is practically necessary. Once adopted, a municipality must take on the duties to manage the impact fee ordinance's administrative details that include establishing and tracking the time limitations on received fees. Impact fees not expended by the municipality within three years for the specified capital improvements must be returned to the developer that paid the fees.

Recreation Impact Fee

Section 503(11) of the MPC enables municipalities to require developers, as a condition precedent to the approval of a final land development or subdivision plan, to publicly dedicate land to the municipality for parks and recreation purposes or enter agreement for one or a combination of the following:

- Construction of park and recreational facilities within the development;
- Payment of a fee-in-lieu of construction; and/or;
- Private reservation of land within the land development for park and recreation purposes.

However, the authority to impose recreation impact fees requires the municipality to have formally adopted a recreation plan. The form of the recreation plan is not specified by the MPC; such recreation plan may be found in a comprehensive plan or special purpose plan.

In addition to formal adoption of a recreation plan, the municipal subdivision and land development ordinance must contain definite principles and standards for park and recreational facilities and fees-in-lieu-of.

Finally, Section 503(11) of the MPC contains two further mandates:

1. Land or fees made available to the municipality through the recreation impact fee must be “used only for the purpose of providing park or recreational facilities accessible to the development” that was burdened with the impact fee; and
2. The amount and location of land or fees “shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision.”

Section 503(11)(viii) prohibits the imposition and collection of recreation impact fees except in full compliance with the requirements of Section 503(11).

The Pennsylvania Department of Conservation and Natural Resources has published an extensive report entitled “Public Dedication of Land and Fees-in-Lieu for Parks and Recreation: A Guide to Using Section 503(11) of the Pennsylvania Municipalities Planning Code,” which is accessible online at www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_002299.pdf.

Specific Plans

Section 1106 of the MPC authorizes participating municipalities to adopt a specific plan for the systematic implementation of a county or multimunicipal comprehensive plan for any nonresidential part of the area covered by the plan. Specific plans allow municipalities to specify more design details for prospective development or redevelopment. The MPC provides that developments consistent with the specific plan shall only need to submit a final development plan, which affords developers with significant time and cost savings. A specific plan must include text and a diagram or diagrams, and be adopted by ordinance to specify in detail all of the following technical provisions:

1. The location and standards for land uses and sewage, water, drainage, and other essential facilities.
2. The location and design of all transportation facilities.
3. Standards for land coverage, building intensity, and supporting services.
4. Standards for the preservation, conservation, development, and use of natural resources.
5. A program of implementation including regulations and financing of the capital improvements.

Although there are no known instances yet in Pennsylvania in which a specific plan has been adopted, specific plans provide a useful tool for such municipalities, and their utility should be further considered during the comprehensive planning process.

Floodplain Regulations

Floodplain regulations are an important part of an overall land use management program.

In Pennsylvania, the Floodplain Management Act, Act 166 of 1978, requires all municipalities that have been identified by the Federal Emergency Management Agency (FEMA) as having areas subject to flooding to adopt floodplain management regulations. Regulations must meet minimum standards set by the National Flood Insurance Program. In general, for new construction or improvements in flood-prone areas, the regulations require residential structures to be elevated above the base flood elevation (the elevation of a flood having 1% probability of occurring any year, also known as a 100-year flood), and nonresidential structures to be elevated or flood-proofed to above the base flood elevation.

Even though the requirement for floodplain management comes from the state and federal governments, the responsibility to enact and administer regulations rests with local governments. Floodplain regulations can be enacted as single-purpose ordinances or as part of zoning, subdivision and land development ordinances, and/or building codes. Municipal officials need to be diligent in administering the regulations to minimize flood conditions and flood damage and to maintain the availability of flood insurance. Proper administration will lead to the intended benefits of less vulnerability of new buildings to flood damage and reducing future flood losses in the municipality and downstream.

Planning Series #5: Technical Information on Floodplain Management provides a more thorough discussion on floodplain management and regulations.

Stormwater Management

Act 167 of 1978 was enacted in response to the impacts of accelerated stormwater runoff associated with land development in the state. The act requires counties to prepare and adopt watershed based stormwater management plans, and it also requires municipalities to adopt and implement ordinances to regulate development consistent with these plans. Since stormwater management pertains to land development, many municipalities chose to enact their stormwater management plan requirements through their subdivision and land development ordinance regulations or through a separate stormwater management ordinance. As such, the municipal planning commission is often tasked with developing the stormwater management regulations that are typically incorporated into a county or municipal subdivision and land development ordinance, wherein the required stormwater management plans are developed and approved concurrently with the associated land development plan submission and approval process as discussed in *Planning Series #8: Subdivision and Land Development in Pennsylvania*.

Uniform Construction Code

The Pennsylvania Legislature's passing of the Pennsylvania Construction Code Act (Act 45 of 1999) paved the way for the enactment of the Uniform Construction Code (UCC) in April 2004 that replaced and standardized the various forms of building codes administered by municipalities.

The Pennsylvania Department of Labor and Industry administers the UCC, and according to the Department, "Over 90 percent of Pennsylvania's 2,562 municipalities have elected to administer and enforce the UCC locally, using their own employees or via certified third party agencies (private code enforcement agencies) that they have retained. In these municipalities, the Department has no code enforcement authority, except where the municipality lacks the services of a person certified as an "Accessibility Inspector/Plans Examiner."¹ The Department is however responsible for all commercial code enforcement in municipalities that chose to "opt-out" of adopting the UCC.

A listing of all of Pennsylvania's municipalities and their decisions regarding local enforcement of the UCC can be accessed through the Department's UCC Municipal Elections and Contact Information webpage.

Capital Improvements Program

Section 209.1(b) (7) of the MPC, provides that planning agencies are empowered to "submit to the governing body of a municipality a recommended capital improvements program." Section 301(a)(4.2) of the MPC directs that:

The comprehensive plan shall include, but need not be limited to, the following related basic elements...
(4.2) A discussion of short- and long-range plan implementation strategies, which may include implications for capital improvements programming ... and identification of public funds potentially available.

According to *The Practice of Local Government Planning*, "capital improvements programming is the multiyear scheduling of public physical improvements. The scheduling is based on studies of the fiscal resources available and the choice of specific improvements to be constructed for a period of five to six years into the future. The capital improvements budget refers to those facilities that are programmed for the next fiscal year. A capital improvements program refers to the improvements that are scheduled in the succeeding four or five year period."²

A capital improvement is a major public facility involving a non-recurring cost that usually requires a large outlay of capital and brings returns or benefits to the public over a long period of time. A capital improvement may include land acquisition, construction of municipal buildings, water and sewer utility systems, transportation improvements, large fixed equipment, and other similar expenditures.

While a capital improvements program is not a land use control per se, the availability of capital improvements greatly influences whether or not development occurs, plus the type and intensity of land uses. Municipal comprehensive plans will target locations where development is desired and recommend installation and upgrade of capital improvements such as water and wastewater systems and roads to facilitate the development. The capital improvements program turns the recommendations into an achievable schedule for undertaking and financing the improvements.

Each municipality should consider instituting a capital improvements program to provide an orderly means for accomplishing capital projects recommended in the comprehensive plan based on a priority schedule and the ability of the municipality to finance them.

It is not necessary to have a comprehensive plan to embark on this type of planning for public improvements. However, municipalities that already have a comprehensive plan will have a head start in the capital improvements programming process.

Constitutional Constraints on Controls

Land use regulations create tension between the rights of individuals to freely use their property and citizen concern that use of land and development not adversely affect the public good, or cause environmental harm. A taking in violation of the Fifth Amendment of the federal Constitution occurs when a regulation denies a landowner all use of his or her property without just compensation for public purpose. Governing bodies must be careful to achieve balance in the scope of regulation so that land use ordinances do not become so severe that they constitute a taking requiring compensation.

Comprehensive planning and carefully crafted land use ordinances, as well as special purpose regulations, can balance a municipality's need to serve the public and protect the environment with an individual's need to realize some valuable use of his or her property. Public officials must be prepared to demonstrate that the imposition of the regulation is reasonable and connected to legitimate protection of the public good. Careful comprehensive plan preparation and implementing land use ordinances can help document a community's effort to balance these rights.

Planning Coordination

It makes sense for municipalities to coordinate and cooperate in planning and managing land use. Economic markets and natural systems do not suddenly end or change at municipal boundaries. Many roads, water and wastewater systems, and parks serve regional areas. People live in one municipality, work in another, shop in another, etc. There are economies of scale to be realized by working together, and sometimes state and federal laws – or litigation – mandate intergovernmental coordination.

Local government officials, individually and collectively, must continually look beyond municipal boundaries. The MPC mandates intermunicipal planning and coordination in regard to some matters. For instance, Section 301(a)(5) of the MPC specifies that a comprehensive plan must include “[a] statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities...and a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan.” When a governing body adopts or amends a comprehensive plan it must “... *consider the comments of the county, contiguous municipalities and the school district.* . .” (MPC Sections 301 and 302, emphasis added.)

Further, the MPC provides voluntary opportunities for intergovernmental cooperation. Two or more municipalities may enact a single joint zoning ordinance covering their whole area, preceded by a joint municipal comprehensive plan. Also, two or more contiguous municipalities and their county may work together via an intergovernmental cooperative agreement to undertake an implement a multimunicipal comprehensive plan. Implementation can include more legal clout in designating areas where development is desired or not desired, working together to review proposed large-scale developments and specific plans discussed earlier in this publication.

Where municipalities are participating in a joint municipal zoning ordinance or implementing a multimunicipal comprehensive plan – via individual zoning ordinances consistent with the plan – the municipalities are afforded protection from exclusionary zoning challenges. Pennsylvania case law has long held that municipal zoning ordinances must provide for any conceivable, lawful use. Where there is a joint zoning ordinance or individual ordinances consistent with the multimunicipal plan via an intergovernmental agreement, this requirement may be met if a use is reasonably provided for somewhere within all participating municipalities.

Nothing in the MPC suggests that the protection and advantages gained from successful planning efforts are to be limited to residents or property owners of that municipality. After all, both good and bad impacts cross municipal boundaries. In fact, the MPC strongly advocates coordination of the planning function between and among adjacent municipalities. Section 503(7) of the MPC suggests that municipalities include provisions in their subdivision and land development ordinances to obtain reviews and reports from adjacent municipalities when a particular development plan affects that neighboring municipality.

Another example of coordination is the sewage facilities planning process under The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, *et seq.* (Act 537). Municipal officials must review their official sewage facilities plan to ensure that sewage facilities planning is consistent with comprehensive planning efforts under the MPC. Act 537 requires that official sewage plans provide for the orderly extension of community interceptor sewers in a manner consistent with the comprehensive plan and the sewerage needs of the entire area. Official sewage facilities plans are to take into consideration aspects of planning, zoning, population estimates, engineering, and economics to project sewer service areas 10 years into the future. It is critical that these official sewage plans consider and are consistent with the municipal comprehensive plan and land use regulations.

A governing body must consider the comments of the planning agency prior to adoption of a sewage facility planning module as a revision to their official sewage plan. If inconsistencies with the comprehensive plan, land use planning, or zoning have been identified by a planning agency, the governing body should refuse to accept the planning module as complete until these inconsistencies are resolved. The Department of Environmental Protection (DEP) is dependent upon review and comments from local planning agencies. DEP wants the views of the planning agency regarding proposed sewage facilities and consistency of those facilities with goals and objectives of plans developed under the MPC guidelines and local land use ordinances implementing the comprehensive plan.

Another example of intermunicipal planning and coordination is the Joint Plans and Coordination of Planning provision specified under Section 7 of the Pennsylvania Storm Water Management Act (Act 167 of 1978), which stipulates “where a watershed includes land in more than one county, the department may require the affected counties to prepare, adopt and submit a joint plan for the entire watershed.” The preparation of the joint plan falls within the responsibility of the affected county planning commissions.

Examples of other planning coordination needs include:

- County and regional comprehensive land use plans including any housing studies or strategies prepared by those agencies
- School district long-range development plans
- State level functional plans for transportation, water quality, and other environmental plans
- Plans prepared by utility companies or municipal water and sewer authorities to meet expected demands within their service areas
- Municipal plans must be generally consistent with the adopted county comprehensive plan

Land Use Ordinance Administration

A land use ordinance is a law, and like any other law, a municipality is obligated to enforce it. The governing body is responsible for establishing the necessary means to administer and enforce the provisions of local law. A municipality can increase compliance by having administrative procedures in place.

Land use administrators must be excellent record keepers and focus on the basics. Individual parcel records must be established. Administrators, zoning officers, and codes officials need to keep detailed records of all their inspections. Even informal inspections and contacts with property owners should be documented in writing. Case number and date on the master parcel record should document any formal inspection of a property.

Zoning and subdivision ordinances create significant demands for small municipalities with no full-time staff. Sacrifices and adjustments may be necessary; perhaps, a municipal zoning officer can be shared jointly with neighboring municipalities in order to obtain professional help. Good ordinance administration can improve most situations even with minimal or dated regulations. See *Planning Series #8: Subdivision and Land Development in Pennsylvania* and *Planning Series #9: The Zoning Officer* for more discussion on the subjects of zoning, subdivision and land development administration and enforcement responsibilities.

Adopting and administering land use controls is almost as unpopular with the public as handing out speeding tickets. Still, most people seem willing to comply with reasonable regulations and requirements. Fortunately, the stubborn recalcitrant violator is a rare breed. People are far more willing to comply with a regulation or law if they understand it. Therefore, municipal officials should strive for simplicity and clarity in drafting local land use ordinances. Terms and phrases should all fall within the realm of common knowledge and be readily understood by a public willing to comply with a regulation. A public education process might increase adherence to the regulation.

Communities that adopt sophisticated or complex controls must budget for the inspection function to ensure controls are enforced. Some of the budget could go toward educational materials and public awareness activities. For example, communities adopting performance based standards must recognize the need for continual or regular monitoring and inspection. Someone should indicate to the governing body, preferably prior to the time it is considering enactment of such regulations, what the inspections and enforcement burden is likely to cost. Decision-makers must be reminded that rules must be backed up with budgets to make them work. The budget must include funds for training, equipment, operations, and maintenance.

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V. Planning Assistance from DCED

DCED's Governor's Center for Local Government Services (Center) provides a full range of technical and financial services to all of Pennsylvania's local governments. The Center is the principal state agency responsible for helping with planning and land use matters discussed in this publication.

Local government officials, planners, and other interested individuals have several sources of assistance from the Center:

- **Toll-free telephone number** – 888-223-6837. Callers will be connected with staff that has knowledge of planning, land use, zoning, subdivision and land development, and the PA Municipalities Planning Code.
- **Website** – dced.pa.gov/planning. There are helpful pages under Community Planning, plus information on the topics listed below. This and the other nine Planning Series publications listed in the Preface can be downloaded and printed for free, or hard copies can be purchased at cost.
- **Publications** – dced.pa.gov/publications. This and the other nine Planning Series publications listed in the Preface can be downloaded and printed for free, or hard copies can be purchased at cost. The website also has publications with suggested provisions for floodplain management ordinances, plus publications on many topics from fiscal management to intergovernmental cooperation to open meetings.
- **Training** – PAtraininghub.org. DCED provides funding for local government training programs via the PA Local Government Training Partnership. There are training courses, videos, and online instruction on a variety of topics, including planning and land use, plus ten fact sheets on planning and land use topics.
- **Land use law library** – www.landuselawinpa.com. DCED and the PA Local Government Training Partnership maintain an online library of significant court cases on zoning, subdivision and land development, and other land use topics.
- **Planning and land use eLibrary** – <http://elibrary.pacounties.org>. DCED and the County Commissioners Association of Pennsylvania maintain an online library of comprehensive plans, zoning ordinances, and subdivision and land development ordinances in effect in Pennsylvania counties, cities, boroughs, and townships.
- **Financial assistance** – dced.pa.gov/program. Currently DCED provides funding for local government planning through the Municipal Assistance Program. MAP offers up to 50 percent grants for costs of undertaking comprehensive plans, zoning ordinances, subdivision and land development ordinances, and more.

VI. Other Planning Assistance

Assistance and training on planning and land use are available from other sources:

- **County planning agencies** – Pennsylvania counties have a long tradition of being a source of capacity and expertise in planning and land use. Currently, every county has a planning commission, department, or both, or other agency like a development department that handles planning matters. Every county has staff involved in planning. Many county planning agencies offer assistance to local governments in their counties.
- **American Planning Association (APA)** – The Pennsylvania Chapter has an annual conference with many speakers and sessions on topics from local to national interest, plus training workshops and other educational events and information: <http://planningpa.org>. The national organization has an annual conference, publications, and a variety of audio, web, and e-learning resources: www.planning.org.
- **Local government associations** – In addition to programs through the PA Local Government Training Partnership, Pennsylvania's statewide associations representing different classes of local governments also offer annual conferences and training programs, including planning and land use, to their member local governments.
- **Penn State Extension** – Statewide Extension programming includes courses, webinars, and publications on community issues including planning and land use. Within that is the Pennsylvania Municipal Planning Education Institute which offers training programs on planning, zoning, and subdivision and land development: <http://extension.psu.edu/community>.
- **Universities and colleges** – Several Pennsylvania universities and colleges offer degree programs in planning. Others offer planning-related courses in geography or design degrees. Many have a community service objective and assist community groups and local governments with faculty and/or student service projects.

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THE PLANNING COMMISSION IN PENNSYLVANIA

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I. The Planning Commission in Pennsylvania

Preface

The *Planning Commission in Pennsylvania (Planning Series Publication #2)* is one of a series of 10 planning publications produced by the Governor's Center for Local Government Services (Center) as a means to educate both professionals and non-professionals on the ways that planning and land use management is achieved within the commonwealth. The planning publications were first developed in the 1970s and in subsequent editions have been revised to incorporate differences in the overall planning viewpoint, offer up-to-date best practices, and reflect the latest changes in Pennsylvania planning law. Each publication addresses a specific planning or land use method enabled through The Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq., and used by municipalities throughout the commonwealth.

The Center's 10 Planning Series Publications are as follows:

- No. 1 – Local Land Use Controls in Pennsylvania
- **No. 2 – The Planning Commission**
- No. 3 – The Comprehensive Plan
- No. 4 – Zoning
- No. 5 – Technical Information on Floodplain Management
- No. 6 – The Zoning Hearing Board
- No. 7 – Special Exceptions, Conditional Uses and Variances
- No. 8 – Subdivision and Land Development in Pennsylvania
- No. 9 – The Zoning Officer
- No. 10 – Reducing Land Use Barriers to Affordable Housing

This publication specifically addresses the planning commission form of a planning agency authorized by the MPC. To that end, this publication is designed and intended for the following purposes:

- To address the statutory authority and composition of the planning commission in Pennsylvania and the specific powers and duties of the planning commission;
- To specify the reasons for and roles of the planning commission in municipal land use decisions;
- To guide municipal planning commission members on their specific roles and responsibilities as authorized by the MPC and as may be further stipulated in a planning commission's bylaws, rules, and regulations governing its procedures consistent with the ordinances of the municipality and the laws of the commonwealth;
- To review the common roles of planning commission members, particularly in terms of hiring planning consultants to assist with various technical planning activities; and
- To provide supporting technical guidance through a series of appendices that include a model ordinance and procedures for the establishment of a planning commission, model bylaws, and the adoption of a community's comprehensive plan.

II. Introduction

Communities throughout the commonwealth are faced with many challenges that require the insight, intuitiveness and energy of its local residents, some of whom are appointed by their governing body to serve on their municipal planning commission. These “citizen planners” are tasked with developing plans and implementation policies that provide the foundation for the community to manage changes caused by a variety of internal and external forces including community growth or decline, and changes in demographics, economies, technology, natural resources, the environment, housing, transportation, etc.

As its name implies, a planning commission’s primary activity is planning, which according to the American Planning Association, “is a dynamic discipline that works to improve the welfare of people and their communities by creating more convenient, equitable, healthful, efficient, and attractive places for present and future generations. Planning enables civic leaders, businesses, and citizens to play a meaningful role in creating communities that enrich people’s lives. Good planning helps create communities that offer better choices for where and how people live. Planning helps communities to envision their future. It helps them find the right balance of new development and essential services, environmental protection, and innovative change.”¹

In Pennsylvania, planning commissions are primarily responsible for and charged with exercising a municipality’s legal right to develop a comprehensive plan that outlines its specific community planning objectives that may focus on environmental protection; agricultural, historical, and cultural resource preservation; business retention, expansion, and recruitment; urban redevelopment; housing opportunities; parks and recreation amenities; transportation and utility infrastructure; or other health, safety, and public welfare needs and issues that are critical to community’s overall well-being and prosperity.

As such, planning commissions are on the front line regarding the issues that matter most to many communities. Their leadership is crucial in developing recommendations for implementing change as well as promoting responsible and sustainable community planning practices that have not only local implications, but multimunicipal and regional implications as well.

The most recent data available tell us that more than 60 percent of the municipalities in the commonwealth have planning commissions. In fact, there are more municipal planning commissions than water and sewer authorities or police departments in the commonwealth.

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III. Statutory Authority for Planning

The responsibility for planning in Pennsylvania has been delegated to each local municipality and county. The Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq., is the legislation that conveys planning authority and sets the ground rules that a municipality must follow.

Specifically, Article II, Section 201 of the MPC provides the municipal governing body with the legal authority to establish, by ordinance, a planning agency. A governing body has several choices when it decides to create a planning agency within its municipality. It can create a planning commission, planning department or both; or, instead of a commission or department, the governing body may create a planning committee composed solely of members of the governing body. Since many municipalities opt to establish a planning commission, this publication specifically addresses the planning commission form of organization.

In Pennsylvania, the Municipalities Planning Code is the uniform planning and land use enabling law for all municipalities and counties, including those under home rule, but not for the cities of Philadelphia (consolidated with Philadelphia County) and Pittsburgh.¹

The MPC requires that the planning commission be created by ordinance enacted by the governing body and requires that it be abolished in the same manner. A model ordinance for the creation of a planning commission can be found in Appendix II: Model Ordinance for Creating a Planning Commission.

A planning commission acts as an advisor to the governing body. Its principal role is stipulated in Section 209.1 of the MPC: A planning commission is required – at the request of the governing body – to prepare a comprehensive plan for the long-term growth, development, and well-being of the municipality. (For more information on comprehensive plans, please see *Planning Series #3 The Comprehensive Plan in Pennsylvania*.) Under Section 209.1 of the MPC, a planning commission is also empowered to:

1. Make recommendations to the governing body concerning the adoption or amendment of an official map.
2. Prepare and present to the governing body a zoning ordinance, and make recommendations to the governing body on proposed amendments to it.
3. Prepare, recommend, and administer subdivision and land development and planned residential development regulations.
4. Prepare and present to the governing body a building code and a housing code and make recommendations concerning proposed amendments thereto. *Refer to The Planning Commission and Building Code Enforcement section below.*
5. Do such other acts or make studies as may be necessary to fulfill the duties and obligations imposed by the MPC.
6. Prepare and present to the governing body an environmental study.
7. Submit to the governing body a recommended capital improvements program.
8. Prepare and present to the governing body a water survey, which shall be consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.
9. Promote public interest in, and understanding of, the comprehensive plan and planning.
10. Make recommendations to governmental, civic, and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
11. Hold public hearings and meetings.
12. Present testimony before any board.
13. Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
14. In the performance of its functions, enter upon any land to make examination and land surveys with the consent of the owner.

15. Prepare and present to the governing body a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.
16. Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

In addition to the duties and responsibilities authorized by Section 209.1 of the MPC, a governing body may by ordinance delegate approval authority to a planning commission for subdivision and land development applications. Generally, larger municipalities or counties delegate this approval authority to a planning commission or department and many such municipalities and counties are large enough to have full-time professional staff.

Also, in instances in which a municipality has enacted an impact fee ordinance pursuant to Article V-A of the MPC, the planning commission may also be appointed by the governing body as the impact fee advisory committee. However, such an appointment requires the planning commission's membership to include no less than 40% representation from the real estate, commercial and residential development, and building industries. Individuals representing these industries must reside in the municipality or conduct business within the municipality to serve as *ad hoc* voting members of the planning commission whenever the planning commission functions in this capacity.

Administrative and technical services provided by outside entities (both public and private) may be employed by the governing body to carry out any of these duties and responsibilities. Also, the planning commission can accept and utilize funds, personnel, and other services made available to it with the consent of the governing body. Such resources may be obtained through public and private grants, staffing assistance from county or regional planning agencies, or from professional consultants. The governing body can enter into agreements or contracts for the acceptance and utilization of any such funds or assistance.

The MPC gives specific authorization for municipal governing bodies to engage in intergovernmental cooperation and collaborative planning initiatives. Specifically these authorized powers can be utilized to enact planning implementation agreements. Such agreements must be made in conformance with the requirements of the Intergovernmental Cooperation Act of 1996, 53 Pa. C. S. § 2301, et seq.

In light of the MPC powers bestowed to a planning commission, the planning commission's fundamental role is to proactively exercise its authority to develop a comprehensive plan that identifies specific strategies through which the municipality can achieve its community development goals and objectives. As such, planning commissioners are on the front line regarding the issues that matter most to many communities, and they play a vital role in ensuring that all fundamental aspects of the community's growth and development are considered and coordinated. Their leadership is crucial in developing sound policy recommendations for implementing positive change to help their communities to prosper and increase the health, safety, and welfare of their fellow residents.

Through an effective comprehensive planning and implementation process, planning commissions play a crucial role in identifying, analyzing, and balancing environmental, economic, and human resources and interests. All of these resources are important to the welfare of our communities, and in combination these interests represent the very fiber of our democratic process and our quality of life. Through careful planning and implementation, planning commissions can assist their governing bodies with determining how to best balance the guaranteed property rights of land owners with those of the general public.

Appendix I: Additional Readings and Resources for Planning Commissioners provide a few resources to help members of a planning commission with their "on-the-job" training.

References

1. Article XV, Section 1 of the Pennsylvania Constitution of 1874, the First Class City Home Rule Act, Act of April 21, 1949, as amended by the Act of June 1, 1995, 53 P.S. §§ 13101 et seq., and the home rule charter adopted under those enabling authorities are the source of authority for Philadelphia's municipal planning and land use regulation. The Second Class City Zoning Law, Act of March 31, 1927, 53 §§ 25051 et seq., the Home Rule Charter and Optional Plans Law, and the home rule charter adopted under those enabling authorities is the source of authority for Pittsburgh's municipal planning and land use regulation.

IV. Examples of Specific Planning Commission Responsibilities

In support of the its fundamental comprehensive planning role, the planning commission is tasked with carrying out a number of supporting technical responsibilities as specified under Section 209.1 of the MPC, as well as other Pennsylvania planning legislation such as The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, et seq. (Act 537), and Pennsylvania's Storm Water Management Act, Act 167 of 1978, 32 P.S. § 680.1, et seq. The following provides a summary of these technical responsibilities. Additional information on these topics is provided within Appendix I: Additional Readings and Resources for Planning Commissioners.

The Planning Commission and Subdivision and Land Development Review

While providing the leadership for planning and land use decisions is the first priority of the planning commission, in practice the planning commission's time is largely devoted to reviewing applications submitted pursuant to the municipality's zoning and subdivision and land development ordinances and providing recommendations for their approval to the governing body. This technical function of the planning commission can consume so much of the planning commission's time and attention that other responsibilities – such as updating the comprehensive plan– get neglected. While the review of subdivision and land development plans is important, members should also promote implementation of other aspects of the comprehensive plan and give attention to the future well-being of the community.

For further information on the technical process of reviewing subdivision and land development plans please see *Planning Series #8: Subdivision and Land Development in Pennsylvania*.

The Planning Commission and Stormwater Management Planning

Act 167, Pennsylvania's Storm Water Management Act, was enacted in response to the impacts of accelerated stormwater runoff associated with land development in the state. Act 167 requires counties to prepare and adopt watershed-based stormwater management plans. Once the County 167 plan is approved by the Pennsylvania Department of Environmental Protection and adopted by the municipality, Act 167 requires municipalities within the area covered by the Act 167 plan to adopt and implement ordinances to regulate development consistent with the plan. Since stormwater management pertains to land development, many municipalities have chosen to enact stormwater management plan requirements through their subdivision and land development ordinance regulations or through a special purpose stormwater management ordinance. As such, the planning commission is often tasked with developing the stormwater management regulations that are typically incorporated into a county or municipal subdivision and land development ordinance, wherein the required stormwater management plan for the development project is reviewed and approved concurrently with the associated land development plan submission and approval process as discussed in *Planning Series #8: Subdivision and Land Development in Pennsylvania*.

The Planning Commission and Floodplain Management

According to the Federal Emergency Management Agency (FEMA), "floodplain management is the operation of a community program of corrective and preventative measures for reducing flood damage. These measures take a variety of forms and generally include requirements for zoning, subdivision or building, and special-purpose floodplain ordinances."¹ Any community wishing to make flood insurance available to its property owners must agree to adopt and enforce a floodplain management ordinance consistent with National Flood Insurance Program (NFIP) policies and standards (which includes, among other authorizing legislation, the Flood Disaster Protection Act of 1973, as amended, Public Law 93-234, approved December 31, 1973) and Pennsylvania's Flood Plain Management Act, Act 166 of 1978, 32 § P.S. 679.1091, et seq. Currently, 2,466 of Pennsylvania's municipalities participate in the NFIP program.

Considering the planning commission's lead role with preparing and presenting to the governing body the municipal comprehensive plan, zoning ordinance, and subdivision and land development ordinance, its responsibilities related to floodplain management are quite extensive. Although a more detailed discussion on floodplain management is provided in the *Planning Series #5: Technical Information on Floodplain Management*, the following discussion provides a summary of the MPC's provisions related to floodplain management.

Planning – Comprehensive Plan

The planning for floodplain management begins with the comprehensive plan. Section 301(a) (2) of the MPC specifies that a plan for land use may include provisions for floodplains and other areas of special hazards and other similar uses.

Section 301(a) (4) of the MPC allows municipalities to plan for community facilities and utilities, which may include storm drainage and floodplain management.

Section 301(a) (6) of the MPC authorizes a plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes, but is not limited to, wetlands and aquifer recharge zones and floodplains.

Preservation of Floodplain Areas – Official Map

Article IV of the MPC authorizes the governing body to adopt an official map of all or a portion of the municipality which may show appropriate elements or portions of elements of the comprehensive plan adopted pursuant to Section 302 of the MPC with regard to public lands and facilities, and which may include, among other features, flood control basins, floodways and flood plains, storm water management areas, and drainage easements. An official map's essential purpose is to preserve and provide for land and facilities for future public acquisition or dedication as envisioned through the municipality's comprehensive plan. More information regarding the official map and its use is discussed in *Planning Series #1: Local Land Use Controls in Pennsylvania*.

Floodplain Regulation – Subdivision and Land Development

Section 503 of the MPC specifies that the contents of a subdivision and land development ordinance may contain provisions for insuring that, among other requirements, land which is subject to flooding either shall (i) be made safe for the purpose for which such land is proposed to be used or (ii) shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.

Floodplain Regulation – Zoning

Section 604 of the MPC specifies that the provisions of zoning ordinances shall be designed to promote, protect and facilitate among other aspects public health and safety that includes the preservation of floodplains.

Section 605 of the MPC specifies that in any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned and use classifications may be made within any district such as floodplains and other places having a special character or use affecting and affected by their surroundings.

The Planning Commission and Sewage Facilities Planning

The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, et seq. (Act 537) requires that a planning commission review the municipality's proposed official sewage facilities plan. The purpose of the planning commission's review of the municipality's official sewage facilities plan is to ensure that sewage facilities planning is consistent with comprehensive planning for the municipality under the MPC. Act 537 requires that official sewage plans provide for the orderly extension of community interceptor sewers in a manner consistent with the comprehensive plan developed under the MPC. Official sewage facilities plans are to take into consideration aspects of planning, zoning, population estimates, engineering, and economics to project sewer service areas 10 years into the future. It is critical that these official sewage facilities plans consider and are consistent with the municipal comprehensive plan, land use planning, and zoning. The planning commission's review and comment on sewage facilities plans plays an important part in assuring this consistency. When sewage facility planning and land use planning efforts are consistent, adequate sewage facilities can be implemented to serve both existing development needs and provide for planned growth.

Sewage facilities regulations were expanded to address natural resource and environmental protection issues, such as protection of wetlands, rare, endangered or threatened species, prime agricultural land, archaeological or historical preservation, and water resources planning. Planning commissions study these matters when undertaking the

comprehensive planning process prescribed by the MPC. Pennsylvania's Department of Environmental Protection (DEP) wants to hear the views of the planning commission regarding the proposed sewage facilities and consistency of those facilities with the goals and objectives of plans developed under MPC guidelines, including local land use ordinances comprehensive plans.

Act 537 also requires the governing body to consider the comments of the planning commission prior to adoption of a planning module as a revision to a municipality's official sewage facilities plan and subsequent submittal to DEP. If inconsistencies with the comprehensive plan, land use planning, or zoning have been identified by the planning commission, the governing body may refuse to accept the planning module as complete until these inconsistencies are resolved.

The Planning Commission and Public Meetings

The MPC provides that, at the request of the governing body, a planning commission may present testimony before any board. This would include testimony before a zoning hearing board conducting a public hearing when considering a request for a variance or special exception or a governing body conducting a hearing on a conditional use application. Section 603(c)(2) of the MPC requires that a planning commission, when considering conditional use applications, make recommendations based on express standards and criteria for the conditional use as provided for in the zoning ordinance. A planning commission should never miss the opportunity to review and comment on these matters when it has relevant information to contribute.

The Planning Commission and Multimunicipal Relationships

Although each community is unique in its physical and social composition, community planning needs and issues often transcends municipal boundaries. Therefore, it makes logical sense for planning commissions to forge multimunicipal relationships with their neighboring counterparts to discuss common issues and identify solutions that benefit the region as a whole.

Planning commission (and municipal officials in general) can approach matters on a regional basis two different ways: informally or formally. Informal arrangements can be made at any time to address almost any issue. Formal cooperative arrangements can be made by intergovernmental agreements that are more permanent and binding. Examples of these are as follows:

- **Informal – Peer-to-Peer Planning Commission Meetings/Work Sessions** – Planning commissions from neighboring municipalities, within a region, etc., may meet on an ad-hoc basis to discuss issues of concern and use the discussions to make informed policy recommendations or decisions. In such instances, the planning commission members must be cognizant of the Sunshine Act and hold their meeting accordingly.

An example of a formal partnership for a multimunicipal comprehensive plan is the Pottstown Metropolitan Regional Planning Committee (PMRPC), which is comprised of two representatives from each of the eight participating municipalities in the region. The PMRPC members address multi-municipal issues such as agricultural and open space preservation, natural and historic resources, transportation, housing, economic development, administration, and interpretation of the Pottstown Metropolitan Regional Comprehensive Plan on matters relating to zoning, land use, and public infrastructure and services. More information regarding the PMRPC is available at <http://pmrpc.pottstownmetroregion.com/about/regional-planning-committee>.

- **Formal – Statutory Consultations** – The MPC requires municipalities to consult with each other when undertaking certain actions:
 - Section 301(a)(5) requires a comprehensive plan to include a statement addressing compatibility with existing and proposed development in neighboring municipalities, plus consistency with the county comprehensive plan.

- Section 408(c) requires a municipality to forward a proposed official map ordinance or amendment to the adjacent municipality where it proposes reservations for future streets or public lands leading into the adjacent municipality.
- The MPC requires a municipality to forward proposed ordinances or amendments for subdivision and land development, zoning, and official map to the county planning agency for review and comment prior to enactment.
- **Formal – Joint, Multimunicipal, or Regional Planning Commissions** – Two or more municipalities may join together to form a planning commission covering and serving their entire area. Authority for this is provided by the Pennsylvania Intergovernmental Cooperation Law. A joint planning commission must be formed by intergovernmental agreement enacted by ordinance. The agreement must specify the structure of the joint commission, the powers delegated to it, and how it will be financed. A joint commission may exist in lieu of or in addition to individual municipal planning commissions. A county may participate in a joint planning commission. (Pennsylvania also has a lesser-known Regional Planning Law – 53 P.S. §§ 2341-2348 – that provides authority for creation of a regional planning commission by two or more municipalities.) Municipalities should obtain legal guidance from their solicitors when considering formation of a joint or regional planning commission.
- **Formal – Multimunicipal Comprehensive Plan** – Article XI of the MPC authorizes municipalities (including counties) to enter into intergovernmental cooperative agreements for the purpose of developing, adopting, and implementing a multimunicipal comprehensive plan. An agreement must establish a process to ensure each municipality acts cooperatively and consistent with the plan in implementing it. Implementation agreements can accomplish this by creating multimunicipal planning commissions as previously described, or by creating processes whereby municipalities consult with each other prior to taking certain actions implementing the plan. (For more information on multimunicipal comprehensive plans please see *Planning Series #3 The Comprehensive Plan in Pennsylvania*.)
- **Formal – Joint Municipal Zoning Ordinance** – Article VIII-A of the MPC authorizes two or more municipalities to enact a single joint municipal zoning ordinance covering all the participating municipalities. (For more information please see *Planning Series #4 Zoning*.)
- **Formal – Intergovernmental Cooperation Agreements** – Because of the broad scope of the Pennsylvania Intergovernmental Cooperation Law, two or more municipalities can work cooperatively by agreement on a variety of things such as hiring professional planning staff (where municipalities can't afford staff on their own), creating a web portal for development and zoning permits, engaging the county planning agency to perform technical reviews of development plans for the municipality, and other creative possibilities.

References

1. *Floodplain Management*. FEMA. Retrieved April 14, 2014 from <http://www.fema.gov/floodplain-management#1>

V. The Planning Commission and Building Code Enforcement

Although one of the planning commission's specific duties under Section 209 of the MPC is to "prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto," the Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. §§7210.101- 7210.1103, established the Uniform Construction Code (UCC) for the entire commonwealth. Its enforcement by the Pennsylvania Department of Labor and Industry commenced in April 2004. This new comprehensive building code established minimum regulations for most new construction and additions and renovations to existing structures within the commonwealth. As such, the responsibility of a planning commission in building code regulation has largely been diminished. Nonetheless, planning commission members should familiarize themselves with the building code regulations and be educated about how the UCC affects the general goals of community development.

For example a strong housing or community development section of a comprehensive plan should take into account the enforcement of the UCC and ways in which building code enforcement carries out the community's stated goals and objectives. Likewise, an enhanced historic preservation element of a comprehensive plan ought to simulate careful review of provisions of a zoning ordinance related to historic preservation. If a Historic Architectural Review Board (HARB) exists, recommendations can be made regarding the historic code.

Since April 2004, "over 90% of Pennsylvania's 2,562 [sic]¹ municipalities have elected to administer and enforce the UCC locally using their own employees or via certified third-party agencies (private code enforcement agencies) that they have retained. In these municipalities, the Department of Labor and Industry (L&I) has no code enforcement authority, except where the municipality lacks the services of a person certified as an "Accessibility Inspector/Plans Examiner." If a municipality has "opted out," L&I is responsible for all commercial code enforcement in that municipality. L&I also has sole jurisdiction for all elevators and all state-owned buildings, no matter where they are located. Certified third-party agencies hired by property owners (or their contractors) enforce the residential requirements of the UCC in all opt-out municipalities."²

References

1. The current number of municipalities is 2,561.
2. Uniform Construction Code. Pennsylvania Department of Labor and Industry. Retrieved March 18, 2014 from http://www.portal.state.pa.us/portal/server.pt/community/uniform_construction_code/10524

VI. Membership, Appointment, and Organization

As stipulated under Sections 202 and 203 of the MPC, planning commissions are to be comprised of three to nine members who must be residents of the municipality. Legal residence is best determined by where a person lives; it not only includes a person's intention to live somewhere, but also a physical presence. Under Section 903(b) of the MPC, no individual may sit on both the planning commission and the municipal zoning hearing board.

Members of the planning commission are appointed by the municipality's appointing authority, subject to the approval of the governing body (except where both are the same). An appointing authority is the mayor in cities, the board of commissioners in counties, the council in incorporated towns and boroughs, the board of commissioners in townships of the first class, the board of supervisors in townships of the second class, or as may be designated in the law providing for the form of government or in the charter for home rule municipalities.

The governing body that appoints the planning commission must ensure the diversity of experience, expertise, and interests in the composition of the planning commission's membership. Members of various professions should be sought out for membership, and sitting members of the planning commission should endeavor to increase their own level of planning education during their time on the board. There are no formal requirements to serve on a planning commission. However, the governing body, when appointing members, should review potential appointees' qualifications carefully.

The planning commission itself, when faced with a vacancy, should review potential appointees' qualifications and make recommendations to the governing body.

The term of a planning commission member is four years. It is recommended that terms should expire December 31 of each four-year term. To avoid major changes at any one time, the terms of its members are staggered. Any vacancy occurring during a term of office is filled only for the unexpired portion of the term.

A planning commission must maintain a prescribed number of citizens as part of its complement. Only a certain number of planning commissioners can be officers or employees of the municipality. The ratios are as follows: on a planning commission of three members, at least two shall be citizen members; on a planning commission of four or five members, at least three shall be citizen members; on a planning commission of six or seven members, at least five shall be citizen members; and on a planning commission of either eight or nine members, at least six shall be citizen members.

New by amendment of the MPC in 2015, a planning commission may have one to three alternate members. Alternates are appointed by the governing body by resolution and, like regular members, must be residents and have four-year terms. Planning commission alternates may not serve on the zoning hearing board or as a zoning officer.

The planning commission chairman may designate an alternate to sit for an absent, recused, or disqualified member as may be needed to reach a quorum. When seated, an alternate has the powers and duties of a regular member including the right to participate in all proceedings and discussions and the right to cast a vote. An alternate must serve in all proceedings involving a matter or case that was initiated when the alternate was seated until a final decision is made.

It is possible for a member of a planning commission to be removed from office. Removal however, requires a majority vote of the governing body. Any such removal of a member must be based on just cause. The primary grounds for removal could be any of the following: malfeasance – committing an unlawful act in office; misfeasance – committing a lawful act in an unlawful manner in office; and nonfeasance – failure to perform the duties of the office.

A member of a planning commission that is threatened with removal must receive fifteen days' advance notice of the intent by the governing body to take the required vote. The member has a right to a hearing under the MPC, upon written request, and also under the Local Agency Law, 2 Pa. C. S. § 551.

The commonwealth has a long history of volunteer involvement in local government and the duties and responsibilities of the planning commission are carried out largely by citizens on a volunteer basis. However, the MPC allows for the governing body to provide compensation for planning commission members. If the governing body elects to do so, such compensation must be less than the amount authorized by statute and ordinance to be paid to the members of the governing body. In addition, the MPC allows the governing body to provide for reimbursement of the planning commission members for any necessary and reasonable expenses incurred in the performance of their duties.

If reimbursement expenses are not part of the annual budget approved by the governing body, approval should be obtained from the governing body prior to incurring the expense. Allowable expenses may include registration fees for planning conferences, seminars or workshops, reasonable cost of meals while in attendance, and mileage reimbursement to and from the training site.

VII. General Operating Procedures for Planning Commissions

Annually the planning commission elects its own chairman and vice-chairman and any other officers that it feels are necessary. Practical experience has shown that it is difficult for a member to serve as a recording secretary and also contribute meaningfully to matters under discussion. An officer serves an annual term and is permitted to succeed him or herself. A planning commission has the power to make, alter, rescind, and reinstate rules for its procedure, provided that they are consistent with the rules of the municipality and laws of the commonwealth. A planning commission may adopt bylaws. Appendix III: Suggested Bylaws for Planning Commissions contains model bylaws.

At the discretion of the governing body, a planning commission may be provided with legal counsel by the municipal solicitor or a solicitor appointed to the planning commission.

The MPC requires that a planning commission keep full public records and ensure that all records become property of the municipality.

The Municipal Records Act, part of omnibus Act 177 of 1996, amended by Act 27 of 1998, 53 Pa.C.S. § 1381, et seq., and the Pennsylvania Historical and Museum Commission's Municipal Records Retention Manual establish procedures and standards for records retention, including mandatory record retention and disposition schedules.

The Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, et seq. (RTKL) applies to the records of a planning commission. Most requests will be submitted to the municipal open records officer for determination as to whether a responsive record is a "public record" and otherwise subject to a privilege or exception to disclosure. Unless an extension of time is warranted, the open records officer has five business days to respond to a request. In the event a request for a record is made to an individual member of the planning commission, the individual should immediately notify the municipal open records officer of the request.

Each planning commission member should be provided with a packet containing basic information. For example, the packet should certainly include a copy of the MPC, the municipality's comprehensive plan, zoning ordinance, and subdivision and land development ordinance. Copies of the municipality's official Act 537 sewage facilities plan, stormwater management ordinance, and other pertinent ordinances will also prove to be useful, and should be included in the informational packet.

VIII. Planning Commission's Relationship to the Governing and Appointed Bodies

Governing bodies are empowered under MPC Section 201 to create planning commissions to perform community planning activities and coordinate municipal planning programs. In doing so, a governing body specifies the planning commission's powers, duties, and functions that include the preparation of the municipal comprehensive plan.

As discussed in the *Comprehensive Planning Series Publication #3*, the comprehensive planning process should be inclusive of the governing body's interests and perspectives as the community's elected leaders. As such, the planning commission must ensure that the governing body, among other community stakeholders, is actively involved in the planning process. In doing so, the process establishes the foundation for the governing body to embrace and adopt the community's comprehensive plan. The adopted plan in turn serves as the basis from which the planning commission makes objective, unbiased recommendations on zoning, land development and other community planning matters to the governing body for its consideration in making informed policy decisions.

A collaborative comprehensive planning process not only forges an interdependent relationship between the governing body and planning commission, but involves the planning commission with many of the municipality's other appointed bodies that are responsible for various functions and services. Such appointed bodies typically include the zoning hearing board, HARB, parks and recreation boards, sewer and water authorities, environmental advisory councils, etc.

It is wise for the planning commission to keep a harmonious relationship with other municipal officials. It should meet and communicate on some regular basis with the governing body and various municipal groups. It should establish itself as a key member of the municipal "team" and as a provider of solutions not problems. And, it should quickly address any instance of conflict lest it festers into distrust or worse an adversarial relationship with the governing body or other municipal groups.

IX. Planning Commission Reports to the Governing Body

Section 207 of the MPC requires a planning commission to make an annual report to the governing body by March 1 each year. Among other topics, such reports may include a summary of the reviews performed by the planning commission in the prior year and identification of planning issues or concerns, including possible amendments to the planning ordinances that the planning commission seeks to bring to the attention of the governing board. Also, the MPC generally requires a planning commission to maintain records of its actions and to provide such records for the possession of the governing body.

X. Planning Commissions and the Need for Technical Planning Services

As previously discussed, planning commissions are primarily responsible for and charged with preparing and maintaining the municipality's comprehensive plan. In addition, the planning commission is also charged with preparing the municipality's zoning and subdivision and land development ordinances. These vital community planning activities take extensive time and require particular technical expertise that often requires outside professional assistance to augment the planning commission's limited capabilities (e.g., lack of time as citizen planners, no full-time municipal planning staff, need for special planning expertise, etc.).

Section 210 of the MPC authorizes the planning commission, with the consent of the governing body, to accept and utilize any funds, personnel or other assistance made available by the county, the commonwealth or the Federal government or any of their agencies, or from private sources. The governing body in turn may enter into agreements or contracts for the purpose of utilizing the funds or assistance in or for the planning commission to carry out its duties and responsibilities.

For the reasons specified above, many municipalities often hire a professional consultant to assist the planning commission in carrying out its duties. Choosing the right consultant for the job, and for a community, is a process that requires great care and attention to ensure the governing body's judicious allocation of public resources. At a minimum, consultants should be selected based on their comprehension of the community's needs/problems, commitment to assign staff having the appropriate skills and experience, offering of the most creative approach towards the project, and adherence to deliver the best work effort for the cost.

The Pennsylvania Local Government Partnership has published the "Working with Consultants Guidebook" at http://www.palocalgovtraining.org/pdfs/working_with_consultants.pdf. In addition, the American Planning Association (APA) has published detailed guidance for selecting a consultant at <https://www.planning.org/consultants/choosing/part1.htm>.

In addition to professional consultants, municipalities may also obtain assistance from other sources that include, but are not limited to, the following:

- **County planning agencies** – Pennsylvania counties have a long tradition of being a source of capacity and expertise in planning and land use. Currently, every county has a planning commission, department, or both, or other agency like a development department that handles planning matters. Every county has staff involved in planning. Many county planning agencies offer assistance to local governments in their counties.
- **Regional planning agencies** – Agencies such as the Delaware Valley Regional Planning Commission, Southwestern Pennsylvania Commission, etc., are most often relied upon to provide niche technical services and products, including but not limited to, sophisticated transportation planning models (e.g., travel demand model, transit demand models, etc.), extensive geospatial datasets, special reports on various community planning topics and issues germane to its geographic region. In addition, regional planning agencies also provide funding for various planning activities through competitive application processes.
- **Colleges and universities** – College and university faculty and students often provide a low cost, yet invaluable resource for outside technical assistance that not only benefits the community, but forges and strengthens town and gown partnerships. Many communities have received excellent planning assistance through their local educational institutions often at a lower cost than private or other public sector planning assistance.
- **The Governor's Center for Local Government Services** – the Center provides municipalities and local government officials with assistance and support in a variety of areas, including technical and financial assistance, as well as training in partnership with the Local Government Training Partnership. More information regarding the Center's services is available at <http://www.newPA.com/local-government/services-provided>.

A Note About Studies...

Section 301.2 of the MPC provides for a planning commission to “make careful surveys, studies and analyses of housing, demographic, and economic characteristics and trends; amount, type and general location and interrelationships of different categories of land use; general location and extent of transportation and community facilities; natural features affecting development; natural, historic and cultural resources; and the prospects for future growth in the municipality.”

Conducting studies is beneficial, but studies can become an end in themselves and, worse yet, not used. The MPC intends that municipalities conduct studies as part of the process to create a wise and effective comprehensive plan. The purpose of studies is not to generate encyclopedic tabulations of data. Planning commissions should avoid collecting and presenting data not of particular relevance to the municipality’s problems, needs, or opportunities. Rather, studies should provide “discoveries” and “intelligence” to understand the community’s issues and lead to ideas and solutions to improve the community that will be written into the comprehensive plan then implemented.

XI. Issues Every Planning Commission Member Should Consider

Approaching the Art of Planning: Reactive vs. Proactive

Planning is often more of an art than a science and, as such, a good deal of successful planning relies on timing. The members of a planning commission have a decision to make regarding the approach that they take in carrying out their duties and responsibilities. As stated at the opening of this guidebook, the planning commission member's first responsibility is to help his or her community develop a vision for the future growth, and then seek out a way to implement that vision through the comprehensive plan and by reviewing plans for new development. There are very different approaches to how those two items – the comprehensive plan and the review of new development – can be addressed by the members of the commission. They can take each item as it presents itself and attempt to deal with it, or they can take an proactive approach and attempt to head off any potential problems before they occur. By taking the former approach, (i.e. reacting to and processing subdivision and land development plans), the planning commission is technically fulfilling its obligations. However, if it does not attempt to foresee any potential areas of difficulty, it may not be responsibly carrying out its tasks.

When the governing body has adopted a comprehensive plan, its departments, agencies, and appointed authorities must submit projects to the planning commission for recommendations. Each project represents an opportunity for a planning commission to influence the direction of growth and development within their community. A planning commission should analyze the proposed projects in terms of criteria provided in Sections 303 and 304 of the MPC for establishing the legal status of a comprehensive plan. This is a major effort, but must be done for projects that relate to, for example, the location or opening of any street, public ground or watercourse, or the adoption, amendment or repeal of an official map, subdivision and land development ordinance, zoning ordinance or provision for a capital improvements program.

Although the planning commission serves in an advisory capacity, this does not prevent the planning commission from acting as a pilot to chart change within the community. For example, some external factors, such as a new road or interchange location, may significantly alter both the traffic and land use patterns within the community. This could necessitate an update of the comprehensive plan and quite possibly a zoning amendment. An alert planning commission would be aware of this situation and could present both the problem and possible solutions to the governing body.

Public Participation

Public participation is vitally important to the planning process for two reasons: (1) It allows citizens to have say in the actions and decisions of their governments, including community planning and land use regulations that governing bodies and planning commissions undertake as authorized under the MPC; and (2) it results in better and stronger plans through consensus building and stakeholder advocacy for successful plan implementation.

“Public participation is essential to the planning process—whether it entails a planning commission meeting, zoning board hearing, or visioning exercise that is part of developing a comprehensive plan.”¹

The MPC stipulates certain public participation requirements that planning commissions must achieve in carrying out their planning duties and responsibilities. These include the following:

- **Comprehensive plan adoption** – Section 302 (a) of the MPC requires that “before adopting or amending a comprehensive plan, or any part thereof, the planning agency shall hold at least one public meeting before forwarding the proposed comprehensive plan or amendment thereof to the governing body.”

- **Zoning ordinance adoption** – Section 607(b) of the MPC stipulates “...the planning agency shall hold at least one public meeting pursuant to public notice and may hold additional public meetings upon such notice as it shall determine to be advisable.”
- **Curative amendments to the zoning ordinance** – Sections 609.1 and 609.2 of the MPC stipulate the requirements for landowner and municipal curative amendments, respectively. In both instances, the governing body shall hold a public hearing before voting on the enactment of an amendment.

Public meeting is defined by Section 107 of the MPC as an open forum held pursuant to notice under the Pennsylvania Sunshine Act (Act 94 of 1986, 65 Pa.C.S.A. § 701). In general, a planning commission is required to conduct its meetings in conformance with the Sunshine Act and its meetings must be made known through public notice according to Section 709 of the Act. Furthermore, its meetings must be open to the public and the public must be permitted to participate in the meetings in accordance with Section 710.1 of the Act. Finally, the planning commission must keep minutes of its meetings and all votes must be publicly cast and recorded.

Planning commissions must recognize that the MPC’s public participation specifications constitute the minimal legislative requirements. Instead, effective planning processes should have multiple and varied public participation opportunities programmed throughout their durations, i.e., from beginning to end. Such opportunities include but are not limited to:

- Project steering committees comprised of municipal officials, community stakeholders, and citizens alike;
- Telephone or in-person interviews with key stakeholders, etc.;
- Paper or web-based surveys;
- Community design charrettes;
- Public open houses;
- Interactive project websites and social media;
- On-line meetings (e.g., webinars);
- Showcasing the planning initiative at community events.

Planning commissions may consult the following publications for additional guidance on various public participation and public outreach tools and methods:

- The United States Environmental Protection Agency’s Public Participation Guide (<http://www.epa.gov/oia/amount/public-participation-guide/index.html>)
- The American Planning Association’s Community Engagement Publication Brief (<http://www.planning.org/research/arts/briefingpapers/pdf/engagement.pdf>)

Ethics

The activities of the planning commission do come under the scrutiny of the public. It is therefore important that any activities of the planning commission avoid even the hint of any possible unethical conduct or activity.

The Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 et seq. (Ethics Act), applies to individuals who are defined by the Act to be a “public official.” Members of a planning commission delegated with authority to make decisions on subdivision and land development plans qualify as “public officials” and are subject to the requirements of the Ethics Act.

Most planning commissions do not make decisions on applications; rather, they make recommendations to the governing body of the municipality. When a planning commission functions as an advisory body, the Ethics Act is not applicable to the individual members of the planning commission. Nonetheless, it is strongly recommended that the planning commission consult with its solicitor concerning the applicability of the Ethics Act, or contact the Pennsylvania Ethics Commission.

The planning commission may at some time be confronted with an issue in which one or more of its members has a financial interest. In such instances where the planning commission has been delegated decision-making authority, the member or members of the planning commission who may have a financial interest in the matter should disclose the nature of his or her interest in the matter and excuse themselves from any deliberation and voting. Even if the member feels that there will be no conflict of interest it may not appear this way to the public. By explanation of the situation or relationship, the disclosure will "clear the air" and allow the public to make an informed judgment. It is always wise to consult with a solicitor if doubt about conflict exists and to disclose any potential conflict of interest prior to casting a vote.

Where the planning commission has been delegated decision-making authority, members are subject to the conflict provisions of the Ethics Act. Section 1103(a) of the Ethics Act provides that "[n]o public official or public employee shall engage in conduct that constitutes a conflict of interest." The Ethics Act defines "conflict of interest" as "[u]se by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for a private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affect to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with he or a member of his immediate family is associated." "De minimis economic impact" is defined as "[a]n economic consequence which has an insignificant effect." Section 1103(j) of the Ethics Act requires, in the event of conflict of interest under the Ethics Act, that recusal of the individual with the conflict must "publicly announce and disclose the nature of his interest [the conflict of interest] as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken." The individual recused may not participate in the matter from which he is recused. That is, he may not participate in the discussion, make a motion, second a motion, or vote on a motion relating to the matter.

The Ethics Act also requires an individual who is defined by the Act to be a "public official" to annually file financial disclosure statements. Members of a planning commission *that has been delegated decision-making authority* on subdivision and land development plans are required to make such filings. Based on an opinion of the Ethics Commission, planning commissioners *serving in an advisory capacity only* are not required to make these filings. However, because the law on this issue is not well-established, it is recommended that they do so and also consult with their solicitor on the current law.

Planning Ethics

Recognizing that planning commission members appointed by the governing body serve in a public capacity authorized under the MPC, they are obligated to conduct themselves in an ethical and professional manner. According to the APA, there are two standards set for ethical behavior in the field of planning. The first is a Code of Ethics binding on members of the American Institute of Certified Planners (AICP) and the second standard is APA's Ethical Principles in Planning, which applies to citizens and non-AICP certified planners including elected and appointed officials, such as planning commissioners. This standard is not binding; it is a set of guidelines. However, some planning commissions formally adopt the ethical principles to assist them with ethical public decision making.

References

1. American Planning Association. "Planners' Communications Guide: Strategies, Examples, and Tools for Everyday Practice." Accessed online May 23, 2014 at <http://www.planning.ri.gov/documents/comp/APA%20Communication%20Guide.pdf>
2. *What is Planning?* American Planning Association. Retrieved April 9, 2014 from <https://www.planning.org/aboutplanning/whatisplanning.htm>.

XII. Planning Assistance from DCED

DCED's Governor's Center for Local Government Services (Center) provides a full range of technical and financial services to all of Pennsylvania's local governments. The Center is the principal state agency responsible for helping with planning and land use matters discussed in this publication.

Local government officials, planners, and other interested individuals have several sources of assistance from the Center:

- **Toll-free telephone number** – 888-223-6837. Callers will be connected with staff that has knowledge of planning, land use, zoning, subdivision and land development, and the PA Municipalities Planning Code.
- **Website** – dced.pa.gov/local-government. There are helpful pages under Community Planning, plus information on the topics listed below.
- **Publications** – dced.pa.gov/local-government/publications. This and the other nine Planning Series publications listed in the Preface can be downloaded and printed for free, or hard copies can be purchased at cost. The website also has publications with suggested provisions for floodplain management ordinances, plus publications on many topics from fiscal management to intergovernmental cooperation to open meetings.
- **Training** – <https://palocalgovtraining.org>. DCED provides funding for local government training programs via the PA Local Government Training Partnership. There are training courses, videos, and online instruction on a variety of topics, including planning and land use, plus ten fact sheets on planning and land use topics.
- **Land use law library** – www.landuselawinpa.com. DCED and the PA Local Government Training Partnership maintain an online library of significant court cases on zoning, subdivision and land development, and other land use topics.
- **Planning and land use eLibrary** – <http://elibrary.pacounties.org>. DCED and the County Commissioners Association of Pennsylvania maintain an online library of comprehensive plans, zoning ordinances, and subdivision and land development ordinances in effect in Pennsylvania counties, cities, boroughs, and townships.
- **Financial assistance** – dced.pa.gov/program. Currently DCED provides funding for local government planning through the Municipal Assistance Program. MAP offers up to 50 percent grants for costs of undertaking comprehensive plans, zoning ordinances, subdivision and land development ordinances, and more.

XIII. Other Planning Assistance

Assistance and training on planning and land use are available from other sources:

- **Pennsylvania Chapter of the American Planning Association (APA-PA)** – The Pennsylvania Chapter of the American Planning Association sponsors training and professional development opportunities to its members through its annual fall conference. In addition, APA-PA's six regional Sections sponsor training opportunities that are often driven to afford members the opportunity to earn AICP (American Institute of Certified Planners) Certification Maintenance Credits. More information on APA-PA is available online at <http://planningpa.org/>.
- **Pennsylvania Local Government Training Partnership** – The Pennsylvania Local Government Training Partnership is a training initiative between the Governor's Center for Local Government Services and Pennsylvania's statewide associations representing local governments. More information may be obtained from its website at <https://palocalgovtraining.org/>.
- **Local government associations** – In addition to programs through the PA Local Government Training Partnership, Pennsylvania's statewide associations representing different categories of local governments also offer annual conferences and training programs, including planning and land use, to their member local governments.
- **The Pennsylvania Municipal Planning Education Institute (PMPEI)** – PMPEI was established in 1992 for the purpose of providing courses in community planning and land use regulations for planning commissioners, zoning hearing board members, zoning administrators, elected officials, and others with an interest or involvement in planning. More information on PMPEI may be obtained on its website at <http://extension.psu.edu/community/pmpei>.

Appendix I: Additional Resources and Readings for Planning Commissioners is a valuable bibliography and resource list that provides the basic resource library for any planning commissioner in the commonwealth.

XIV. Conclusion

The job of the planning commission is not an easy one, and commissioners must juggle many difficult tasks if they are to be ultimately successful. This guidebook is designed as a primer for many of those tasks, and is intended to be a starting point for local governments as they either begin or further develop their planning capabilities.

Planning commissioners are leaders in their communities, and as such, have great potential to shape the future of their homes. As a whole, the planning commission also has many responsibilities. It is expected to oversee the growth and development of the community and to ensure that the community's infrastructure is prepared for any growth and development that may occur. It must advise the governing body on matters relating to planning and community facility needs. It is obligated to prepare amendments to planning and planning related ordinances if such become necessary. It must bear the responsibility of advising the governing body on the action that should be taken on subdivision proposals and development plans.

It can also be responsible for a variety of other activities as are specified in the MPC. The responsibilities are considerable, the consequences are important, and the tangible rewards for providing such service are usually difficult to discern. However, thousands of individuals across the commonwealth willingly provide their time and services to serve in such a capacity. They are leaders, and they are visionaries. For Pennsylvania's many communities, that task falls first to the planning commission. It will not be easy, but a healthy, vibrant Pennsylvania – in all of its regions, cities, townships, and boroughs – is the reward.

Appendix I: Additional Readings and Resources for Planning Commissioners

Resources

Governor's Center for Local Government Services: dced.pa.gov/local-government/community-planning

The Governor's Center for Local Government Services serves as a resource for local government officials, developers, and citizens interested in planning to improve, grow, and enhance communities. It provides valuable tools that will support wise land use decisions and encourage economic development, a healthy environment, and strong communities. More information regarding the Center's services may be obtained at dced.pa.gov/local-government/services-provided.

American Planning Association: www.planning.org

American Planning Association Planning Commissioners Service: www.planning.org/commissioners/

Pennsylvania Chapter of American Planning Association: <http://planningpa.org/>

Pennsylvania Municipal Planning Education Institute (PMPEI): <http://extension.psu.edu/community/pmpei>

Pennsylvania Local Government Training Partnership: <https://palocalgovtraining.org/>

Planners Web – News and Information for Citizen Planners: www.plannersweb.com

Planetizen: The Planning & Development Network: www.planetizen.com

Further Reading for Planning Commission Members

As of this writing, the American Planning Association – at <http://www.planning.org/library> – maintains lists of suggested readings on planning:

- Essential Planning Library
- 100 Essential Books of Planning (1909 – 2009)
- An Annotated List of Electronic and Print Resources for Practicing Planners, Scholars, and Students of Planning

Appendix II: Model Ordinance for Creating a Planning Commission

AN ORDINANCE NO.

An Ordinance signifying the intention and desire of the _____ (Board of Supervisors, Board of Commissioners, Council) of the _____ (Township, Borough, City) of _____ (County) Pennsylvania, to create and establish a Planning Commission under the provisions of the Pennsylvania Municipalities Planning Code Act 247 of 1968, P.L. 805, *as reenacted and amended*, 53 P.S. § 10101, *et seq.*

BE IT ORDAINED and ENACTED by the _____ (Governing Body) of the _____ (Township, Borough, City) of _____ (County).

Section 1. That the _____ (Board of Supervisors/Board of Commissioners/Council) of the _____ (Township, Borough, City) of _____ (County) hereby signifies its intention and desire to organize a Planning Commission under the provisions of Article III of the Pennsylvania Municipalities Planning Code.

Section 2. The Planning Commission shall consist of ____ (3-9) members, all of whom shall be citizens of the _____ (Township, Borough, City) of _____ (County).

The term of office of the members shall be four (4) years and should expire on December 31 or until a successor is appointed, except that the terms of the members first appointed shall be so fixed that on a commission of eight (8) members or less, no more than two (2) shall be reappointed during any future calendar year, and on commissions of nine (9) members, no more than three (3) shall be so reappointed or replaced. In the event of vacancies, the governing body shall appoint a member to fill the unexpired term.

The members of the Planning Commission shall be appointed by the _____ (Board of Supervisors/Board of Commissioners/Council) by resolution which shall also state the term to be filled by each planning commissioner.

***NOTE:** Elected or appointed officers or employees of the municipality may serve on the planning commission. However, on a commission of three members at least two members shall be citizen members; on a commission of four or five members at least three members shall be citizen members; on a commission of six or seven members at least five shall be citizen members; and on a commission of eight or nine members at least six shall be citizen members.

Section 3.

- A. The planning commission shall at the request of the _____ (Board of Supervisors, Board of Commissioners, Council) have the power and shall be required to prepare the comprehensive plan for the development of the municipality as set forth in the MPC and present it for the consideration of the _____ (Board of Supervisors, Board of Commissioners, Council).
- B. The planning commission shall maintain and keep on file records of its actions. All records and files of the planning commission shall be in the possession of the governing body.
- C. The planning commission at the request of the governing body may:
- (1) Make recommendations to the governing body concerning the adoption or amendment of an official map.
 - (2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it.
 - (3) Prepare, recommend and administer subdivision and land development and planned residential development regulations.
 - (4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto.
 - (5) Do such other acts or make studies as may be necessary to fulfill the duties and obligations imposed by the MPC.
 - (6) Prepare and present to the governing body of the municipality an environmental study.
 - (7) Submit to the governing body of a municipality a recommended capital improvements program.
 - (8) Prepare and present to the governing body of the municipality a water survey, which shall be consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.
 - (9) Promote public interest in, and understanding of, the comprehensive plan and planning.
 - (10) Make recommendations to governmental, civic, and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
 - (11) Hold public hearings and meetings.
 - (12) Present testimony before any board.
 - (13) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
 - (14) In the performance of its functions, enter upon any land to make examinations and land surveys with the consent of the owner.
 - (15) Prepare and present to the governing body a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.
 - (16) Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

***NOTE:** Listed above are all of the duties that the MPC enables a governing body to authorize its planning commission to perform. A governing body may elect to authorize its planning commission to perform all of the duties listed by the MPC or a limited number of the duties. In the latter case, C. should specify the specific duties.

Section 4. The planning commission may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the commonwealth, or the federal government, or any of their agencies, or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

Section 5. All other resolutions and ordinances or parts thereof, inconsistent herewith, are hereby repealed.

Duly presented and ordained and enacted at a regular meeting of the _____ (Governing Body) of the _____ (Township, Borough, City) of _____ (County), Pennsylvania held the day of _____, 20____.

ATTEST: _____

Secretary

Appendix III: Suggested Bylaws for Planning Commissions

ARTICLE I. NAME OF COMMISSION

The name of this organization shall be _____ (insert County, City, Township, Borough as appropriate) Planning Commission.

ARTICLE II. AUTHORIZATION

The authorization for the establishment of this Planning Commission is set forth under the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq. Powers and duties are delegated to the Planning Commission by the _____ (insert "Council," "Board of Commissioners" or "Board of Supervisors," as appropriate) of _____ (insert County, City, Township, Borough as appropriate) by Ordinance _____ (insert number) of _____ (insert date) in accordance with the above-mentioned enabling law.

ARTICLE III. MEMBERSHIP

Membership shall consist of [three, five, seven or nine] persons to be appointed by the _____ (insert "Council," "Board of Commissioners" or "Board of Supervisors," as appropriate). The term of office of members shall be four (4) years, except for those members first appointed after creation of the planning commission and those members appointed to fill a vacancy and for the unexpired term of that vacated seat.

ARTICLE IV. VOTING

Section 1. Each member shall be entitled to one vote.

Section 2. Voting shall be by roll call.

Section 3. If a quorum is present, a simple majority of the votes cast on any particular matter of business will carry the issue.

Section 4. A record of the roll call vote shall be kept as a part of the minutes.

Section 5. A motion from the floor must be made and passed in order to dispense with any item on the agenda.

ARTICLE V. OFFICERS

Section 1. The Officers of the Planning Commission shall consist of a Chairman, Vice-Chairman, and Secretary.

Section 2. The Chairman shall preside at all meetings and hearings of the Planning Commission and shall have the duties normally conferred by parliamentary usage on such officers.

Section 3. The Secretary shall keep the minutes and records of the Commission, and with the assistance of such staff as is available, shall prepare the agenda of regular and special meetings under the direction of the Chairman, provide notice of all meetings to Commission members, arrange proper and legal notice of hearings, attend to correspondence of the Commission, and such other duties as are normally carried out by a Secretary. [Alternatively, the Bylaws may provide for a municipal clerk or Secretary to keep the minutes and records.]

ARTICLE VI. ELECTION OF OFFICERS

Section 1. An annual organization meeting shall be held during the first regular meeting in January or at a special meeting following the organization meeting of the governing body.

Section 2. Nomination shall be made from the floor at the annual organization meeting and election of the officers specified in Section I of Article IV shall follow immediately thereafter.

Section 3. A candidate receiving a majority vote of the entire membership of the Planning Commission shall be declared elected, and shall serve for one year or until his successor shall take office.

Section 4. Vacancies in office shall be filled immediately by regular election procedure.

ARTICLE VII. MEETINGS

Section 1. Public notice shall be published of all meetings.

Section 2. Regular meetings will be held on the _____ (insert day of week, week of month) at _____ (insert time of day) at _____ (insert location). In the event of conflict with holidays or other events, a majority at any meeting may change the date of said meeting.

Section 3. A quorum shall consist of _____ (insert simple majority number as appropriate depending on the size of the planning commission established by the governing body). A quorum is necessary to transact business.

***NOTE:** Section 207 of the MPC, Conduct of Business, does not set minimum requirements for a quorum to do business at a meeting of a planning commission. A quorum is best determined by a majority of members appointed to the planning commission by the governing body.

Section 4. Special meetings may be called by the Chairman. It shall be the duty of the Chairman to call a special meeting when requested to do so by a majority of members of the Commission. The Secretary shall notify all members of the Commission not less than 24 hours in advance of such special meeting and provide notice to the public as required by the Sunshine Act, Act 94 of 1986, *as amended*, 67 Pa. C.S. § 701, *et seq.*

Section 5. All meetings shall be conducted in conformance with the requirements of the Sunshine Act. All meetings shall be open to the general public. Any person attending a meeting shall have the right to use recording devices to record all proceedings. Use of devices such as audio, video, or other recording equipment shall be subject to rules and guidelines prepared and approved by the commission. However, in accordance with the Sunshine Act, such rules or restrictions shall not serve to exclude use of recording devices to record the proceedings of a public meeting.

ARTICLE VIII. ORDER OF BUSINESS

The order of business at regular meetings shall be:

- a. Roll call
- b. Reading of minutes
- c. Communications [and bills]
- d. Reports of Officers
- e. Old business
- f. New business
- g. Public comments and questions
- h. Adjournment

ARTICLE IX. EMPLOYEES

Within the limits imposed by the funds available for its use, the Commission may employ such staff personnel and/or consultants as it sees fit to aid in its work. Appointments shall be made by a majority of the entire Commission membership.

ARTICLE ____ SUBDIVISION AND LAND DEVELOPMENT PLANS

(If the governing body has delegated decision-making authority to the Planning Commission, describe in this article the required procedures for consideration and action on a proposed subdivision and/or land development plan. In such case, the Planning Commission must conform its actions to the procedural requirements set forth in Article V of the MPC.)

ARTICLE X. PUBLIC HEARINGS

Section 1. (Include if the governing body has delegated decision-making authority to the Planning Commission). The Planning Commission may hold public hearings subject to public notice, as required by the MPC, on proposed subdivision and land development plans.

Section ____. The Planning Commission may hold public hearings when it decides that such hearings will be in the public interest.

Section ____. Notice of the time and place of a public hearing shall be published pursuant to public notice as provided for in the MPC. [or by alternate described means.]

Section ____. The matter before the Commission shall be presented in summary by a member of the Commission designated by the Chairman, and parties in interest shall have the privilege of the floor.

Section ____. A record shall be kept of those speaking before the Commission at such hearings.

ARTICLE XI. AMENDMENTS

These bylaws may be amended by a majority vote of the entire membership of the Planning Commission. Adopted this date _____.

Attested:

Secretary

Signature of Chairman

**Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services**

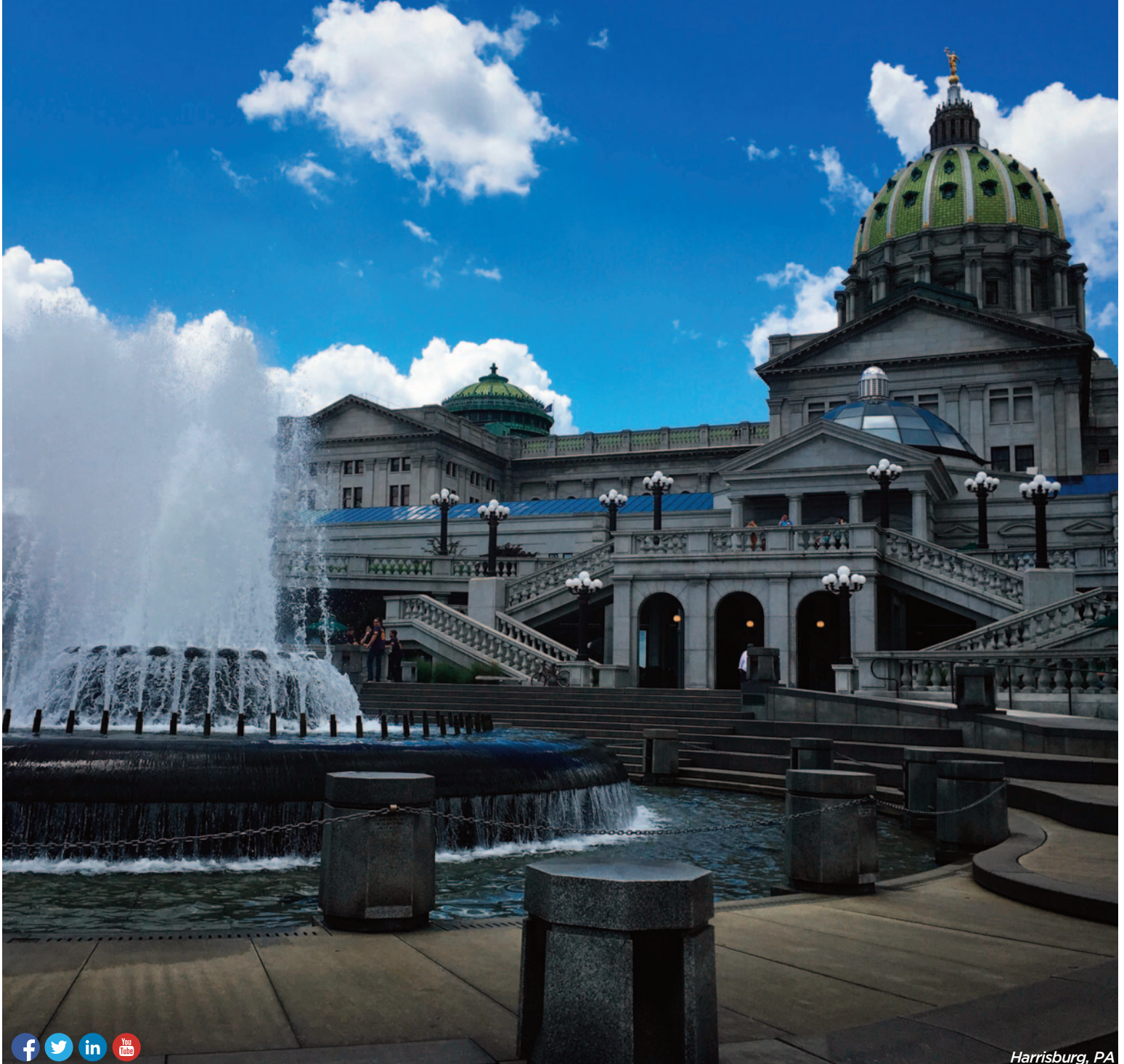
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Introduction

Today, land use is an important issue to people – both locally and nationally. In Pennsylvania, land use planning is a topic among state agencies, county and local governments, business and industry, charitable and private foundations, as well as environmental organizations. In fact, all levels of government and all branches of state government are actively dealing with planning and land use matters.

Pennsylvania has modernized its planning enabling legislation to meet the contemporary demands of the 21st Century. Communities in the commonwealth have new tools to use in planning how their resources are utilized and conserved. The community tool chest has been expanded to specifically authorize municipalities to designate growth areas, rural resource areas and then transfer development rights between or among municipalities by cooperative planning and implementation agreements.

Particularly, the most recent legislative session resulted in passage of four acts that significantly impact the way state agencies, county and local governments do planning. Collectively, Acts 32, 67, 68 and 127 of 2000 provide broad authorization to look closely at areas already developed, examine natural areas for conservation, achieve general consistency among local, county and state entities for promoting sound land use. Each component element of the legislation constitutes an important connection in implementing basic principles of sound land use.

Act 32 requests state agencies to look for and consider locations in downtown areas based on guidelines developed by the Department of General Services. Acts 67 and 68 require all state agencies to consider and rely upon comprehensive plans, including implementing zoning ordinances, when making infrastructure decisions that impact land use. Act 127 allows a municipality to better manage validity challenges that allege simultaneous substantive constitutional challenges. No longer must a municipality hear multiple curative amendments regarding the same property at the same time. Municipalities have more incentives than ever before to cross municipal boundaries and plan together.

A comprehensive plan is more than just a document disclosing past and present land use trends with a proposed course of action. It is a process of organizing for the future. It creates a blueprint for our land use patterns of tomorrow. Even to not plan is a strategy for dealing with what lies ahead. Community planning is an organized way or process of thinking about tomorrow. By thinking about how a community changed in the past can help predict what changes might be in store for the future. When this type of thinking translates into action, it needs to be done in an orderly fashion and made part of a routine administrative process.

Pennsylvanians know that land is one of our most valuable natural resources and the way it is used or developed creates a significant part of our physical surroundings. Any change in land use becomes a permanent part of our daily lives in the future. Yet all valuable resources must be used reasonably, economically and equitably to benefit both the property owner's interest as well as the general public. An important power of local government is to plan for and guide the way land resources are used. We hope that this publication assists local officials in this stewardship and planning endeavor.

Background

Responsibility of Local Government to Plan

Local government is the backbone of Pennsylvania's governmental structure and has the responsibility to plan and take charge rather than doing nothing. To do nothing can put planning in the hands of others. All land use decisions begin with a plan. Whether the idea for development is that of an individual prepared and submitted or that of something suggested in a plan prepared for the community and adopted by the governing body there is a plan. Even no plan is a plan of some sort.

Municipal government must recognize that no one person, agency or group controls the development process. Government's responsibility is to provide a framework for change. Without a framework or plan, the development process is reactive. This reactive process results in piecemeal uncoordinated development. The courts have labeled it disjointed incrementalism. Early in the 20th Century Frederick Law Olmsted, Jr., renowned community planner in Pennsylvania, observed that lack of planning results in a "... drifting hand-to-mouth policy of doing only what must be done today." This practice puts planning in the hands of others.

The choice is up to the elected official - to plan or not to plan for the community? Local government can provide a framework for change. Elected officials make the decision whether a community wants to react on an ad hoc basis or decide if their citizens are better served by a proactive approach that plans for the future. Everyone that has a part in their community should let officials know their preference whether to plan or not to plan.

Today, municipal plans mean more than in the past. State agencies are required to consider and rely upon plans and zoning ordinances that are generally consistent. Without a plan, state agencies, developers, elected officials and landowners have nothing to guide them in the decision-making process. The Pennsylvania Municipalities Planning Code (MPC) has been modernized to make it easier than ever to plan and plan cooperatively. Opportunities abound for those officials interested in shaping future land use patterns in their communities.

Municipal, Multimunicipal and County Comprehensive Plans

Under the updated MPC, four types of comprehensive plans are defined. A municipal, multimunicipal, county and specific plan. A municipal plan covers a single municipality. A multimunicipal plan is developed and adopted by any number of contiguous municipalities and includes any joint municipal plan previously authorized by the MPC. A specific plan is a detailed plan for nonresidential development covered by a municipal or multimunicipal comprehensive plan.

The MPC defines a "County Comprehensive Plan" as "a land use and growth management plan prepared by the county planning commission and adopted by the county commissioners which establishes broad goals and criteria for municipalities to use in preparation of their comprehensive plan and land use regulation." A multimunicipal plan is defined as "a plan developed by any number of contiguous municipalities, including a joint municipal plan as authorized by this act." A "Specific Plan" is a means to expedite development approval by giving municipalities the authority to adopt a plan for the systematic implementation of a generally consistent comprehensive plan for any nonresidential area.

All comprehensive plans are subject to the following four common criteria: 1) contain basic plan elements set forth in Section 301(a); 2) contain a plan for the reliable supply of water, considering current and future water resources availability; 3) be reviewed every 10 years, and 4) "...identify those areas where growth and development will occur so that a full range of public infrastructure, including sewer, water, highways, police and fire protection, public schools, parks open space and other services can be adequately planned and provided as needed to accommodate growth."

County comprehensive plans have an additional set of requirements. MPC Section 301 (7) requires a county plan to:

- (i) Identify land uses as they relate to important natural resources and appropriate utilization of existing minerals.
- (ii) Identify current and proposed land use which have a regional impact and significance, such as large shopping centers, major industrial parks, mines and related activities, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities.
- (iii) Identify a plan for the preservation and enhancement of prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.
- (iv) Identify a plan for historic preservation.

In addition, counties are required to update the comprehensive plan every ten years. Whereas municipal and multimunicipal plans are to be reviewed at least every 10 years and at that time sent to contiguous municipalities for review and comment. As municipal and multimunicipal plan, are sent for review, copies should be sent to the Governor's Center for Local Government Services for informational purposes.

The MPC encourages municipalities to adopt municipal or multimunicipal comprehensive plans that are generally consistent with the respective county comprehensive plan. In fact, municipal plans adopted after February 21, 1989, are to be generally consistent with the adopted county comprehensive plan. To achieve general consistency, two or more contiguous municipalities can request a county to amend its plan. The county must accept the requested amendment unless good cause is given to refuse the request.

MPC Plan Requirements

MPC Section 301 (a) requires each municipal, multimunicipal and county comprehensive plan to have nine elements. Collectively these basic elements should present a composite vision of private and public development for the future based on a statement of community development goals and objectives. Each and every basic element is linked, interrelated or connected. For example, resident population data equates to housing needs, demographics such as age cohorts can relate to housing types and educational needs, both present and future. There are a multitude of interrelationships among and between the required comprehensive plan elements.

A summary of the required plan elements derived from MPC sections 301 (a) follows:

- A statement of community development goals and objectives that chart the location, character and timing of future development.
- A plan for land use identifying the amount, intensity, character and timing of land use.
- A plan to meet housing needs of present residents and those families anticipated to live in the municipality as well as accommodating new housing in different dwelling types and at appropriate densities for households of all income levels.
- A transportation plan.
- A community facilities plan.
- A statement of the interrelationships among the various plan components which estimates the environmental, energy conservation, fiscal, economic development and social consequences on the municipality.
- A discussion of short- and long-range plans implementation strategies.
- A statement indicating that existing and proposed development is compatible with plans and development in contiguous municipalities. This statement should indicate that existing and proposed development is generally consistent with the objectives and plans of the county comprehensive plan.
- A plan for the protection of natural and historic resources to the extent the municipalities are not limited by other federal or state statutes, these resources include, wetlands, aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plain, unique natural areas and historic sites.

Getting Started — Preparing a Comprehensive Plan

First, a municipality should examine its planning problems, needs and resources. Once this open exercise is completed, these elements or factors must be quantified and then prioritized. It is a good idea to take this list to the county planning office to learn their thoughts and discover how they might be able to help. Armed with a list of problems, essential needs and crucial resources, the planning commission and governing body must decide what can be done within the realm of existing resources and capabilities.

Any successful comprehensive planning process demands citizen input from the very onset. Plans should not be made in a vacuum and it clearly violates the Sunshine Act to discuss public matters behind closed doors. Recognize that effective comprehensive planning is an expression of community-wide values. Input from the citizenry is needed to understand and document community interests. Use municipal surveys to open up the planning process, access community-wide values and document citizen interests.

Frequently, planning agencies utilize a visioning exercise to kick off a comprehensive planning effort. Visioning is a facilitated process by which citizens develop and articulate their preferences for the future of their community. A community vision should reflect the thoughts and concerns of the residents regarding environmental, social, and economic values, as well as consider future land uses, residents, and the corresponding desires and needs.

In addition to or along with a visioning program, it is a good idea to begin any planning program with a public meeting explaining what is going to be done, how it is going to be done, who is involved, what estimated costs are going to be, when surveys will be done and the projected time frame for completion.

Very few municipalities can afford their own full time professional planner. Most hire consultants or purchase services of the county planning commission's staff on a contractual basis. A municipality without some type of professional volunteer or paid professional to assist in the planning effort is at a serious disadvantage.

Mistakes are expensive and costly to correct. Some limited services from professional planners can almost always be obtained within available financial resources.

The team approach to comprehensive planning can be most effective. Join with another community to pool both resources and capabilities. Development in one municipality will affect adjacent communities and the MPC encourages coordination with contiguous municipalities. The team approach can also mean working with a college or university to arrange for an intern to do certain segments or tasks under the supervision of a planning professional.

Few municipalities within the commonwealth have the luxury of a full-time paid professional planner. Yet, professional assistance is generally essential. On the other hand, however, the need for planning bears little relationship to the financial ability to pay for services of a professional. Planning needs and capabilities, as well as financial resources, must be balanced so that some level of planning gets done. Check with adjacent municipalities about their planning needs. If they have similar planning needs, perhaps you can join forces and combine financial resources thereby working as a planning team doing integrated plans.

The Comprehensive Plan

Once the planning team is selected work on the plan starts. Land use planning begins with municipalities preparing a comprehensive plan. The comprehensive plan document consists of three separate but related parts: (1) the background studies; (2) the community development goals and objectives; and (3) the plan or plans for future actions and alternative actions regarding the various components such as future land use, housing, transportation and community facilities.

Background Studies

MPC Section 301.2 regarding surveys by planning agencies states that:

“In preparing the comprehensive plan, the planning agency shall make careful surveys, studies and analyses of housing, demographic and economic characteristics and trends; amount, type and general location and interrelationships of different categories of land use; general location and extent of transportation and community facilities; natural features affecting development; natural, historic and cultural resources; and the prospects for future growth in the municipality.”

In the beginning of the 20th Century, Frederick Law Olmsted Jr., renowned designer/planner of several communities in Pennsylvania including the first planned industrial town designed to be sold to its workers, urged municipalities to “. . . create or acquire statistical databases on the physical, social, economic and financial environment; compile information on relevant legal and administrative matters and draw up accurate topographical maps.” A comprehensive plan entails such an inventory and makes recommendations regarding policies designed to guide future development thereby avoiding costly unwise development. Olmsted also noted that “prevention is cheaper than the cure.”

The studies performed in the areas referred to above attempt to objectively analyze the community from a number of different perspectives. Each individual study takes an in-depth look at a specific topic. When completed, each study or survey will then lend support to the development of the plan.

Various sources must be utilized to gather the data necessary to prepare the studies. Historical documents, municipal records, soil and geological surveys, various census reports and other sources of information are essential. From these reports, surveys and documents, the facts and trends can be analyzed to develop the basic assumptions and projections necessary for the development of the comprehensive plan.

These background studies and surveys describe the natural and man-made conditions, community facilities and socioeconomic trends that affect the pattern of development. They should comprise the best available information for determining which uses are best suited to given areas of the community. In addition to mapping data about natural features such as terrain and existing man-made improvements, these studies will also shed light on the probable magnitude, direction, and characteristics of future development pressures.

Community Development Goals and Objectives

Local goals, objectives and policies represent an important part of the plan document. Community development goals and objectives are a required section of any zoning ordinance; you must have them to implement any type of a zoning program. They are developed primarily on the basis of the constraints, problems, and opportunities, needs and assumptions made about the future in the background studies. The goals and objectives should be prioritized because there is competition for future use of land and resources are dwindling.

Developers and even municipal officials will often dismiss the plan's community development goals and objectives as meaningless rhetoric or idealistic jargon. While it may be true that some statements of goals and objectives may be too idealistic and/or altruistic, the importance cannot be overstated. In addition to being a statutory requirement, they are not only supposed to guide the policy decisions made in the development of the plan, but also may be closely examined by the courts for intent should land use decisions be challenged.

Statements constituting the community goals and objectives should be clearly and concisely articulated because they serve as guides for the decision-making process. They are to be as specific as possible and be unique to each community. Goals and objectives should not be cloned from another municipality, nor should they be drafted without thought and discussion. These statements are the basis for and justify regulations governing the future growth and development of your community.

Goals or objectives that violate constitutional rights are unconstitutional. Statements articulating goals or objectives that violate either state or federal statutes are illegal and will be struck down when challenged. The court system will not tolerate discrimination. Goals or objectives, whether at face value or by defacto effect, that are exclusionary, unduly restrictive or unconstitutional once challenged will be found invalid.

Plan Components

Comprehensive plan components should convey a clear strategy for residential, recreational, agricultural, open space, commercial, industrial, resource extraction and institutional uses as well as the necessary infrastructure to serve development as planned. In recognition of the truism that “one size does not fit all” these following plan components represent a benchmark for comprehensive plans developed under the MPC. Some components or elements may not be appropriate in a given community, while other elements may require more detail and need considerable more attention in another community.

As noted previously, a MPC plan has three parts – community goals and objectives, technical background studies and various other plans commonly called functional plans. A comprehensive plan paves the way for preparation of these so called functional plans, which contain more detail. An outline of these suggested elements is found in Appendix I.

COMMUNITY PLANNING PROCESS

Assessment — This results in a general statement of appearance of the community. It can be an exercise formulating a brief description of the general character and appearance of the community as it exists at the time of the planning assessment and at the beginning of the planning process.

Visioning — This facilitated process provides an opportunity for residents to develop and articulate preferences for the future of the community.

Citizens Participation — This outreach effort, if thorough and successful, results in citizen buy in and acceptance of the final product; a plan for the future of the community.

History of the community and region — An assessment of past development patterns, cultural, social and economic characteristics that resulted in the present form of the community.

Regional characteristics — An analysis of regional factors and conditions that impact and influence the community, its people, its economy and its environment.

Build-out map — A build-out analysis can help visualize future land use patterns for the community. It shows likely location of new roads and lots that could legally be built on vacant land presently undeveloped in the community.

PHYSICAL ENVIRONMENT, NATURAL AND HISTORIC RESOURCES

Topography — A detailed description of surface features of a community and its region.

Natural Resources — An inventory of the soils, water, minerals, gas, petroleum, forest, fish and game in the community.

Water Resources — An inventory and description of water resources and supply, wetlands, and floodplain areas.

Watershed Inventory — A description and assessment for features and characteristics compiled on a watershed basis.

Resource Inventory/Analysis Maps — A compilation of the natural environmental features in the community.

Natural Diversity Inventory — A register of significant ecological features. These features include plant and animal species of special concern and outstanding geological features as well.

Green Infrastructure Inventory — Public and private natural areas such as parks, greenways, river and stream corridors, paths and trails.

Natural hazard areas — A list of hazard sites and areas such as floodplains, steep slopes, mudflow or other geological hazard areas, old land fills, sink hole prone sites, and man-made sites or facilities, such as underground storage facilities, chemical and other know technological facilities.

Inventory of Historic Features — A list that identifies historically significant cultural, natural or man-made structures.

POPULATION CHARACTERISTICS AND TRENDS

Demographic Studies — This element of a comprehensive plan inventories the population of the community. Population statistics characterize the past and present size, density, distribution, data by sex, age cohorts, racial and ethnic composition and human movement patterns. This statistical inventory of its people is utilized to project population trends and condition into the future for the community

PUBLIC, SEMI-PUBLIC, COMMUNITY SERVICES AND UTILITY FACILITIES

Community Facilities Plan — This element inventories, analyzes and projects future community facilities and utility needs for the community. A plan for community facilities can be as inclusive as deemed appropriate depending upon the needs of the municipality.

TRANSPORTATION

Inventory of all transportation modes and systems — This element describes components of the circulation system in the community, its interstates, expressways, beltways, highways, boulevards, streets, alleys and public ways.

Pedestrian; bikeway; equestrian; trails; pathways — These are not as traditional ways of transport as those above, but nonetheless are important ways to move around and through the community, either for recreational purposes or more practical trips for specific reasons.

Terminals; airport; port; railroad; water — Perhaps not appropriate for all communities, but if one of these significant facilities is present in the community it should be inventoried, analyzed, and planned for in some way.

Classification of roads, streets and ways — This component categorizes roads by function and purpose. A classification system can be the basis for functional street standards, setting speed limits and programmed maintenance schedules.

Traffic patterns; origin and destination — This information is utilized to program road improvement needs and secure funding.

Traffic volumes and capacity analysis — This data provides important traffic flow information and can be used to establish background levels of service criteria for the community.

Public transportation; assessment and needs — Where appropriate, this component provides important data for present and future public transportation needs.

HOUSING

Inventory of Housing Stock — This element identifies housing needs, inventories and trends.

Housing Characteristics — An analysis of housing characteristics provides data relative to housing age, type of construction and specifications, such as manufactured, code standard, company homes.

Housing Types — This data quantifies type dwellings, such as, single-family, two-family, manufactured homes and residential parks; range of multifamily residential structures.

Housing Occupancy and Vacancy Study — This element assesses housing occupancy and vacancy rates and projects future needs and trends.

Housing Quality Value and Needs Assessment — This type of inventory and analysis provides data about housing costs and dollars value per unit of the housing stock.

Housing Needs and Affordability — This component of the plan compares personal income levels to housing costs to determine housing affordability data.

Future housing needs — An assessment of future housing requirements provides important information not only to community officials, but also the builders in community that build residential dwellings.

Residential Neighborhood Patterns — Community housing patterns and densities are useful in understanding the role of housing in the well being for the larger community. It is important to recognize housing mobility, changes and shifts in housing patterns, such as transitional housing stock can be identified and accommodated by a plan.

Housing Ownership and Funding — Identifying and analyzing ownership patterns and trends enables builders, developers and community officials to better understand the dynamics of the community housing stock. Bankers and community leaders can better address funding needs and future requirements.

ECONOMIC CONDITIONS

Economic analysis of the community — This analysis enables community officials to recognize the composition of the local and regional economy.

Community Income Analysis — A study of income by source and distribution provides valuable data regarding economic patterns in the community.

Labor Force Characteristics — An analysis of the labor force and market by size and character is important when considering local economies. This study looks at the labor force by categories such as, skilled, semi-skilled, unskilled workers, managerial and professional force.

Economic stability and versatility — This type of economic analysis allows municipal officials to value and understand the significant economic components of the community and region. This data helps identify which sectors of the economy that need to be addressed to increase the economic and versatility and vitality of the community.

Inventory of industrial, commercial and trade establishments — An inventory by types of industry, commercial and trade establishments, is an important factor in assessing a community's economy. Factors such as size of physical plants, payroll, capitalization demands and requirements are critical considerations.

Agricultural resources and production — An inventory and assessment of agricultural activities provides data that ensures that essential agricultural dependent industries and businesses are in place to support the farming community.

Mining, quarrying and other extraction and raw materials processing activities — An inventory of aggregated related industries is important to community and economy in many ways. These activities need to be considered as they enable economic expansion and are specifically addressed in the MPC.

Underutilized and Undeveloped Industrial and Commercial Areas — This background study identifies these areas and incorporates recommendations to maximize commercial and industrial activities.

LAND USE PLANS

Existing land use inventory, land characteristics and coverage — This element inventories and identifies existing land uses within the community.

Future land use plan — The element projects land use patterns of the future.

Other future land use plans as appropriate — These functional plans include Sewage Facilities Planning, Recreation Plans, Storm Water Management Plans, Energy Conservation Plans, and Solid Waste Management Plans, etc.

FUNCTION AND FORM OF GOVERNMENT

Type of government — This element describes all aspects of form of government in place within the community, including the charter if it is home rule. It also provides information on advisory commissions, authorities and intergovernmental organization that official governing body participates in regarding regional affairs.

Administrative organization — This section describes the day-to-day administrative components of the municipal government. This includes an organizations chart for the administrative functions of the municipality as well as committees and task forces established to serve the community.

Consistency of plans (horizontal and vertical) — This element is an assessment of the consistency among and between plans. It analyzes each comprehensive plan element and implementation ordinance in terms of consistency of impact on land use in the community, surrounding municipalities and the county. This component also assesses how the plan relates to school district plans, as well as county and regional plans.

Implementation Ordinances (non-land use) — This section inventories codes and code enforcement activities such as NFIP floodplain regulations including: building; housing; electrical; plumbing; fire; property maintenance codes.

MPC Land Use Ordinances — Official map; zoning; subdivision and land development; PRD provisions.

Designated Growth Areas — An area designated for growth used as a tool to build on and implement a comprehensive plan. A growth area is a geographic delineation, or boundary line, within which development at higher density and intensity is encouraged.

Hazard Mitigation Plan — A hazard mitigation plan seeks to ensure that development, both existing and future, is compatible with the hazards facing a community.

Energy Conservation Plan — An energy conservation plan systematically analyzes the impact of each component and element of a comprehensive plan on the present and future use of energy in the community.

Capital Improvement Plan — A schedule or list of projects for which public funds are to be used (wholly or partially).

Historic and natural features preservation ordinances — These are free standing implementation ordinances such as wellhead protection standards and historical preservation regulations implemented under Act 167 the Historic Preservation Act.

Innovation in Planning - The Implementable Comprehensive Plan

As previously mentioned, both county and municipal comprehensive plans must meet the MPC requirements relating to referencing required topics. That being said, a municipality creating a comprehensive plan is not strictly bound by the recommendations and format of the traditional planning approach found above. Planning is ultimately about creating a roadmap for not only those actively involved in the day-to-day workings of municipal government but also those who participate in the development of a place. These individuals are ordinary citizens who may be part of associations or civic organizations. Despite a lack of technical knowledge in planning, the individuals will play a crucial role in the implementation and formulation of a comprehensive plan.

The implementable comprehensive plan approach is based upon the presupposition that a comprehensive plan should be as understandable and immediately accessible to the general populace as possible. Simply, what good is a map if one can't read it?

In 2016, DCED's Denny Puko outlined five keys to an implementable comprehensive plan. These keys are:

1. Focus on relevant, real community issues.
2. Organize the plan the way local officials and citizens think.
3. Devise practical and workable recommendations.
4. Recruit partners and create capacity to implement the plan.
5. Get local ownership of the plan and commitment to implement it.

The keys to an implementable comprehensive plan take into account the reality of planning today and serve as DCED's doctrine for providing both technical and financial planning assistance. Due to the limited nature of municipal resources, it is vital to make planning a value adding activity rather than an exercise that results in an expensive, unused document with an incomprehensible compilation of data. A municipality with an implementable and understandable comprehensive plan will be able to realize their goal of a coherent and consistent long term strategy and subsequent implementation approach.

Not Just a Document: Comprehensive Planning is a Process

To summarize, the planning process consists of making surveys, data collection, analysis and projections; problem identification; setting goals and objectives; formulating options; choosing an alternative; implementing decisions; experiencing the results; evaluating the outcomes and updating the goals or methods of implementation.

This systematic process represents a means of dealing with change. If a community is growing, change will occur more quickly than in a stable community. Even a placid community will change over time. The makeup of the population will alter; the economy will fluctuate; the housing stock will age and its condition change; the environment will continue to be threatened and the needs of the citizens will not be the same today as in the future.

A municipality is not required to regulate land use, but if it decides to implement zoning, it must have a well-articulated statement of community development objectives. Objectives should be supported by sufficient analysis and documentation to defend the zoning or other land use ordinances of the community against legal challenges. Preparing a comprehensive plan provides the most effective basis for the development of land use ordinances.

Any community planning process must be a public process. It must also look beyond the municipal boundary. This publication will describe the details of the comprehensive plan: its development, its uses, its adoption and its implementation. It explains the planning process, the relationship of the local citizenry, the planning commission and the governing body.

This process results in a comprehensive plan that is not a legal document nor is it a land use ordinance. However, like a land use regulation, it can and should be adopted. It is an overall plan embracing general goals and objectives with which a governing body agrees, based on input from its constituents, to observe in making day-to-day decisions. There is no specific requirement that a community must have a comprehensive plan.

The three exceptions are: 1) when a governing body enacts a transportation impact fee ordinance detailed in Article V-A (Municipal Capital Improvement) of the MPC; 2) if municipalities collectively enact joint zoning controls, or 3) if the governing body is a county.

A comprehensive plan is a document that states basic objectives and policies that guide future growth and development. It can assist municipal leaders in their decision-making. It is a factual report that examines how the past led to the present, and reports in detail how to chart the community's path into the future.

Implementation

Adopting the Comprehensive Plan

A successful comprehensive planning process requires citizen participation from the very onset. Good plans are not made in a vacuum. Effective planning is an expression of community-wide values. The citizenry at large must be involved to understand and document community interests.

The MPC contains the procedural requirements for adopting the comprehensive plan. At a minimum, the planning agency must hold at least one public meeting scheduled pursuant to public notice prior to forwarding the proposed plan to the governing body. The governing body of the municipality must hold at least one public hearing after having given public notice of the hearing. The plan can then be adopted by resolution of the governing body, provided that a majority of members of the governing body vote in the affirmative. A governing body may choose to vote on the comprehensive plan document in its entirety, element by element or piecemeal as each section is completed.

While the proposed plan is under review by the governing body they must consider the review comments of the county, contiguous municipalities, as well as the public meeting comments and the recommendations of the municipal planning agency. If any action is taken that substantially revises the proposed comprehensive plan, the governing body must hold another public hearing following the public notice procedure set forth in the MPC. (See *Appendix III - Comprehensive Plan or Plan Amendment Adoption*.)

Plan Implementation Tools and Techniques

LAND USE ORDINANCES

The primary tools used by most municipalities to implement the comprehensive plan are the land use ordinances commonly known as the subdivision and land development ordinance and the zoning ordinance. The MPC defines a land use ordinance as “any ordinance or map adopted pursuant to the authority granted in Articles IV, V, VI, and VII.” In addition, MPC Section 303 (d) – legal status of comprehensive plans – states that: “Municipal zoning, subdivision and land development regulations and capital improvement programs shall generally implement the municipal and multimunicipal comprehensive plan or, where none exists, the municipal statement of community development objectives.”

The authority and requirement to implement comprehensive plans that are generally consistent with county and adjacent municipal plans is clear. The next step to is enacting specific land use ordinances as appropriate.

Subdivision regulations are designed to:

- Ensure a well-designed subdivision or land development;
- Set minimum standards for the layout or design of developments;
- Promote coordinated development;
- Insure the installation of necessary improvements;
- Minimize existing or foreseen problems; and
- Manage storm water runoff and erosion.
(See MPC Section 503)

A zoning ordinance regulates and promotes:

- Uses of land, water courses and other bodies of water;
- Size, height, bulk and location of structures;
- Areas and dimensions of land to be occupied or to be unoccupied by uses and structures;
- Density of population and intensity of use;
- A variety of residential dwelling types;
- All basic forms of housing;
- Protection of natural resources and agricultural land; and
- Reasonable overall community growth.
(See MPC Sections 603 and 604 for zoning ordinance provisions and purposes respectively.)

Zoning provisions for Planned Residential Development (PRD) can be incorporated in a zoning ordinance to direct mixed uses and higher residential densities near community facilities such as water, sewer or transportation. Also, under MPC Articles VI and VII, municipalities can enact a local ordinance that provides for Transferable Development Rights (TDRs).

Newly authorized zoning provisions allow for Traditional Neighborhood Development (TND) regulations. The TND attempts to recapture the village and town square flavor of a pedestrian oriented setting. By utilizing traffic calming design measures such as narrow streets, frequent intersections and on-street parking, in combination with a mixed array and proximity to each other of housing, businesses and services, the TND also integrates different segments of the population otherwise separated by age or income. Overall, the positive impacts of a TND can be felt through an increase in safety and a resulting enhancement in community camaraderie.

Transferable development rights (TDR) are used by a municipality to make growth restrictions more financially equitable to landowners. Municipalities participating in Intergovernmental Cooperative Planning and Implementation Agreements can now transfer these rights among and between municipal boundaries. The underlying principle is that real property is a bundle of rights rather than a single entity. Just as mineral rights can be separated from the land, so can the right to develop. The development right can be transferred from one site to another, from an area to be preserved or protected to an area whose land is being restricted and would therefore be fairly compensated. The imposition of the regulation becomes more palatable in this manner and, in most cases, the taking issue can be avoided.

Another land use ordinance that can be used to implement recommendations made in the comprehensive plan is the official map ordinance provided for in Article IV of the MPC. An official map is a declaration by the governing body of the projected areas a community needs for public purposes sometime in the future. This plan implementation technique combines two powers delegated to municipalities, namely the regulatory function under the police powers and real property acquisition by negotiation or ultimately under the powers of eminent domain.

The discussion of plan implementation techniques thus far has been limited to land use ordinances. It is important to understand that a comprehensive plan is not a law nor does it connote any legal status.

Pennsylvania's enabling legislation contains neither concurrence nor congruity requirements that some other state statutes may have. However, Section 301.4 of the MPC does require that municipal plans be "...generally consistent with the adopted county comprehensive plan." Land use ordinances are local laws that can be enforced when an action or activity occurs in violation of the law. A comprehensive plan is advisory only – it recommends certain patterns of growth and lacks compliance authority.

OTHER IMPLEMENTATION ORDINANCES

As noted by reference to MPC Section 303 (d), municipalities are authorized to enact other ordinances that can support implementation of the comprehensive plan. There are certain types of codes that may be adopted by a municipality to regulate existing and new construction. Adoption of these various construction codes (building, plumbing, electrical, property maintenance and fire prevention codes) is a commonly accepted function of local government. These codes also provide the necessary regulatory function for new and old construction and are safeguard from fire and other life safety hazards. These codes are enacted under the authority of the local municipal codes and home rule charters and not the MPC.

When properly adopted, administered and enforced, these codes can increase the quality and safety of housing or other construction through the regulation of construction activities. They can also promote the improvement and rehabilitation of older sections of the community. Codes can therefore be a vital link in the achieving of the goals in a comprehensive plan.

A comprehensive plan cannot be implemented entirely by codes and ordinances. Some recommendations made within the plan require other types of actions that only a governing body can take. Examples of these types of actions are: developing capital improvements programs; promoting redevelopment or in fill development, and fostering good public relations, perhaps the keystone and the catalyst of most plan implementation techniques. Obviously, there can be many other similar actions that can aid in implementing the comprehensive plan, none of which require codes and ordinances to be put into effect but which, nevertheless, are equally as important to assist with plan implementation.

For example, periodic informational meetings with the local Chamber of Commerce to discuss the comprehensive plan can aid in plan implementation. Exchanges with this group and other civic organizations will keep the plan in the forefront as individuals make business decisions and civic groups plan their community assistance activities. Collectively, actions by individuals and individual civic groups can add up toward accomplishing goals set forth in the plan. When government sponsored activities are linked to non-governmental actions real progress can be made.

Life After the Plan

After a municipality adopts a comprehensive plan and any implementing codes and ordinances, there is a tendency to put the plan away and to consider the planning task complete. This is not and should not be the case. A community is seldom a stagnant place; some type of change is almost always occurring. Planning is an organized process of dealing with change. Therefore, all change must be examined to see what effects it may have upon the community.

The comprehensive plan and its implementing ordinances must be adjusted accordingly. This examination and updating procedure should be done methodically and periodically. This is known as the continuing planning process. The MPC envisions an ongoing process. MPC Section 303 requires that where municipal comprehensive plans are adopted: "...any subsequent proposed action of the governing body, its departments, agencies and appointed authorities shall be submitted to the planning agency for its recommendations...." In another similar provision, Section 209.1 mandates that the planning agency "review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan."

Municipal and multimunicipal comprehensive plans should be reviewed every 10 years to conform to the recently enacted MPC amendments. If the review uncovers shortcomings, it is only prudent that the plan be updated. Counties, however, are required to update their comprehensive plans every 10 years.

Citizens, Planning Agencies, and the Governing Body

To be effective, planning must have the support and understanding of the citizens of the community. Its citizens, who may also be developers, need to be informed about the planning process being undertaken and given an opportunity to participate in the process. Citizens comprise the backbone of a community and are the crucial ingredient for a successful planning program. The planning agency acts as an advisor to the governing body on all matters of community growth and development. A planning commission should be viewed as a peer group or citizens group of unpaid volunteers. It is not some cold distant bureaucratic agency to be feared or avoided. The governing body and the developers both have rules that they follow. Citizens' concerns can be adequately addressed in the planning process.

Land use regulations restrict or limit use of private property for the benefit of the public good. The state's police power delegated to local elected officials allows this without the government acquiring or purchasing the land. Land use controls can create basic tensions between the rights of individuals to make free choices about the use of their property and the obligation not to adversely affect the public good or cause harm to the environment. Balancing these rights can present difficulties. Planning agencies can play a major role in balancing these interests.

Governing bodies must be careful that land use ordinances do not place too many constraints upon private property that restrictions become so severe that they constitute a taking requiring compensation. Public officials must be prepared to demonstrate that the imposition of the regulation is connected to legitimate protection of the public good. Careful comprehensive plan preparation and implementation of the land use ordinances can help document a community's effort to balance the rights of the general public and those of the individual property owner.

Conclusion

Planning for the future growth and development of the community is the responsibility of the governing body and the planning agency. The comprehensive plan is the first step taken to rationally carry out this responsibility. The planning commission generally prepares it with input from the local citizenry. Following its adoption, the governing body has a sound footing upon which to base the plan implementation activities, i.e. adoption of land use ordinances.

The comprehensive plan is a document prepared to assist in the determination of future growth and development policies. It contains sections or studies performed on various aspects of the community, community development goals and objectives, and plans for future land uses. It is officially adopted by the governing body of a municipality, and is implemented to a large extent by zoning and by subdivision and land development ordinances. The plan must be periodically reviewed and updated and must have the understanding and cooperation of the citizenry, the planning commission and the governing body.

Appendix I

Comprehensive Plan Elements – The Traditional Approach

A comprehensive plan paves the way for preparation of functional and more detailed plans. A comprehensive plan consists of three major parts: community goals, objectives, and policies; technical background studies and various other plans which may be called functional plans.

I. Planning Process and the Community

- General appearance of the community
- Visioning
- Statement of Community Development Objectives and Policies
- Citizens Participation
- History of the community and region
- Regional characteristics
- Build out map

II. Physical Environment and Natural Resources

- Topography
- Natural resources – soils; water; minerals; gas; petroleum; forest; fish; game
- Water resources; water survey and supply; wetlands; flood plain
- Watershed inventory
- Resource Inventory/Analysis maps
- Natural Diversity Inventory
- Green Infrastructure Inventory
- Natural hazard areas; special hazard areas.
- Inventory of Historic Structures

III. Population Characteristics and Trends

- Demographics
- Present size; density
- Distribution
- Age-sex distribution
- Racial and ethnic character
- Population movements
- Family patterns; special sociological characteristics

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- Volunteer service operations: fire; medical; other
- Schools – physical plant; student distribution

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- Recreational areas – parks; playgrounds; trails; other
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- Hospitals
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Appendix II

Comprehensive Plan Adoption and Plan Amendment

1. A planning agency must hold at least one public meeting pursuant to public notice before forwarding the proposed comprehensive plan or amendment to the governing body.
See MPC Section 301.3.
2. At least 45 days prior to the required public hearing held by the governing body, the municipality shall submit the proposed comprehensive plan to the county planning agency for recommendations. At the same time, the municipality must forward copies of the proposed plan or amendment to all contiguous municipalities and to the local school district for their review and comment.
See MPC Section 301.3.
3. Comments from the county, contiguous municipalities and the local school district must be made to the governing body within 45 days of receipt. A governing body cannot act upon the amendment until comments are received or the 45 day review period has expired.
See MPC Section 302.
4. In reviewing the proposed comprehensive plan, the governing body must consider the review comments of the county, contiguous municipalities and the school district, as well as the public meeting comments and the recommendations of the municipal planning agency.
See MPC Section 302.
5. Before voting on adoption of the proposed plan or amendment to the plan, the governing body MUST hold at least one public meeting pursuant to public notice.
See MPC Section 302(b).
6. If, after the public hearing the proposed plan or amendment is substantively revised, the governing body shall hold another public hearing prior to voting on adoption of the plan or plan amendment.
See MPC Section 302(b).
7. Adoption of the comprehensive plan, or any part thereof, or any plan amendment shall be by resolution carried by the affirmative votes of not less than a majority of all members of the governing body at a public meeting.
See MPC Section 302(c).
8. Within 30 days after adoption, the governing body of a municipality other than a county shall forward a certified copy of the comprehensive plan or amendment to the county planning agency. Where no county planning agency exists, a certified copy must go to the governing body of the county.
See MPC Section 306(b).

Appendix III

Planning Assistance from the Governor's Center for Local Government Services

The Governor's Center for Local Government Services is available to assist municipalities. Assistance is offered to assist municipalities in assessing the impact of state agency decisions on local planning and zoning activities. Municipalities with an adopted comprehensive plan and zoning ordinance located within a county with an adopted comprehensive plan have the benefit of commonwealth agencies considering the documents when reviewing applications for the funding or permitting of municipal infrastructure or other facilities. In addition, the Center offers grant assistance to prepare and/or update these important land use documents.

The Municipal Assistance Program (MAP) is available to provide matching grants for municipalities preparing to develop and strengthen community planning and land use management practices.

Guidelines for MAP incorporate the principles of the Land Use Planning Executive Order. Priority consideration for funding is given to municipalities that incorporate multimunicipal approaches into their planning efforts. Similarly, those municipalities that strive for general consistency between their comprehensive plan, the county comprehensive plan and local zoning ordinances also receive priority consideration.

MAP funding is one of the Center's most significant support programs for planning and planning related activities. It allows municipalities to use funds to develop new or update existing comprehensive plans and land use implementation ordinances. It also allows municipalities to prepare strategies or special studies that will support the comprehensive planning process. MAP funds can also be used to develop or update zoning or subdivision and land development ordinances, or to utilize advanced technology, such as Geographic Information Systems.

A community or individual desiring information on planning or planning assistance, either financial or technical, should contact the appropriate Department of Community and Economic Development Regional Office in their area. Some of the issues that the Department's staff can provide assistance on are:

- Community planning and comprehensive plans;
- Zoning;
- Subdivision and land development;
- National Flood Insurance and Floodplain Management;
- Other planning related areas such as PRD, historic districts, mobile home parks, sign control, etc. and
- Procedural questions involving the Municipalities Planning Code.

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Governor's Center for Local Government Services
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I. Subdivision and Land Development in Pennsylvania

Preface

Subdivision and Land Development in Pennsylvania (Planning Series Publication #8) is one of a series of 10 planning publications produced by the Governor's Center for Local Government Services (Center) as a means to educate both professionals and non-professionals on the ways that planning and land use management are achieved within the commonwealth. The planning publications were first developed in the 1970's and in subsequent editions have been revised to incorporate differences in the overall planning viewpoint, offer up-to-date best practices, and reflect the latest changes in Pennsylvania planning law. Each publication addresses a specific planning or land use method enabled through the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq., and used by municipalities throughout the commonwealth.

The Center's 10 Planning Series Publications are as follows:

- No. 1 – Local Land Use Controls in Pennsylvania
- No. 2 – The Planning Commission
- No. 3 – The Comprehensive Plan
- No. 4 – Zoning
- No. 5 – Technical Information on Floodplain Management
- No. 6 – The Zoning Hearing Board
- No. 7 – Special Exceptions, Conditional Uses and Variances
- **No. 8 – Subdivision and Land Development in Pennsylvania**
- No. 9 – The Zoning Officer
- No. 10 – Reducing Land Use Barriers to Affordable Housing

Subdivision and land development regulations are enacted by a municipality to maintain acceptable site design standards for development of land within a municipality and to coordinate public improvements on the properties. The *Subdivision and Land Development in Pennsylvania* publication is specifically designed to:

- Address the statutory authority of the powers of a municipality in regulating subdivision and land development within the boundaries of the municipality.
- Provide a summary of provisions that may be included in a subdivision and land development ordinance pursuant to the MPC.
- Outline procedures for enacting and amending a subdivision and land development ordinance.
- Describe standards that municipalities must follow in administering a subdivision and land development ordinance, specifically with regard to the processing of subdivision and land development proposals.
- Describe an approach for implementing a conservation subdivision approach to development.

II. Introduction

The subdivision and land development ordinance is the most commonly used development control mechanism in Pennsylvania. Over 90 percent of the municipalities have subdivision and land development regulations in effect, either by their own ordinance or by a county ordinance. It is the most basic of land use regulations. Subdivision is the creation of new lots or property lines, while land development involves construction of buildings and improvements. Land is a valuable natural resource, and its division and development create a major portion of the physical surroundings and greatly define the character of communities and quality of life for citizens.

The major purposes of subdivision and land development regulations are to provide adequate sites for development and public use, to maintain reasonable and acceptable design standards, and to coordinate public improvements with private development interests. More specifically, subdivision and land development regulations help achieve several objectives:

- They help contain municipal costs by having developers pay for public improvements necessitated by the development, and by requiring development design that is efficiently supported by municipal services.
- They protect the municipality from problems and costs it may have to inherit later from unplanned and poorly designed development.
- They ensure a decent quality of life for citizens by promoting healthy walkability, preventing stormwater damage, protecting from excesses of noise, lighting, or other pollution, and ensuring accessibility for fire and police services.
- They help a municipality attract investment in homes and businesses which are more these days seeking out great places with a quality built and natural environment.

A subdivision and land development ordinance differs from a zoning ordinance. A subdivision and land development ordinance does not control use of land or buildings. It does not define zones or districts in the municipality in which certain uses are permitted and others not, and in which there are different standards for density or intensity of development. A subdivision and land development ordinance's design standards apply uniformly throughout a municipality.

III. Statutory Overview of Authority

Article V of the MPC grants powers to municipalities to regulate subdivisions and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance shall require all plans for subdivision and land development of land situated within the municipality to be submitted for approval to the governing body or, in lieu thereof, to a planning agency designated in the ordinance for this purpose.

It is important to note the MPC specifies that where a municipality has enacted planned residential development (PRD) regulations in its zoning ordinance in accord with Article VII of the MPC, the development standards and plat approval procedures governed by the PRD regulations and Article VII shall be followed. Subdivision and land development standards for PRDs may be different than the standards and requirements otherwise imposed by the municipality's subdivision and land development ordinance.

The MPC authorizes municipalities and counties to enact subdivision and land development ordinances. Where a county enacts an ordinance, and a borough, city, township, town, or home rule municipality has not enacted an ordinance, the county ordinance is in effect. Where the county has an ordinance and the municipality subsequently enacts its own ordinance, the county ordinance is repealed in that municipality. There are options for a municipality and the county to interact. A municipality may arrange for the county planning agency to administer the municipal ordinance, or a municipality may adopt the county subdivision and land development ordinance by reference. For more information on county duties and responsibilities, see the section in this document titled "The Role and Function of the County."

Article V of the MPC prescribes for subdivision and land development ordinances:

- Content of the ordinance and what matters may be regulated.
- How the ordinance is enacted or amended.
- The basic process and timeframe that must be followed in submission, review, and decision on a subdivision or land development plan and any public improvements to be constructed.

IV. What are Subdivision and Land Development?

The MPC provides controlling definitions of “subdivision” and “land development.” These definitions and meanings, in addition to other common and necessary terms, are required to be used in a local subdivision and land development ordinance.

“**Subdivision,**” as defined in Section 107(b) of the MPC, is:

[T]he division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: Provided however, That the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling shall be exempted.

“**Land development,**” as defined in Section 107(b) of the MPC, is:

- (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
- (2) A subdivision of land.
- (3) Development in accordance with Section 503 (1.1).

Section 503(1.1) of the MPC allows:

Provisions for the exclusion of certain land development from the definition of land development contained in section 107 [of the MPC] only when such land development involves:

- (i) the conversion of an existing single-family detached dwelling or single-family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
- (ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
- (iii) the addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park.

The courts have carved out from the definition of “land development” certain development activities not involving buildings that the courts observed lack traditional indices of “large-scale” land development – intensity of use, new roads, utilities, common open space, etc. To date, the courts have concluded that a billboard and cellular telecommunication tower structures are not land development. Municipalities are strongly advised to consult with their solicitors as to the current law on whether the subdivision and land development ordinance should not be administered as to any particular development.

As the land development definition implies, development of even one lot for a single nonresidential building or for two or more tenants or prospective occupants constitutes a land development. Thus, an individual desiring to construct a convenience store, a pharmacy, a shopping center, an office complex, or an apartment building on a single parcel of land would be required to follow the procedures, provisions, and standards in the subdivision and land development ordinance.

Likewise, all other definitions necessary to explain any administrative terms or phrases vital to the proper implementation of the subdivision and land development ordinance must be clearly stated in the subdivision and land development ordinance. Words and phrases defined in Section 107 of the MPC should be incorporated into the subdivision and land development ordinance without change. Examples include “subdivision,” “land development,” “manufactured home park,” and “substantially completed.”

V. Enacting and Amending the Ordinance

The MPC sets forth required procedures for the consideration and enactment of a subdivision and land development ordinance or an amendment to an existing subdivision and land development ordinance (except where noted, later use in this section of the term “ordinance” refers to both the enactment of a subdivision and land development ordinance and an amendment thereto). Conformance with these procedures is mandatory, as they protect the due process rights of the regulated public.

The MPC requires that both the municipal planning agency (if it did not prepare the proposed ordinance) and the county planning agency be given an opportunity to review and submit recommendations on the proposed ordinance prior to the governing body holding a required public hearing on the ordinance. The MPC sets different review periods for a new ordinance and an amendment to an existing ordinance. The review period for a new ordinance is 45 days; the review period for an amendment to an ordinance is 30 days. Where the proposed amendments to the existing subdivision and land development ordinance are extensive and substantial, allowing the planning agencies a 45 day review period is prudent and otherwise may be necessary to satisfy the requirements of the MPC. The review period is an opportunity for the planning agency to provide its recommendations to the governing body; however, should a planning agency fail to submit recommendations within the required review period, the governing body is under no obligation to extend the time for review and recommendation and may proceed with the public hearing.

The MPC requires that the governing body hold at least one public hearing (or more if necessary) at which all interested parties are given the opportunity to be heard on the proposed subdivision ordinance. This public hearing must be advertised according to the MPC requirements for a public notice. Public notice of the public hearing must be published in a newspaper of general circulation in the municipality during two successive weeks. The first notice may not be published more than 30 days prior to the public hearing and the second notice may not be published fewer than seven days prior to the public hearing.

The Statutory Construction Act of 1972, 1 Pa.C.S. § 1501, et seq. provides that the phrase “successive weeks” means calendar weeks. However, it further provides that “at least five days shall elapse between each publication.”

In addition to publication requirements, where the notice of the proposed ordinance does not contain the full text of the proposed ordinance, a full copy of the proposed ordinance must be provided to the newspaper with the public notice to the published. Additionally, a copy of the proposed ordinance must be provided to the county law library.

The public notice requirements serve several purposes. The first is to clearly state the intent of the planning agency or governing body to prepare and enact a particular proposed ordinance or amendment. The second is to make the local citizenry aware of the planning efforts within the municipality and to afford them an opportunity to participate in the planning effort.

If after the public hearing “substantial amendments” are made to the proposed ordinance, before proceeding to vote on its enactment the governing body is required, at least ten days prior to enactment, to readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

The courts have provided guidance on making a determination as to whether a revision is “substantial” with respect to zoning ordinances; such guidance is relevant to subdivision and land development ordinances. The courts have advised that the determination must be made by considering the revision “in relation to the legislation as a whole.” The courts have further advised that a revision is “substantial “in relation to the legislation as a whole” when it results in either (i) a significant disruption in the continuity of the proposed legislation or (ii) an appreciable change in the overall policy within the municipality.

There appears to be consistency in the decisions of the courts that a revision that “merely makes regulations more stringent than initially proposed” is not substantial.

Whether the revisions made to a proposed zoning ordinance are “substantial” or “insignificant,” the courts have held that the proposed revisions must be submitted to the municipal and county planning agencies again for review and recommendation. The courts have not addressed whether such requirement also applies to revisions to a proposed subdivision and land development ordinance. It is recommended that municipalities provide the planning agencies with such opportunity. Municipalities should consult with their solicitors regarding the required process.

The MPC imposes a separate notice requirement relating to the enactment of (voting upon) an MPC ordinance or amendment thereto.

Unlike the notice of the public hearing, the notice of an intent to enact is published one time only, no more than 60 days and no fewer than seven days prior to the meeting at which passage of the ordinance will be considered. If the full text of the proposed subdivision and land development ordinance is not set forth in the notice, then a copy must be supplied to the newspaper at the time the notice is published and an attested copy filed in the county law library. If the governing body delays enactment beyond the 60 days, an additional notice of intent to vote should be published. In order to save costs, the notice of intent to enact an ordinance may be included with one of the two public notices for the public hearing, provided its publication meets the time requirements for both the enactment and public hearing notices.

Following enactment of the proposed subdivision and land development ordinance, a copy of the adopted ordinance must be placed in the municipal ordinance book as required by the ordinance provisions set forth in the respective state municipal codes. Within 30 days following the governing body’s action adopting the proposed subdivision and land development ordinance, a copy of the adopted ordinance must be provided to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

The procedures discussed above are extremely important. As explained by the Courts, these procedural rules provide notice and the opportunity to be heard and have the purpose of protecting the interest of the public in the legislative process. They are a condition precedent to the validity of the subdivision and land development ordinance. If these procedures are not followed, the subdivision and land development ordinance could be declared null and void by a court of law in procedural challenge to the ordinance.

Under Section 1002.1-A of the MPC, an individual challenging the validity of a land use decision on the basis of a defect in the procedures for enactment of the ordinance who brings the challenge within 30 days of enactment of the ordinance need only establish that the municipality did not strictly follow the procedural requirements set forth in the MPC. When a procedural challenge is brought after 30 days, the municipality need only demonstrate substantial compliance with the procedural requirements. The challenger must prove that, because of the alleged defect in procedure, either the public was denied notice sufficient to permit participation or those whose substantive property rights were or could be directly affected were denied an opportunity to participate.

VI. Contents of a Subdivision and Land Development Ordinance

Section 503 of the MPC states that a subdivision and land development ordinance may include but need not be limited to the following provisions, which are presented in summary to the full requirements as listed in MPC:

- Provisions for the submittal and processing of plats, including the charging of review fees, and specifications for such plats, including certification as to the accuracy of plats and provisions for preliminary and final approval and for processing of final approval by stages or sections of development (*note certain conditions are further specified in the MPC*).
- Provisions for the exclusion of certain land development from the definition of land development contained in Section 107 only when such land development involves:
 - The conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
 - The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
 - The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park.

Section 503(1.1) of the MPC permits – but does not mandate – a municipality to provide in its local ordinance for the exclusion from land development regulation of one or more of only the three forms of development expressly identified in 503(1.1) and described above.

- Provisions for insuring that:
 - The layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof;
 - Streets in and bordering a subdivision or land development shall be coordinated, and be of such widths and grades and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection;
 - Adequate easements or rights-of-way shall be provided for drainage and utilities;
 - Reservations, if any, by the developer of any area designed for use as public grounds shall be suitable size and location for their designated uses; and
 - Land which is subject to flooding, subsidence or underground fires either shall be made safe for the purpose for which such land is proposed to be used, or that such land shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.
- Provisions governing the standards by which streets shall be designed, graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plats in accordance with the requirements of Section 509.
- Provisions which take into account phased land development not intended for the immediate erection of buildings where streets, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements may not be possible to install as a condition precedent to final approval of plats, but will be a condition precedent to the erection of buildings on lands included in the approved plat.
- Provisions which apply uniformly throughout the municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and sewage, in the event the municipality has not enacted a zoning ordinance.

- Provisions for encouraging and promoting flexibility, economy and ingenuity in the layout and design of subdivisions and land developments, including provisions authorizing alterations in site requirements and for encouraging other practices which are in accordance with modern and evolving principles of site planning and development.
- Provisions for encouraging the use of renewable energy systems and energy-conserving building design.
- Provisions for soliciting reviews and reports from adjacent municipalities and other governmental agencies affected by the plans.
- Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with section 512.1.
- Provisions for the approval of a plat, whether preliminary or final, subject to conditions acceptable to the applicant and a procedure for the applicant's acceptance or rejection of any conditions which may be imposed, including a provision that approval of a plat shall be rescinded automatically upon the applicant's failure to accept or reject such conditions within such time limit as may be established by the governing ordinance.
- Provisions and standards for insuring that new developments incorporate adequate provisions for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources.
- Provisions requiring the public dedication of land suitable for the use intended and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees in lieu thereof, the private reservation of the land, or a combination, for park or recreation purposes as a condition precedent to final plan approval (*note certain conditions are further specified in the MPC*).

As the wording of the MPC suggests, each municipality adopting an ordinance determines its content and structure. The MPC provides basic guidelines for ordinance content, and the municipality may use fewer or more requirements based upon local need. The MPC provides for flexibility for municipalities and counties to shape planning areas based on inherent regional logic or importance. Such areas might be natural resource based (e.g., watersheds), cultural resource based (e.g., historic structures), or of regional significance (e.g., prime agricultural land in a developing municipality). Municipalities should use subdivision and land development ordinances to try to ensure that growth in the community is effectively managed.

Manufactured Home Park Regulations

The MPC clearly provides for manufactured home parks to be regulated through a municipal subdivision and land development ordinance. Section 501 states that:

Provisions regulating mobile home parks shall be set forth in separate and distinct articles of any subdivision and land development ordinance adopted pursuant to Article V, or any planned residential development provisions adopted pursuant to Article VII.

Therefore, if a municipality has enacted a subdivision and land development ordinance, regulations for manufactured home parks should be included as a separate article.

Other considerations all but compel inclusion of manufactured home park provisions as a distinct article in any subdivision and land development ordinance. Manufactured home parks differ significantly from traditional single-family subdivisions. A manufactured home park is a land development that may be under single ownership or control, much like a planned residential development. Common areas for open space, recreation, or other services may be provided and maintained by the owner. Lot sizes are usually smaller, and lots are usually leased or rented rather than purchased. Water and sewer systems that are not public are centralized for the entire park. These design and layout considerations or factors make it advisable to prepare and enact separate and distinct standards for regulating manufactured home parks. To include provisions as a separate article in any subdivision and land development ordinance is not only consistent with MPC requirements, but it also demonstrates a commitment to reasonable regulation of manufactured home park developments.

VII. Administration of Subdivision and Land Development Regulations

The governing body has flexibility in designating plan approval powers. The governing body may reserve approval powers to itself or delegate such approval powers to the planning agency. In any event, approval authority must be clearly stated in the municipal subdivision and land development ordinance. Where a county enacts subdivision and land development regulations, and a borough, city, township, or home rule municipality has not enacted its own subdivision and land development ordinance, the county regulations are in effect. Where the county has an ordinance, and the municipality subsequently enacts its own ordinance, the county ordinance is repealed in that municipality. A municipality that has enacted its own subdivision and land development ordinance may by separate ordinance designate the county planning agency, with its concurrence, to administer the municipal ordinance.

There are two aspects to the administration of the subdivision and land development ordinance: procedures and standards. The MPC prescribes procedures that municipalities must follow in processing subdivision and land development proposals. Municipal officials are responsible for the preparation and enactment of reasonable design standards or specifications necessary to achieve local development objectives. Common sense and legal precedents require that procedures and standards be uniformly applied. A municipality has a major responsibility to assure that subdivision and land development regulations are administered equitably according to procedural requirements and time limitations contained in the MPC.

However, unlike the MPC's stipulation that municipalities must appoint a zoning officer to administer the zoning ordinance, the MPC does not require municipalities to appoint a subdivision and land development ordinance officer. Typically, this duty is handled by the planning staff of a county or municipality, or falls to the individual who is also the zoning officer, to the codes enforcement officer, or to the municipal engineer. Some municipalities assign plan review work by contract to a consultant planner or engineer. The duties entail, but are not limited to, the following:

1. Receive and review all applications and submissions related to any proposed subdivision or land development for completeness.
2. Determine compliance with the requirements of the subdivision and land development ordinance and coordinate among the various number of internal and external stakeholders participating in the process, including the municipal secretary, local governing body, local planning commission, municipal engineer and solicitor, local sewage enforcement officer, county planning commission, county conservation district, Department of Transportation, Department of Environmental Protection, public utility companies, and the developer/applicant prior to plan submission, prior to plan approval, during construction, and after construction has been completed.
3. Bring applications to the planning commission and governing body for consideration and action.
4. Issue written stop, cease, and desist orders and other written orders for correction of all conditions found to be in violation of provisions of the subdivision and land development ordinance.
5. Create and maintain standardized forms for applications and other required documents.

Administration of the subdivision and land development ordinance also involves coordination with state and federal laws and other municipal ordinances. These include but are not limited to regulations covering waterways and wetlands, erosion, driveways entering highways, stormwater and floodplain management, water and sewer facilities, zoning, and building codes.

VIII. Role and Functions

The Role and Function of the County

There are various roles that a county may have in the subdivision and land development process. First, Section 502 of the MPC authorizes the county to adopt and enforce subdivision and land development regulations. After enactment, a county must send a certified copy of the ordinance, as well as any future amendments, to each municipality within the county. These regulations remain in effect until the municipality adopts its own subdivision and land development ordinance.

Second, a municipality may elect to adopt the county ordinance by reference, but use municipal staff to perform the administrative duties.

Third, when a municipality enacts its own subdivision and land development ordinance, it must file a certified copy with the county planning agency effectively repealing the county ordinance in that municipality. Where the municipality enacts its own subdivision and land development ordinance, all applications for subdivision or land development must still be sent to the county for review. A county may charge a fee sufficient to cover the review costs. The applicant is responsible to pay this fee. County review comments are to be sent to the municipality within 30 days from the date an application was forwarded to the county for review. If county comments are not received, a municipality can act on the plan after 30 days have passed. A plan cannot be recorded unless the plan officially notes review by the county planning agency.

Fourth, a municipality may also, by separate ordinance, designate the county planning agency as the body responsible for the review and approval of plans under the municipal subdivision and land development ordinance. Of course, before this approach is used, the county agency must first be consulted for concurrence.

A fifth role that a county planning agency has is to offer mediation to contiguous municipalities, if requested. Section 502.1 of the MPC requires the county planning commission to "...offer a mediation option to any municipality which believes that its citizens will experience harm as the result of an applicant's proposed subdivision or development of land in a contiguous municipality, if the municipalities agree."

The Role and Function of the Planning Agency

The planning agency (planning commission, planning department, or committee of the governing body) plays a central role in the subdivision and land development process. It may upon request prepare and recommend to the governing body a subdivision and land development ordinance for enactment, and it may make recommendations to the governing body regarding approval or denial of individual subdivision and land development applications. The governing body, by ordinance, may delegate approval authority to the planning agency for the subdivision and land development applications (MPC Section 501). Where such authority is delegated, the planning agency's traditional advisory role to the governing body shifts to a decision-making role on matters relating to the approval or denial of subdivision and land development applications pursuant to Section 508 of the MPC. This same grant of power is also afforded to the planning agency on matters relating to the approval of planned residential developments as regulated under Article VII of the MPC.

The Role of Local Government and Public Improvements

It is a basic responsibility of local government to provide and guide the expansion of municipal services and public improvements so that development occurs in an orderly, rational, and sustainable manner. Conversely, it is impermissible for local government to withhold municipal services or facilities as a means to gain land use or development objectives that place unreasonable restrictions on growth and on the landowner. The Pennsylvania Supreme Court, even prior to enactment of the MPC, gave notice that municipalities cannot restrict growth or development by failing to provide necessary public facilities and services if the community can provide them. Although the regulation under review was a zoning provision, the principles apply to any regulation that has the same effect. Regarding government's responsibility to provide for growth, the Supreme Court said: "A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid." *National Land and Investment Company v. Easttown Township Board of Adjustment*, 419 Pa. 504, 215 A. 2d 597 (1965). Governing bodies have the tools necessary to effectively meet some of the demands of a growing community. It is only prudent that elected officials use available planning tools to carry out the responsibility of providing guidance and supporting normal future community growth. With respect to subdivision and land development regulations, municipalities should consider the tools afforded through the MPC's provisions regarding municipal [transportation] capital improvements (Article V-A), public dedication of land or fee in lieu of (Section 503 (11)), and financial security guaranteeing capital improvements (Section 509).

A 2012 amendment to the MPC added a new responsibility for local governments regarding public facilities. Sections 508.1 and 711(f) of the MPC require municipalities to notify the school district superintendent of any plans for a residential development or planned residential development that were granted final approval by the municipality during the preceding month. The intent of this provision is to make school districts aware of approved residential development so they may consider impacts to projected school enrollments and school facility needs.

IX. Land Development in Absence of Zoning

Section 503(4.1) of the MPC authorizes municipalities that have not enacted zoning to include uniform provisions in their subdivision and land development ordinances that regulate minimum setback lines and minimum lot sizes based on the availability of water and sewage. Areas within a municipality that have public water and sewer, for example, may use this provision to provide a greater degree of development density over areas lacking these services that in turn require (for health and safety reasons) larger lots to accommodate on-lot groundwater wells and sewage disposal systems.

X. Sewage Facilities Planning and Subdivision or Land Development

The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, et seq. (Act 537), requires each municipality to prepare and adopt an official plan for sanitary sewer facilities serving the municipality. Act 537 plans, as they are known, are to take into consideration aspects of planning, zoning, population estimates, engineering, and economics to determine the present and future sewerage needs of the municipality. Municipal officials must review their official sewage facilities plan to ensure that sewage facilities planning is consistent with comprehensive planning efforts under the MPC.

A proposed subdivision or land development must demonstrate that it can provide safe and adequate sanitary sewer facilities serving the proposed lots or development. Depending on the nature and scale of the development, applicants often must submit a request – a “planning module” – for revision of the municipality’s official Act 537 plan. A planning module must be approved by the municipality with oversight from the Pennsylvania Department of Environmental Protection, the regulating agency for Act 537. The planning module must be referred to the municipal planning agency for review of consistency of the proposed sewage facilities with the municipal comprehensive plan and land use regulations.

Municipalities and their planning agencies typically review subdivision and land development plans and sewage facilities planning modules concurrently. Many municipal subdivision and land development ordinances require indication of approval of sanitary sewer facilities as a pre-requisite for final subdivision or land development plan approval.

For more information on Act 537 plans and requirements related to subdivisions and land developments, contact the Department of Environmental Protection. Regional offices typically have staff that provides oversight of Act 537 in their regions.

XI. Process and Procedures

Application Procedures and Requirements

A major responsibility under the subdivision and land development ordinance is the establishment of uniform procedures and criteria for processing applications. If stipulated by the ordinance, each application can be reviewed and subsequently approved or disapproved based on criteria developed in the best interest of the municipality. Guidance and procedures for processing subdivision and land development plans are specified in Section 508 of the MPC as follows:

A municipality may adopt procedures for determining whether an application is complete upon submittal. This completeness review does not involve a merit-based review. Rather, the completeness review assesses whether the information required by the municipal subdivision and land development ordinance has been provided with the submittal. An application determined to be administratively incomplete would be returned to the applicant; the applicant should be informed in writing of the deficiencies of the application that render it to be incomplete. The procedural deadlines in the MPC are not triggered if the submittal has been determined to be administratively incomplete.

- All applications must be acted upon and a decision rendered to the applicant not later than 90 days following the date of the regular meeting of the governing body or planning commission (whichever first reviews the application) next following the date an application is filed; if the regular meeting is more than 30 days after the filing of the application, the 90-day period begins after the thirtieth day from the date the application was filed with the authorized representative of the municipality. *MPC Section 508.*

A subdivision and land development ordinance should prescribe that an application shall not be accepted as “filed” until the application is complete, (i.e., it includes all information and complete drawings). This allows a municipality to do completeness checks at the counter rather than at meetings, and withholds start of the 90-day time clock until a fully-complete application is received.

- The decision must be in writing. *MPC Section 508(1).*
- The written decision must be delivered no later than 15 days following the issuance of the decision. *MPC Section 508(1).*

The MPC is unclear as to whether the 15-day period falls within the 90-day period for decision on the plan. The Commonwealth Court has held that the 15-day provision applies upon issuance of the decision. Municipalities should consult with their solicitors as to the time requirements.

- Where disapproving the application, the written decision must specify any defects, describe the requirements that have not been met, and cite sections of the subdivision and land development ordinance relied upon for disapproving the application. *MPC Section 508(2).*
- Failure to render and communicate a written decision within the required time and in the manner prescribed constitutes a deemed approval of the application. *MPC Section 508(3).*

The MPC contains no express notice provisions with respect to a claimed deemed approval of a land development or subdivision plan. This contrasts with Section 908(9) of the MPC relating to deemed approvals in a zoning context, which the courts have determined is not self-effectuating but requires published notice by either the municipality or the applicant. However, a Pennsylvania court opined that the reference in Section 1002-A of the MPC to Section 908(9) makes the notice provision of 908(9) applicable in the land development and subdivision context for purposes of determining when an appeal period begins to run. *Peterson v. Amity Twp. Bd. of Supervisors*, 804 A.2d 723 (Pa. Cmwlth. 2001).

A municipality may not file a land use appeal challenging the validity of a plan “deemed approved.” However, a person aggrieved by a plan that has been deemed approved may file a land use appeal challenging the “deemed approved” plan’s compliance with the requirements of the municipal subdivision and land development ordinance. The time for filing the appeal (30 days) begins, at the latest, with the failure of the municipal body or planning agency to issue the written decision within 15 days of the oral decision. Neither the applicant nor the municipality can act on the plan until such time as the period for appeal has expired or until proceedings before the court on appeal have concluded.

- A public hearing may be held prior to acting on any subdivision or land development plan. A public hearing is not required. *MPC Section 508(5).*
- Upon the approval of a final plan, the developer must record the final plan within ninety days in the Office of the Recorder of Deeds of the county in which the property is located. *MPC Section 513.*
- Building permits should not be issued until the final plan has been approved and recorded. *MPC Section 515.1.*
- Any final plan that requires access to a highway under the jurisdiction of the Pennsylvania Department of Transportation cannot be finally approved unless the plan contains a notice that a highway occupancy permit is required in accordance with Section 402 of P.L. 1242, the “State Highway Law.” *MPC Section 508(6).*

In addition to the time-based procedures described above, the MPC stipulates the following protection to an applicant for subdivision or land development plan approval:

- From the time an application is filed and pending approval or disapproval, “no change or amendment of the zoning, subdivision, or other governing ordinance or plan shall affect the decision on such application adversely to the applicant, and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was filed.” *MPC Section 508(4) (i).*
- When a preliminary plan application has been approved, the applicant is entitled to approval of the final plan in accordance with the terms of the approved preliminary application. *MPC Section 508(4) (i).*
- When a preliminary or final plan is approved without conditions or with conditions accepted by the applicant, “no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval.” *MPC Section 508(4) (ii); see also 508(iii).*
- When the required improvements on the plan have been “substantially completed” within the five-year period (or any extension granted by the governing body), no change of municipal ordinance or plan enacted subsequent to the date of filing of the preliminary plan may modify or revoke any aspect of the approved final plan pertaining to zoning classification or density, lot, building, street, or utility location. *MPC Section 508(iv).* Additionally, in the event of a phased residential subdivision or land development where the developer has not defaulted on any conditions to the approval of the plan, including compliance with a phased schedule, an additional period for protection of three years shall apply from the date of final plat approval for each section. *MPC Section 508(5) (vi).*

Section 107(a) of the MPC defines “substantially completed” to mean “where, in the judgment of the municipal engineer, at least 90% (based on the cost of the required improvements for which financial security was posted pursuant to section 509) of those improvements required as a condition for final approval have been completed in accordance with the approved plan.”

- If a special exception or conditional use is a subdivision or land development, an applicant is entitled to submit a subdivision or land development plan within six months of the zoning approval in accordance with the subdivision and land development ordinance as they stood when the zoning (special exception or conditional use) application was filed. *MPC Section 917.*

Development Permit Extension Act

By provision in Article XVI-I of the Fiscal Code, Sections 1601 and 1608, Act 46 of 2010, the Pennsylvania Legislature provided for the “automatic extension” of subdivision and land development plans, among other municipal permits and approvals, through July 2, 2013. Act 87 of 2012 amended Act 46 to establish an extension period through July 2, 2016. The Development Permit Extension Act, Act 54 of 2013, established a stand-alone act. The Development Permit Extension Act provides that the “automatic extension” is not available to any approvals granted after July 2, 2013.

No court with statewide jurisdiction has commented on the provision. However, the Lancaster County Court of Common Pleas in *In Re: Appeal of Keystone Customer, Inc. and Fox Clearing, LLC and the York County Court of Common Pleas in Logan Greens Community Assoc., Inc. v. Church Reserve, LLC* (as well as the Pennsylvania Environmental Hearing Board) interpreted the automatic extension provision language as a tolling (suspension) provision. These courts and the EHB concluded that the remaining life of a permit or approval issued as of the time of the enactment of Act 87 (or the life of a permit or approval issued or granted after the enactment of Act 87 through July 2, 2013) would be tacked on at the conclusion of the extension period (now July 2, 2016).

Sketch Plans and Pre-application Conferences

The concept of a sketch plan is not specifically addressed in the MPC. However, it is not uncommon for a subdivision and land development ordinance to contain optional provisions concerning submission of a sketch plan. Optional provisions can provide for a simple outline of the proposed project and will usually include such items as a location map, a property line map, and general layout of the proposed subdivision or land development. Planning commissions or municipalities that encourage developers to voluntarily submit sketch plans afford an opportunity to both the developer and the community to discuss the proposed project on an informal basis.

At the sketch plan phase, the municipality may be able to provide some input into the project design, and the developer may learn of factors that may affect the design or layout that could avoid costly mistakes in the preparation of a preliminary plan. Sketch plans or pre-application meetings provide an opportunity to improve the quality of development that is advantageous to the community and the developer. All parties to the land development application are encouraged to get together as early as possible in the process.

Sketch plans are less expensive for the developer to prepare than preliminary and final plans. A developer is thus more likely to be willing to modify a plan based on comments from the planning commission before he has gone to the expense of submitting a full preliminary plan application.

If a municipality mandates submission of a sketch plan (either apparent or by use of mandatory language (e.g., shall, must, etc.)), the sketch plan, in the eyes of the courts, must be processed under the requirements of Section 508 of the MPC and if approved, accords the applicant vested interest in the sketch plan as submitted same as if it was a preliminary plan.

Another innovative approach used by some municipalities involves the formation of a pre-application review conference committee procedure. This procedure can streamline and increase the effectiveness of any plan review process. The review committee is composed of the developer and any designated professional agents involved in the plan preparation for the proposed development. All municipal review representatives that participate in the normal review process have the opportunity to look at the plan prior to preliminary plan submission.

By instituting this procedure, the initial phase of the review process can be less contentious and more apt to foster consensus building than the more formal preliminary plan review process. The pre-application conference process can increase cooperation among the developer, his agents, and the municipality. The result can be an application submitted as a preliminary plan that is acceptable to the developer and municipality as the formal review period begins.

Preliminary and Final Plans

The MPC contemplates that the approval of a plan is, in most cases, a two-step process: a preliminary plan followed by a final plan. Generally, the preliminary plan is intended to provide a more generalized plan of development, including phasing. The final plan provides design details for immediate development. This process requires that a preliminary plan be submitted and an approval obtained. A final plan meeting any terms or conditions under which the preliminary plan was approved is then prepared and submitted. Only upon securing final plan approval can the plan be recorded and lot sales and/or development commence.

A municipality may provide for expedited procedures for “minor” subdivision or land development plans. Typically such procedures are reserved for plans proposing lot line adjustments or the creation of lots or development which require no new public improvements or substantial stormwater management.

There are some differences in the kind of information that is required with the preliminary plan versus the final plan. Both plans contain detailed information, but to avoid cluttered plans, some of the information at the preliminary plan stage is not included on the final plan where other information is necessary. For example, a preliminary plan almost always shows existing topography of the site, an item that is usually absent from the final plan. The final plan will provide all necessary survey, construction, and engineering data. The final plan is the plan that will be recorded at the county, but some of the information necessary for review and approval at the preliminary stage is not needed for the final plan or plan of record.

The preliminary plan is perhaps the most important of the plans submitted. Approval of this plan will virtually guarantee approval of the final plan, so long as the final plan is consistent with the approved preliminary plan and otherwise meets the requirements for a final plan. Therefore, the preliminary plan should be examined closely for compliance with the subdivision and land development ordinance. The plan cannot be arbitrarily disapproved. If it meets the requirements of the subdivision and land development ordinance (and also complies with zoning requirements in communities that have adopted zoning) the plan must be approved.

Phased Development

A developer proposing a large-scale development requiring public improvements may decide to, or out of necessity have to, construct the development in phases or sections. Section 509 of the MPC authorizes provisions for phased developments. Where the developer submits a preliminary plan calling for the installation of improvements over a period of more than five years, the developer must submit a schedule detailing deadlines within which applications for final plan approval of each phase or section are intended to be filed. The applicant is required to update the final plan submission schedule on an annual basis before the anniversary of the preliminary approval. Any modification to the original schedule is subject to approval of the governing body in its discretion.

Section 508(4)(v) of the MPC requires that each section or phase in any residential land development or subdivision, except for the last section, contain a minimum of 25 percent of the total number of dwelling units as depicted on the preliminary plan. The MPC authorizes the governing body, in its discretion, to lessen the percentage.

As previously described, Sections 508(4) (v) and (vi) of the MPC provide for a period of time in which a phased development is protected from intervening changes in local regulations. However, Section 508(5) (viii) of the MPC provides that, where a developer fails to adhere to the initial schedule or an approved modified phasing schedule, the governing body has discretion to subject that section or phase to intervening changes in local regulations. This discretionary authority applies to any changes enacted after the date of initial preliminary submission, and includes zoning, subdivision, land development, and other governing ordinances.

Relief from Requirements

From time to time, a situation may arise in which the standards of the subdivision and land development ordinance cause an undue hardship or prove unreasonable in application. In Sections 503(8) and 512.1, the MPC provides for relief from the strict application of a requirement in the form of a modification or waiver.

Although all are requests for relief, modification or waiver must not be confused with relief granted by a variance from requirements of a zoning ordinance. The criteria for the grant of a modification/waiver and a variance differ. Additionally, the grant of a variance lies exclusively with the zoning hearing board; the grant of a modification/waiver rests with the governing body or, where the planning agency has been delegated plan approval authority, with the planning agency.

Section 503(8) of the MPC authorizes municipalities to include in their subdivision and land development ordinances “provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with [Section 512.1 of the MPC].” The MPC does not define either modification or waiver. In practice, a modification seeks an adjustment from a requirement, while a waiver seeks release from the requirement.

Section 503(8) authorizes waivers or modifications “when the literal compliance with mandatory provision is shown to the satisfaction of the governing body or planning agency... to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.”

Section 512.1 titled specifically “Modifications,” sets forth a standard for grant that differs slightly from the one found in Section 503(8). Section 512.1(a) authorizes the grant of a modification “if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.” Section 512(b) further provides that the request be the minimum necessary to give relief.

The remainder of Section 512.1 of the MPC sets forth procedures relating to a request for relief. A request “shall accompany and be part of the application for development.” The request must be in writing and shall state “in full the grounds and facts of unreasonableness or hardship on which the request is based.” The request shall identify the provision of the subdivision and land development ordinance from which relief is sought. A written record of the action on the request must be made and maintained by the municipality.

Where the governing body has reserved to itself the power to approve a plan, the governing body may refer the request for modification to the planning agency for advisory comments.

Care must be taken to assure that any modification or waiver is necessary, represents the minimum possible modification, and will not jeopardize public safety. A different layout or design may eliminate the need for a modification or waiver. On the other hand, where an alternative standard than the one required by the ordinance can be demonstrated to provide equal or better results and still observe the purpose and intent of the ordinance, a modification may allow for an improved design. At no time, however, should justification for the grant of a modification under this standard be casually used as a substitute for a proper amendment to the subdivision or land development ordinance, where such amendment is appropriate.

Conditional Approvals

The governing body (or planning agency if delegated authority) has 90 days (from the first regular meeting of the planning agency following plan submittal) to: (i) approve the plan, (ii) approve the plan providing certain conditions are met, or (iii) disapprove the plan.

A plan that meets the requirements of the subdivision and land development ordinance is entitled to approval. A plan that does not meet the requirements of the subdivision and land development ordinance may be denied. However, the courts have vested discretionary authority in the governing body to condition approval of an otherwise deficient plan, rather than deny it.

The courts have advised that, under the following circumstances, rather than denying a subdivision or land development plan, conditions should be attached to plan approval:

- A condition designed to correct a minor deficiency with compliance with a requirement of the subdivision and land development ordinance, for example an incorrect zoning district reference.
- A condition providing for the issuance of a permit or approval by another agency, for example a PennDOT highway occupancy permit.
- A condition intended to provide for an executed, formal third-party agreement to document a commitment made of record, for example a shared parking agreement where both parties have communicated to the municipality an intent to enter into the agreement.
- A condition grounded in a specific requirement of the subdivision and land development ordinance, for example requiring improvement to an abutting roadway or payment of a fair share of construction of the improvement where the governing body determines that there is a reasonable relationship between the need for the improvement and traffic generated by the subdivision and where the ordinance specifies the design standard for the improvement.

Again, a governing body may in its discretion attach a condition to the approval to remedy the deficiency; however, it is not required to do so, and failure to comply with a requirement in the subdivision and land development ordinance may be grounds for denial of the plan. In any event, a municipality may not condition its approval of a subdivision plan on a developer meeting a standard not contained in the ordinance and which the applicant rejects.

A municipality should not use conditional approvals as a substitute for diligent ordinance administration. Municipal officials should make reasonable effort with an applicant to gain timely submission of required information and compliance with ordinance requirements without conditions. An option is to seek an extension of the 90-day time frame for approval, to which the applicant must agree in writing. However, where necessary and appropriate despite diligent efforts, a municipality may approve with conditions.

Any proposed condition of approval must be accepted by the applicant. If the applicant refuses to accept a condition and the municipality proceeds with the conditional approval, the legal outcome is a rejection of the plan. It cannot be grounds for a claim of a deemed approval. The developer may challenge the disputed condition by means of a land use appeal to the county court of common pleas.

By contrast, any condition that the developer willingly accepts (by making a voluntary offer of the condition or by agreement with the municipality's proposal), even when the condition imposes a standard not found in the subdivision and land development ordinance, binds the applicant. A record of the developer's acceptance of a condition should always be made, either by means of a written developer's agreement or clear reporting in the minutes of the governing body that the developer was asked to agree with the condition and indicated agreement. The condition itself should be clearly stated on the record. The ordinance should provide a procedure by which an applicant can accept or reject conditions within a specific time limit.

When a plan is approved with conditions, the conditions must be satisfied before the plan may be recorded. The MPC 90-day time requirement for recording a plan is not triggered until the conditions are fully satisfied. The attachment of time deadlines for compliance with conditions of approval is appropriate to limit the time between the conditional approval of a subdivision plan and its recording.

Coordination/Tracking Applications

Where subdivision and land development regulations are in effect, Section 513 of the MPC provides that: "... [T]he recorder of deeds of the county shall not accept any plat for recording unless such plat officially notes the approval of the governing body and review by the county planning agency..." In addition, developers, subdividers, and realtors are not exempt from any penalties which may result from the sale or transfer of lots by use of a description of the property by metes and bounds. In either situation, any municipality may refuse to issue any permit or revoke a permit issued in error to improve or further improve real property that has not been approved in accordance with the subdivision and land development ordinance.

It is advantageous to designate a single official to be responsible for receiving and tracking subdivision and land development applications. This person would be responsible for ensuring that applications are complete, review fees paid, and plans distributed to other reviewing agencies. Some municipalities have found it beneficial to develop a checklist that can accompany the application through the review process. Such a checklist may serve to place the entire process into clearer perspective. Any checklist must be tailored to provisions and requirements included in your own municipal ordinance.

Municipalities are encouraged to work closely with the municipal engineer and the municipal solicitor throughout the development process. The best way to minimize potential problems is through a regular program of inspections and monitoring during the construction phase. Although some items may require an engineer, other qualified municipal inspectors may be able to perform some of the necessary inspections.

The key to successfully implementing a subdivision and land development ordinance is its administration. Administration must be approached with strict observance of the MPC requirements and in accordance with the literal terms of the subdivision and land development ordinance, as well as other applicable local land use control measures.

Exactions

An exaction is a development condition imposed on a parcel of land that requires the developer to mitigate anticipated negative impacts of the development. The Pennsylvania legislature has provided limited authority to impose exactions on development.

Public Dedication of Land for Recreation Purposes

A municipality may provide standards in its subdivision and land development ordinance for the provision of recreational lands and facilities within and to serve the occupants of a residential development. Additionally, Section 503(11) of the MPC provides special, direct authority for a municipality to require a developer, as a condition to the approval of a final subdivision plan, to publicly dedicate land to the municipality for parks and recreation purposes or to enter agreement to make a payment in lieu of construction.

Authority to require public dedication or to impose a recreation impact fee requires that the municipality have first adopted a recreation plan (either as part of the comprehensive plan or special purpose plan). In addition to the recreation plan, the municipality's subdivision and land development ordinance must contain definite principles and standards for park and recreation facilities and fees in lieu of. The authority to impose and collect recreation impact fees is limited by two mandates:

- (i) Land or fees available through the recreation impact fee must be "used only for the purpose of providing, acquiring, operating or maintaining park or recreational facilities reasonably accessible to the development" burdened with the impact fee. *MPC Section 503(11)(iii)*
- (ii) The amount and location of land or fees imposed "shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision." *MPC Section 503(11)(v)*

Under this authority, a municipality may accept from the developer (1) payment of fees in lieu of dedication of land; (2) the construction of recreational facilities; (3) private reservation of land; or (4) a combination thereof.

The Pennsylvania Land Trust in partnership with the Pennsylvania Department of Conservation and Natural Resources (DCNR) has published guidance pertaining to the public dedication of land and fees-in-lieu pursuant to MPC Section 503(11). The publication is available online at <https://conservationtools.org/guides/17-public-dedication-of-land-and-fees-in-lieu-for-parks-and-recreation>.

It is recommended that the planning commission and recreation board periodically hold a joint meeting to assure coordination of recreation plan components with community recreation needs and implementation of provisions calling for park and recreation facilities through the subdivision and land development administrative processes.

Transportation Impact Fees

The MPC authorizes a municipality to require a developer to construct sufficient roadways within a subdivision and to improve adjoining roads as necessary to handle the increased traffic generated by the development. To implement that authority, a municipality must include appropriate standards and requirements in its subdivision and land development ordinance.

The MPC expressly prohibits a municipality from imposing a requirement for construction of any “off-site” road improvements or payment of fees in lieu of construction of “off-site” road improvements, except where the municipality has properly enacted a transportation impact fee.

By contrast, there is no comparable limitation on the authority of PennDOT to require off-site improvements relating to development. Where the required traffic impact study conducted to obtain a highway occupancy permit for a development identifies a deficiency on a state or local road within the scope of the study and demonstrated to be impacted by the development, PennDOT can require the developer to make the improvements necessary to correct the deficiency. The scope of a PennDOT-required traffic impact study typically extends beyond the portion of the road immediately adjacent to the property to be developed.

Article V-A of the MPC is the exclusive authority to enact and collect off-site transportation impact fees. Statutory provisions mandate very specific and complex procedures that a municipality must follow in order to enact an impact fee ordinance. To lawfully impose a transportation impact fee, a municipality is required to have strictly followed the procedures set forth in the MPC, which include having a comprehensive plan, zoning ordinance, and subdivision and land development ordinance.

The municipality must establish an impact fee advisory committee, designate transportation service areas, and conduct a series of studies. These studies consisting of a land use assumption report and a roadway sufficiency analysis, and a transportation capital improvements plan must be approved in order to enact an impact fee ordinance. The adoption of an ordinance establishes the transportation impact fee. The transportation impact fee must be supported by the required studies; an excessive fee is unlawful.

Impact fees cannot be used to pay for operation and maintenance expenses, repairs, pass-through trips, or trips attributable to existing development. Growth and the pace of growth are among the factors to be weighed when deliberating whether to enact an impact fee ordinance. Such an ordinance represents just one more tool available to a municipality to promote orderly development. However, each municipality will have to make a cost-benefit determination to see if enacting an impact fee ordinance will likely be a net revenue producer over a given period of years.

The Pennsylvania Department of Transportation has published the *“Transportation Impact Fees: A Handbook for Pennsylvania Municipalities,”* which is available online at <https://www.dot.state.pa.us/public/Bureaus/Cpdm/ImpactFees.pdf>.

Aside from the above, no other impact fees or exactions for offsite improvements are authorized under law or can be required by municipal regulation.

Financial Guarantees for Construction of Public Improvements

Section 509 of the MPC mandates that a municipality not approve a final subdivision or land development plan unless required public improvements are completed or completion is assured by financial security provided by the developer and available for use by the municipality to complete the required improvements. Municipalities that fail to obtain financial security from the applicant for construction of required public improvements are financially responsible for completing improvements not completed by the developer through the expenditure of public funds.

Completion of required public improvements prior to final plan approval requires substantial front-end capital expenditure by the developer. In lieu of completion, the MPC permits a developer to provide financial security to the municipality to guarantee that improvements will be completed. However, a developer is not required to provide financial security to a municipality for any improvement for which PennDOT receives financial security in connection with a highway occupancy permit.

The MPC vests the municipal engineer with the authority to determine the appropriate costs of construction of required public improvements for use in setting the amount of the necessary financial security. The governing body retains jurisdiction over acceptance of the financial security offered by the developer. Financial security may be in the form of cash (escrowed by the developer or municipality), performance bond, letter of credit, or other generally acceptable form of performance security. A municipality may not refuse any lawful form of financial security. As construction proceeds, a developer may ask for the release of the financial security for completed improvements. If over time the cost of construction increases or the provided financial security is determined to be insufficient to cover the cost of constructing any remaining improvements, the municipality may and should require that additional financial security be provided.

On occasion a cautious lender will not provide financial guarantees until presented with a signed final subdivision or land development plan. In such a situation, the developer has an approvable final plan, but cannot satisfy the lender's requirement. In this situation, Section 509(b) of the MPC permits a developer to request a signed copy of a municipal resolution or letter indicating approval of the final plat contingent upon the developer obtaining satisfactory financial security. The resolution or contingent approval expires and is deemed to be revoked if the financial security is not executed within 90 days, unless a written extension is granted.

How is the amount of the financial security determined? The applicant and/or developer submit a cost estimate for completion of the required public improvements. The estimate must be prepared by a registered professional engineer licensed in Pennsylvania and must be certified to "be a fair and reasonable estimate" of the cost of completion of the improvements. The cost estimate is to be calculated as of 90 days following the date scheduled for completion by the developer. This projection assures the municipality will hold sufficient funds in the face of future inflation to construct the public improvements in the event of default. Where the estimated costs of completion would be subject to prevailing wage if completed by the municipality, the municipality may recognize prevailing wage in determining the amount of the required financial security. The municipal engineer is authorized to review the estimate and recommend its acceptance, or not if the estimate is determined by the municipal engineer to be insufficient. A municipality may refuse to accept the original or revised estimated cost for good cause shown. If the applicant and municipality are unable to agree, a mutually chosen engineer establishes a cost estimate. The amount of financial security required of the developer should equal 110 percent of the estimated cost.

The municipality is also allowed to adjust the amount of security annually based on actual cost of completed improvements in comparison to scheduled completion dates and thus may require posting of additional security over time to assure it equals 110 percent of the cost of completion of any remaining required public improvements.

As construction proceeds, a developer may ask for the release of the financial security for completed required public improvements. Any such request must be in writing to the municipality. Upon receipt of the request, the municipality has 45 days to have its municipal engineer certify that work on the improvements was completed according to final plan approval. Within 15 days of receipt of the municipal engineer's report, the governing body must provide written notification as to its decision regarding partial release of the developer's financial security.

The municipality may continue to hold 10 percent of the financial security even if more than 90 percent of the improvements are completed. However, once improvements are totally completed by the developer, a municipality must return the final 10 percent even if the municipality decides not to accept dedication.

Where the municipality accepts dedication of improvements, it may require posting of additional financial security to secure the structural integrity of the constructed improvements subject to the design and specifications depicted on the final plan. Such financial security can be held for a period of only 18 months and may not exceed 15 percent of the actual cost of constructing the improvements.

Regardless of when the improvements are constructed, the municipality should establish an inspection procedure to carefully monitor progress of improvements construction. This procedure will go a long way toward assuring that sufficient security balance is available if the municipality is required to complete the improvements. It also assures that the development is built as the approved plans indicate. The municipality is authorized to charge the applicant/developer for the costs incurred by the municipality for inspection of the improvements.

Building Permits

Permits to build or construct improvements to real estate are inextricably related to land development regulations. This is an effective pressure point and should not be lost when illegal or unauthorized improvements are in process. No building permit should be issued unless the lot or parcel of ground is part of an approved and recorded plan.

When financial security is provided in lieu of completion of required improvements, the MPC allows for development of the subdivision to proceed. The MPC specifically requires building permits be issued for the lots in the subdivision. Section 509(m) of the MPC provides that “the municipality shall not condition issuance of building, grading, or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plat upon actual completion of the improvements depicted upon the approved final plat.”

Additionally, when financial security is provided, Section 509(m) of the MPC specifically calls for occupancy permits to be issued for buildings constructed on the lots in the subdivision, subject to the following: (i) “the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition” and (ii) “completion of all other improvements as depicted upon the approved plan, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.”

XII. Subdivision and Land Development Best Practices

Several regulatory best practices have emerged in recent decades to help municipalities achieve a win-win of quality development and positive impact to the community, the environment, and the local government. These include the following:

- **Conservation Design Regulations** – The incorporation of conservation techniques into local zoning and subdivision and land development ordinances is detailed in the *Growing Greener: Conservation by Design* handbook published by the Natural Lands Trust and DCNR. This publication summarizes and graphically illustrates how municipalities can use the development process to their advantage to protect interconnected networks of open space: natural areas, greenways, trails and recreational lands. The handbook is available online at http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_002285.pdf.
- **Traditional Neighborhood Development (TND)** – Article VII-A of the MPC authorizes municipalities to utilize traditional neighborhood development (TND) as a means – among other objectives – to encourage innovations in residential and non-residential development and renewal. TND promotes compact development to achieve a harmonious mix of housing accompanied by neighborhood scaled commercial facilities (e.g., shops, eateries) and civic uses such as libraries, churches, interspaced among grid-like streets, sidewalks, and village greens. The Pennsylvania Lands Trust has published an online conservation guide pertaining TND at <http://conservationtools.org/guides/show/46-Traditional-Neighborhood-Development#ixzz35jyH4dD9>
- There are a variety of **new design approaches** reflecting current science and engineering and promoting low-impact, low-cost development. Design ideas include reduced standards for lot dimensions, streets, and parking; decentralized management of stormwater; and protection of open space and natural systems. The results are less land disturbance and environmental impact, lower cost to developers and home-buyers, and lower cost for municipal services and maintenance. The Pennsylvania Housing Resource Center published a comprehensive set of low-impact, low-cost design standards at <https://www.phrc.psu.edu/Publications/PHRC-Technical-Publications/index.aspx>.

Finally, The Conservation Fund's and DCNR's *Better Models for Development: Ideas for Creating More Livable and Prosperous Communities* publication presents six principles for better development. Each principle is illustrated with numerous examples of alternatives to conventional development that are more sustainable, efficient, and attractive than conventional development approaches. This publication is available online at http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_002279.pdf.

XIII. Administrative Fees, Reviews, and Inspections

Administrative Fees

The municipality may levy administrative fees on applicants for subdivision or land development plan approval to recover all or part of its costs of administration of the subdivision and land development ordinance. Administrative fees are to be based on a schedule established by ordinance or resolution. A fee schedule adopted by resolution can be easily updated without the legal and advertising expenses of an ordinance amendment.

Administrative fees must be reasonable and not excessive, defined in terms of an amount sufficient to cover the actual cost of making the necessary review of the plan or inspection of the development for compliance with the approved plan. Administrative fees should not exceed the rate or cost customarily charged to the municipality by the engineer or consultant when fees are not reimbursed or otherwise imposed on applicants. Fees may not include municipal costs related to an appeal of the decision on an application. A municipality cannot use its power to charge administrative fees for the purpose of raising general revenue or to frustrate or discourage subdivision and land development activity. Generally, if a fee is greater than the cost of administering the regulation, it will be considered unauthorized tax and will most likely be invalidated by the courts.

Administrative fee schedules should be monitored and regularly reviewed to ensure both that fees do not exceed the actual costs and fees are sufficient to recover the legitimate costs of plan review and inspection borne by the municipality.

Filing Fees

A filing fee is commonly used as a means to collect administrative fees up front and is generally charged at the time the preliminary plan (and frequently also at the time the final plan) is submitted for approval. This fee is usually a specified flat amount and may also include an additional amount for each lot in the subdivision or by type or size of a land development. Some municipalities also provide for additional fees to be billed during the review process to recoup actual costs incurred during the review process that exceed the filing fee.

A municipality may elect to escrow the administrative fee (particularly where it reflects expected municipal engineering review and inspection costs) and require that it be supplemented or refunded as circumstances dictate.

Professional Consultant Review Administrative Fees

The MPC authorizes a municipality to recover the costs of its professional consultants' activities relating to a proposed subdivision or land development plan. The MPC defines "professional consultants" broadly to include "persons who provide expert or professional advice, including, but not limited to, architects, attorneys, certified public accountants, engineers, geologists, land surveyors, landscape architects or planners."

Most municipalities levy an engineering fee to recover the cost of the municipal engineer's review of the plan, including related activities, such as the review of cost estimates required for financial security for the completion of required public improvements. Since such costs are usually not known at the time a plan is submitted, the municipality may issue invoices to the developer as actual costs are incurred. As an alternative to direct billing, a municipality may include an estimate, based on past experience, of the review costs for a given type or size of a plan in its filing fee. In such case, a municipality may further provide for the collection of actual costs incurred in excess of the filing fee.

The developer/applicant must pay the administrative fee within the time established by the local subdivision and land development ordinance. The receipt of payment of the administrative fee can be made a prerequisite for plan acceptance for review or a condition of approval to be satisfied prior to approved plan recordation.

Inspections

It may be advantageous to establish a separate administrative fee for inspections of construction when the subdivision and/or land development requires the construction of improvements, such as roads, utilities, and stormwater management facilities. Such administrative fees may be charged and recovered through invoices as inspections proceed, made a part of the application filing fee, and/or charged separately to recover actual costs incurred in excess of the inspection costs estimated for the filing fee.

The municipality has the authority to recover the costs of administering the subdivision and land development ordinance dollar-for-dollar from the applicant seeking review and approval of a subdivision or land development plan. A municipality may elect instead to cover the costs through allocation of the municipality's general revenues.

Fee Disputes

Section 503(1) (i) of the MPC requires that the fees of professional consultants be shown in an itemized billing. Interim billing or municipal escrow is also permitted. If the applicant disputes the review fees charged, Sections 503(1)(i)-(iii) and 510(g)(1)-(5) set forth the dispute resolution procedures which include the applicant providing notice of the dispute and appointment of another professional consultant to serve as an arbitrator if the applicant and municipality do not agree on the amount of expenses. The cited sections prescribe specific steps and timeframes for dispute resolution.

XIV. Enforcement Procedures

Enforcement

Section 515.1 of the MPC specifically allows remedies for enforcement of a subdivision and land development ordinance by law or in equity to: (1) restrain, correct or abate violation of subdivision and land development regulations, (2) prevent unlawful construction, (3) recover damages, and (4) prevent illegal occupancy.

In addition, a municipality may refuse to issue any permit or grant any approval required to further improve or develop any property in violation of the subdivision and land development ordinance. This authority to deny permits or approvals applies to:

1. The owner of record at the time of such violation.
2. The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
3. The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
4. The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

The MPC authorizes a municipality, as a condition for granting a permit or approval, to require a subsequent owner, vendee, or lessee to comply with conditions that would have been applicable to the property at the time the applicant acquired an interest in the real property.

Court Actions

The most appropriate action for a municipality seeking enforcement to initiate depends on the severity of the violation. If an imminent threat exists to public health, safety, or welfare, the court of common pleas should be petitioned for an injunction. An injunction is a court order to restrain, correct or abate violations and can be used to prevent an individual from performing specific acts.

The activity to be enjoined could be commencement of work on a foundation or sale of land without proper subdivision plan approvals. Injunctions constitute severe action and should only be used when progressive attempts to enforce an ordinance have failed or where continued activity constitutes a clear and serious threat to the health and safety of the general public.

Under circumstances that are neither as severe nor urgent, compliance can be obtained by taking action at a lower level than the court of common pleas. The form any action should take depends upon the specific problem. For example, if onsite improvements are not installed or not constructed according to standards required in the approved plan, notifying the developer directly about the substandard work and placing a hold on any request for even a partial release of security might gain compliance. Other situations may require a stop-work order to enforce the ordinance.

What follows is a description of the various enforcement actions that may be taken given various circumstances beginning with suggested progressive enforcement actions.

1. After inspection, contact the violator to bring the municipal concerns as well as specific provisions of the ordinance to the attention of the violator. A simple handshake agreement could achieve compliance at this point in the process.

2. Serve formal written notice of violation identifying corrective action that will resolve the violation. The notice should contain a deadline for compliance.
3. In consultation with the municipal solicitor, proceed with a legal action appropriate to the severity of the violation.

The basic objective is to obtain compliance. It is best to resolve the issue at the lowest possible level, unless there is an imminent peril to life or property. Most reasonable persons will respond to a site inspection notice or a letter of a possible violation (a violation notice). Such a course eliminates the need to take further action such as filing a complaint with the district justice or an injunction action in court. By following a progressive procedure, a municipality is building a case with supportive documentation that reasonable attempts were made by the municipality to gain compliance.

Enforcement Remedies

The MPC provides that only the municipality has the right to commence action for enforcement. In the event a person is found liable in a civil enforcement proceeding of violating the municipal subdivision and land development ordinance, the court may impose of judgment not more than \$500 plus court costs including attorneys' fees incurred by the municipality. Each day the violation continues constitutes a separate violation, unless the district justice determines a good faith basis existed for the person to believe there was no violation. In such a situation, there is deemed to have been only one violation until the fifth day following the district justice's determination of the violation, and thereafter each day constitutes a separate violation.

Remedies to Complete Improvements

What happens when a required public improvement is left incomplete or never begun? Section 511 of the MPC provides "Remedies to Effect Completion of Improvements." If required improvements are not installed according to the final plan or recorded plat, the governing body is granted the power to enforce any financial security provided by the developer to the municipality by appropriate legal or equitable remedies. Further, if such improvement guarantees are insufficient to pay the cost of installing the required improvements, the municipality, at its option, may install part or all of the improvements and may then institute legal or equitable action to recover public funds. All funds recovered shall be used solely for installation of improvements covered by such financial security and may not be used for any other municipal purpose.

XV. Improving the Subdivision and Land Development Review Process

A subdivision and land development ordinance helps achieve noble and lofty goals for the good of a community and its residents and businesses. Yet there are often news accounts of local reviews of development projects that are contentious and even adversarial. A subdivision and land development ordinance and its review-and-approval process can be complex and time-consuming. Much of this is rooted in the process as authorized by the Pennsylvania Municipalities Planning Code which has changed little since original enactment in 1968. Still, there are measures a local government can take, consistent with existing law, to lessen tensions and make the development review-and-approval process more of a win-win for all parties involved.

Differing Perspectives

Different parties involved in the development review process – the local government, developers, and citizens – bring different perspectives to the process. Development reviewers should be aware of and take into account the differing perspectives.

- **Local government perspectives** – Local officials have the challenge of representing the public interest. Ideally the public interest is embodied in a comprehensive plan. Practically, local officials are beholden to multiple bottom lines: generation of tax revenue vs. cost to serve development; different neighborhood interests; politics; limited administrative capacity; etc.
- **Developer perspectives** – Developers want to make a profit and are very sensitive to the money cost of time. Most are not averse to typical regulations, but desire the regulations and development review process to be clear and predictable. More developers than perceived are interested in doing a quality project that contributes to the community.
- **Citizen perspectives** – Citizens also want to see the public interest served, but their interests are narrower and often based on protecting their own homes and neighborhoods vs. the uncertain change new development might bring.

Challenges and Issues

In 2013, the Pennsylvania State Planning Board and Department of Community and Economic Development studied the local development review-and-approval process in Pennsylvania. With input from local officials, planners, developers, engineers, and attorneys, the study identified several challenges and issues:

- **The local development review process is complex.** The MPC-authorized subdivision and land development process has complex details. Many developments also involve zoning approvals – conditional uses or special exceptions, variances, amendments – which have different time frames and approval bodies. Many developments involve state and federal permitting.
- **The process can be time-consuming.** A single subdivision or land development approval, especially one that involves multiple regulatory approvals, can take a year or more.
- **The process can be unpredictable.** Different counties and municipalities have different regulations and variations on the review-and-approval process.
- **There are capacity issues on both the public and private side.** Many local governments lack staff time and expertise to adequately review developments. Many development applications lack complete information and fail to address regulatory requirements. Both end up causing delays and additional expenses.

Recommendations to Improve the Process

Under existing authority of law, there are process improvements local governments can implement to address the challenges and issues. The improvements are geared to achieve a win-win for local governments, developers, and the community.

- **Intergovernmental cooperation** – There are several options. by intergovernmental cooperation agreement, multiple municipalities can create and share the cost of a joint plan review professional, either as shared staff or as a contracted consultant. This would provide a high level of review capacity for municipalities that could not afford or support it on their own. A cooperative program could also include a common application form, uniform submission requirements, a web-based information and application portal, and consistent process steps for all the municipalities. Further, municipalities could work together to enact more consistent ordinance terminology and standards, or to devise a uniform subdivision and land development ordinance all municipalities enact. Municipalities can cooperate with and utilize the professional capacity of the county. Section 502(c) of the MPC says a municipality may designate the county planning agency (with its concurrence) as the official administrative agency for review and approval of subdivision and land development plans. Section 502(c) also says a municipality may adopt the county subdivision and land development ordinance by reference and administer it as the municipal ordinance.
- **Team approach** – Several counties in Pennsylvania utilize a team approach to coordinate and expedite reviews and approvals for larger-scale, higher-profile, or more economically-significant developments. Typically a county planning or economic development agency serves as the lead and coordinates a team of local officials and agencies from multiple levels of government involved in development review. The team sets an expedited review schedule by mutual agreement, works together to address problems as they arise, and helps promote a quality development project.
- **Tiered reviews** – Several counties and municipalities provide for different tiers of development review. Smaller or lower impact subdivisions and developments are subject to fewer steps over less time than larger or higher impact subdivisions and developments. For instance, one county provides planning department staff with authority to review and approve minor subdivisions without the additional step and time of planning commission approval. Major plans must be approved by the planning commission.
- **Express-lane reviews** – A practice done by some planning agencies in other states is to offer an optional express review that bypasses the “normal” queue of development reviews. The express review is done upon request and payment of a higher review fee by a developer/applicant. The planning agency uses the fee to pay an outside-party consultant to perform an expedited review without slowing down the normal queue of reviews and without lessening the diligence applied to the expedited review.

Practitioner Insights

Below are additional suggestions for elected officials, planning commission members, planners, engineers, and attorneys who work on the front lines and interact with developers and the public in administering a subdivision and land development ordinance:

- **Be proactive.** Perform technical compliance reviews as promptly as possible. Provide them to the applicant and parties involved in the review well in advance of meetings. Catch problems and deficiencies in the first review. The sooner parties talk, the easier it is to resolve problems. Respond to calls and e-mails promptly, within 24 hours.
- **Read and know the ordinance.** “We’ve always done it that way!” is not in the ordinance. Judge compliance by the standards in the ordinance. If an applicant meets the standards, the development must be approved. If not, the development must be denied unless waivers or modifications are granted or approval is conditioned on measures to achieve compliance. The municipality cannot require a development to meet standards more restrictive than or not in the ordinance without consent of the applicant.

- **When needed, amend the ordinance.** If literal administration of ordinance standards is not resulting in development consistent with municipal goals, then work on changes to the ordinance. Involve developers and their engineering and design consultants in drafting revisions.
- **Know and stick to the process and timelines.** Don't fight about the process. It is set by the MPC and the municipal ordinance, and it is what it is. Don't introduce any changes or surprises as the process unfolds.
- **Provide clarity.** Give the applicant a copy of the ordinance or the link to it online. Provide information sheets with the application form describing process, timelines, and instructions.
- **Help identify solutions as well as problems and deficiencies.** Help the applicant consider alternatives that will meet the regulations. Conversely, let the applicant make a case for a development proposal that doesn't match the regulations. A different approach may yield equally good or better results, and approval of modifications may be worthwhile.
- **Coordinate the subdivision and land development review with zoning and other local reviews.**
- **Leave political bias and personal opinions out of the process.**
- **Be honest and forthright in dealings with other parties.** Do not be adversarial. Come into dealings with a positive attitude and leave with a positive attitude. Personal reactions – including body language – are tone setters.

XVI. Conclusion

The subdivision and land development ordinance is one of the most basic and important types of land use regulations that a municipality can enact. The MPC specifies the procedures as well as certain other items pertaining to the content and adoption of the ordinance. Administering an ordinance necessitates not only knowledge of the MPC and the municipal ordinance provisions, but also thorough plan review and onsite inspections during and after construction phases of the project.

Poorly planned and constructed developments are painful to live with and expensive to correct. Lack of municipal inspections can result in substandard public improvements that could prove to be a subsequent financial hardship to the municipality. Administrative details require prior thought and consideration. A well informed governing body and planning commission can avoid pitfalls, can encourage and guide sound development practices, and can help create a more acceptable environment for all residents of the municipality.

Finally, the authority to adopt and administer planning control measures or regulations has been delegated exclusively to municipalities and counties under the police powers. The courts have consistently reinforced the importance of having a connection between the specific purpose of a regulation and the general health, safety, and welfare of the public. A municipality must be prepared to document that the regulation bears a reasonable relationship to the welfare of the public and that the measure or control in fact advances a legitimate public interest. That interest must not be arbitrary but rather supported by comprehensive analysis of community development goals and objectives.

XVII. Planning Assistance from DCED

DCED's Governor's Center for Local Government Services (Center) provides a full range of technical and financial services to all of Pennsylvania's local governments. The Center is the principal state agency responsible for helping with planning and land use matters discussed in this publication.

Local government officials, planners, and other interested individuals have several sources of assistance from the Center:

- **Toll-free telephone number** – 888-223-6837. Callers will be connected with staff that has knowledge of planning, land use, zoning, subdivision and land development, and the PA Municipalities Planning Code.
- **Website** – dced.pa.gov/lgs. There are helpful pages under Community Planning, plus information on the topics listed below.
- **Publications** – dced.pa.gov/publications. This and the other nine Planning Series publications listed in the Preface can be downloaded and printed for free, or hard copies can be purchased at cost. The website also has publications with suggested provisions for floodplain management ordinances, plus publications on many topics from fiscal management to intergovernmental cooperation to open meetings.
- **Training** – PAtraininghub.org. DCED provides funding for local government training programs via the PA Local Government Training Partnership. There are training courses, videos, and online instruction on a variety of topics, including planning and land use, plus ten fact sheets on planning and land use topics.
- **Land use law library** – www.landuselawinpa.com. DCED and the PA Local Government Training Partnership maintain an online library of significant court cases on zoning, subdivision and land development, and other land use topics.
- **Planning and land use eLibrary** – <http://elibrary.pacounties.org>. DCED and the County Commissioners Association of Pennsylvania maintain an online library of comprehensive plans, zoning ordinances, and subdivision and land development ordinances in effect in Pennsylvania counties, cities, boroughs, and townships.
- **Financial assistance** – dced.pa.gov/program. Currently DCED provides funding for local government planning through the Municipal Assistance Program. MAP offers up to 50 percent grants for costs of undertaking comprehensive plans, zoning ordinances, subdivision and land development ordinances, and more.

XVIII. Other Planning Assistance

Assistance and training on planning and land use are available from other sources:

- **County planning agencies** – Pennsylvania counties have a long tradition of being a source of capacity and expertise in planning and land use. Currently, every county has a planning commission, department, or both, or other agency like a development department that handles planning matters. Every county has staff involved in planning. Many county planning agencies offer assistance to local governments in their counties.
- **American Planning Association (APA)** – The Pennsylvania Chapter has an annual conference with many speakers and sessions on topics from local to national interest, plus training workshops and other educational events and information: <http://planningpa.org>. The national organization has an annual conference, publications, and a variety of audio, web, and e-learning resources: www.planning.org.
- **Local government associations** – In addition to programs through the PA Local Government Training Partnership, Pennsylvania's statewide associations representing different categories of local governments also offer annual conferences and training programs, including planning and land use, to their member local governments.
- **Penn State Extension** – Statewide Extension programming includes courses, webinars, and publications on community issues including planning and land use. Within that is the Pennsylvania Municipal Planning Education Institute which offers training programs on planning, zoning, and subdivision and land development: <http://extension.psu.edu/community>.
- **Universities and colleges** – Several Pennsylvania universities and colleges offer degree programs in planning. Others offer planning-related courses in geography or design degrees. Many have a community service objective and assist community groups and local governments with faculty and/or student service projects.

Appendix I – Ordinance Enactment Procedures

This is a summary of land use ordinance enactment procedures and is intended for quick and easy reference. However, when you are considering action on an ordinance enactment or amendment, please read the appropriate sections of the MPC. Each section is specifically referenced for this purpose.

The following terms, phrases, and definitions pertain to proper land use ordinance enactment and amendment.

Publication, Advertisement and Availability of Ordinances – MPC Section 506

- (a) Proposed subdivision and land development ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days or less than seven days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:
 - (1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.
 - (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.
- (b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall at least 10 days prior to enactment readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.
- (c) Subdivision and land development ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Public Hearing. A formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act. *MPC Section 107.*

Public Meeting. A forum held pursuant to notice under 65 Pa. C.S. CH 7 (Relating to open meetings). *MPC Section 107.*

Public Notice. Notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing. *MPC Section 107.*

Selected Definitions from the Sunshine Act (Act 84 of 1986)

Deliberation. The discussion of agency business held for the purpose of making a decision.

Meeting. Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

Official action.

1. Recommendations made by an agency pursuant to statute, ordinance or executive order.
2. The establishment of policy by any agency.
3. The decisions on agency business made by an agency.
4. The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

Special meeting. A meeting scheduled by an agency after the agency's regular schedule of meeting has been established.

Enactment of an Original Subdivision and Land Development Ordinance

1. Unless the proposed subdivision and land development ordinance is prepared by the planning agency, the governing body shall submit the proposed ordinance to the planning agency for recommendations at least 45 days prior to the required public hearing held by the governing body. *MPC Section 504(a).*
2. At least 45 days prior to the required public hearing held by the governing body the municipality shall submit the proposed ordinance to the county planning agency for recommendations. *MPC Section 504(a).*
3. A governing body must hold a public hearing pursuant to public notice prior to enactment. If notice of the hearing is published in compliance with MPC section 506, notice of enactment per item 4 (below) may not be required provided that a vote to enact occurs within 60 days of the last date of publication. *MPC Section 504(a).*
4. To be legally enacted, notice of proposed enactment must be published at least once in one newspaper of general circulation not more than 60 days or less than seven days prior to passage. Publication of public notice of the hearing in accordance with item 3 (above) satisfies the requirement for legal enactment of the ordinance. *MPC Section 506(a).*
5. If substantial changes are made to the proposed ordinance, before voting on the enactment, the governing body shall readvertise once at least 10 days prior to the scheduled date of enactment a brief summary of all the provisions in reasonable detail together with a summary of the changes. *MPC Section 506(b).*
6. Within 30 days after enactment a copy of the ordinance must be forwarded to the county planning agency. In counties without a planning commission a copy should be sent to the county commissioners or other office designated by the commissioners. *MPC Section 504(b).*

Enactment of an Amendment to a Subdivision and Land Development Ordinance

1. When an amendment is prepared by other than a municipal planning agency, the governing body must submit the amendment to the municipal planning agency at least 30 days prior to the public hearing that is to be conducted by the governing body to provide the planning agency an opportunity to submit recommendations. *MPC Section 505(a).*
2. At least 30 days prior to the public hearing to be held by the governing body the municipality shall submit the proposed amendment to the county planning agency for recommendations. *MPC Section 505(a).*
3. A governing body must hold a public hearing pursuant to public notice prior to enactment. If notice of the hearing is published in compliance with MPC section 506, notice of enactment per item 4 (below) may not be required provided that a vote to enact occurs within 60 days of the last date of publication. *MPC Section 505(a).*
4. To be a legally enacted amendment, notice of proposed enactment must be published at least once in one newspaper of general circulation not more than 60 days or less than seven days prior to passage. Publication of public notice of the hearing in accordance with item 3 (above) satisfies the requirement for legal enactment of the amendment. *MPC Section 505(a).*

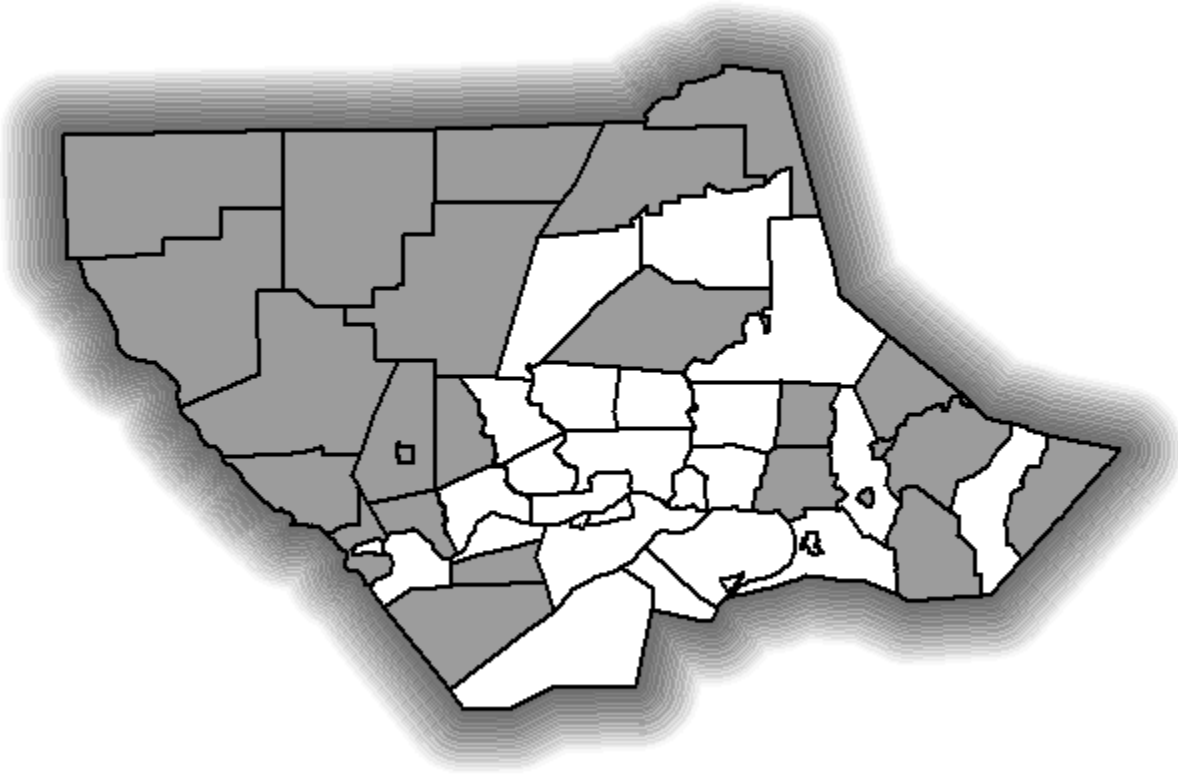
5. If substantial changes are made to the proposed amendment before voting on the enactment, the governing body shall readvertise once at least 10 days prior to the scheduled date of enactment, a brief summary of all the provisions in reasonable detail together with a summary of the changes. *MPC Section 506(b)*.
6. Within 30 days after enactment, a copy of the ordinance must be forwarded to the county planning agency. In counties without a planning commission a copy should be sent to the county commissioners or other office designated by the commissioners. *MPC Section 505(b)*.

**Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services**

Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

USPS 100
APPROVED POLY

Lycoming County



Subdivision And Land Development Ordinance

Enacted: January 23, 2014

Revised: April 23, 2014

Effective: January 23, 2014

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE
FOR LYCOMING COUNTY

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INTRODUCTION

The decision to subdivide and develop land is very important because it results in the conversion of land into parcels intended for separate ownership and use. The establishment of property lines, roadways, and land development are actions that have long lasting effects on the seller of land, the buyer, and the municipality that will provide services. While transferring ownership of property is an individual concern between seller and buyer, the effects of the transaction are passed on to future owners and the taxpaying public. At some point in the future, newly created lots will be owned by someone intending to use and develop their land. The future improvements and building development will lead to changes in natural features, drainage, water use, sewage disposal, location and quality of road intersections, etc. This set of actions taken today creates our legacy for tomorrow. Our responsibility is to ensure that future generations will enjoy our community as formed by following the land use controls set out in the Subdivision and Land Development Ordinance.

In the past, improvements necessary to accommodate development such as roads, sewage facilities, water supplies, drainage culverts, etc, sometimes were inadequately built or not installed prior to subdivision standards. Property lines were disputed because of poorly marked or inadequate surveys. Undevelopable lots were sold, forcing the new owners and municipalities to pursue expensive and troublesome alternatives to address use of the land. The legacy intended by the owner of such a subdivision, as originally envisioned, may have been harmed or made unachievable. Community planning can reduce or eliminate the occurrence of such problems.

The primary purpose of a subdivision and land development regulation is to promote and protect the health, safety, and general welfare of the public and to accomplish coordinated community development. The regulation helps to ensure the provision of adequate sites for development and public use; to coordinate public improvements with private interests; and to provide reasonable and acceptable design standards. To accomplish these objectives the regulations herein encourage well planned growth by ensuring the adequate placement and installation of private and public supporting infrastructure improvements such as roads, parking lots, sidewalks, utilities, water lines, sewer facilities, stormwater drainage systems, etc. Lastly, this Ordinance includes steps for assurance that the site improvements to support development are installed properly.

The intent of the Board of Commissioners in adopting this Ordinance is to assist with and encourage the best possible subdivision and land development solutions for both the individual property owner, the respective Township or Borough, and Lycoming County as a whole. The Lycoming County Planning Commission (LCPC) encourages innovativeness and ingenuity in the layout and design of subdivision and land developments by supporting alternative site requirements and encouraging other best practices in accordance with site-planning principles. The effectiveness and fairness of any ordinance depends upon the means in which it is enforced. The Planning and Community Development (PCD) staff on behalf of the LCPC will be available for meetings with the applicant, developer or property owner or the owner's agent, whenever possible, and proper notification to subdividers will be made prior to any enforcement actions.

FORWARD

In an effort to provide a more user-friendly document, this Ordinance includes section numbered provisions that are regulatory together with portions of the document offered as guidance in a printed format as follows:

The Subdivision & Land Development Ordinance includes cross-references at times to other land use controls that are to be applied to a proposal to subdivide or develop land. Though those cross references may be included in the various sections of this regulation, those other regulations are approved and permitted by other agencies. The applicant needs to coordinate their proposal with these other agencies to secure the respective approvals.

The community planning activity by the owner is a team effort. The guidance portions in the booklet that follows are intended to yield a positive outcome for the applicant's effort.

**COUNTY OF LYCOMING
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. 2014-01

AN ORDINANCE

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LYCOMING COUNTY ESTABLISHING RULES, REGULATIONS AND STANDARDS GOVERNING SUBDIVISION AND LAND DEVELOPMENT WITHIN THE COUNTY OF LYCOMING, SETTING FORTH THE PROCEDURES TO BE FOLLOWED BY THE PLANNING COMMISSION IN APPLYING AND ADMINISTERING THESE RULES, REGULATIONS, AND STANDARDS, AND SETTING FORTH THE PENALTIES FOR THE VIOLATION THEREOF AS ESTABLISHED BY THE COMMONWEALTH OF PENNSYLVANIA.

Short Title: These regulations shall be known and may be cited as "The Lycoming County Subdivision and Land Development Ordinance."

LYCOMING COUNTY COMMISSIONERS

Jeff C. Wheeland, Chairman
Ernest P. Larson, Vice Chairman
Tony R. Mussare, Secretary

LYCOMING COUNTY PLANNING COMMISSION

George Logue, Chairman
Larry Fry, Jr., Vice-Chairman
Howard Fry, Jr., Secretary.
Joseph H. Neyhart
Christopher Kaiser
Bill Parsons
Cindy Bower
James Dunn
Carl Nolan

J. Michael Wiley, Solicitor

LYCOMING COUNTY PLANNING COMMISSION STAFF

Kurt Hausammann, Jr., AICP, Executive Director
Bill Kelly, Deputy Director
Fran Jones, Deputy Director – GIS and Assessment
Kim Wheeler, AICP, Community Development/Lead Planner
Mark R. Murawski, Transportation Planner
John Lavelle, Hazard Reduction Planner
Joshua Billings, Subdivision and Land Development Administrator
David Hines, Zoning Administrator
Salvatore Vitko, Zoning/Subdivision Officer
Lynn F. Cunningham, Planning Technician/Analyst
Richard Murphy, Land Records Cartographer
Mila Robinson, Environmental Planner
Megan Lehman, Environmental Planner
Clifford A. Kanz, AICP, Development Services Supervisor
Ed Feigles, GIS
Amy Fry, GIS Supervisor
Scott Williams, GIS Analyst
Stacy Lewis, UPI
Stephanie Toner, UPI
Jane Magyar, Clerk IV
Jessica Burget, Clerk II-A

ARTICLE I

GENERAL PROVISIONS

1.0 AUTHORITY

Having been vested by law with the power to regulate subdivision and land development by the enactment of a subdivision and land development ordinance and with the power to delegate all administrative and enforcement powers of said ordinance to a planning agency, in accordance with Article V, Section 501 of the Pennsylvania Municipalities Planning Code (PAMPC; Act 247 as amended) the Lycoming County Board of Commissioners hereby designates the Lycoming County Planning Commission (LCPC) as the planning agency with all authority to: review, approve or disapprove all subdivision and land development proposals within the political boundaries of Lycoming County for municipalities that choose to not enact their own respective Subdivision and Land Development Ordinance; and to enforce the regulations of said Ordinance.

This ordinance includes provisions excerpted from the PAMPC, such as definitions. Definitions have been adjusted to fit situations unique to the County of Lycoming. This document is interconnected to other State or Federal provisions found from cross-references included in sub-sections. As mentioned before, the applicant is responsible for coordination and securing other approvals and meeting permit procedures required by respective agencies. All terms are defined in Section VII-Definitions. Definitions also are provided in the main sections as below.

1.01 Definitions of Land Development and Subdivision

- A. Land Development shall be defined as set forth in the Definitions section of this ordinance.
- B. Minor land development shall be defined as any land development involving no more than the placement or construction of one additional single-family detached dwelling and customarily related improvements and accessory structures on a lot of record; or other land development not involving required infrastructure improvements and involving no more than 2,500 square feet of proposed building footprint improvement to the land surface area. For a minor residential land development, the PCD Staff – Subdivision and Land Development Ordinance Administrator- has the option to accept plan sizes on smaller than 18” x 24” paper drawn to scale by the applicant, minimally drawn to the sketch plan standards of Section 2.1.

- C. Major land development shall be defined as any land development not qualifying as a minor land development.
- D. Unless otherwise defined as such, land development does not include the reuse (or more accurately the change of use) of existing structures that do not involve or require supporting improvements to land surface area for the land development.
- E. Subdivision shall be defined as set forth in the Definitions section of this ordinance. Exempted from subdivision are:
 - 1. The lease of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access or any residential dwelling.
 - 2. The occurrence where a deed is to be filed to correct an existing inaccurate deed description, so long as the original inaccuracy was inadvertent and the correction does not significantly alter the legal descriptions of other properties in the vicinity.
- F. Minor subdivision shall be defined as any subdivision that meets the following two criteria: it does not involve required public infrastructure improvements and involves only one (1) new parcel and/or any number of lot additions (known as lot-adds) and/or lot consolidations.
- G. Major subdivision shall be defined as any subdivision not qualifying as a minor subdivision.
- H. Lot consolidation shall be defined as the creation of a new lot by the removal of internal lot lines of existing adjacent lots. Lot consolidation may be accomplished through the preparation and recording of a new deed describing the consolidated lots as one. Alternatively, a clause may be provided in the new deed that states: “consolidated lots shall be considered as one for sub-division and land development purposes.”

1.02 Exclusions to the Land Development Definition

The following shall be excluded from the definition of land development, but not necessarily from the requirement to process a zoning permit or stormwater permit application:

- A. The conversion of an existing single-family detached dwelling or single family semi-detached dwelling into three or fewer residential units, unless such units are intended to be a condominium; or,
- B. The addition of an accessory building, including non-principal farm buildings, on a lot or lots subordinate to an existing principal building; or,

- C. The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this subclause, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until proper authorities have approved plans for the expanded area; or,
- D. The usual rental leases of second residential dwellings in a building as well as continuation of leased premises as may be renewed within existing buildings of residential or non-residential uses.

1.1 PURPOSE

The purpose of this Ordinance is to protect and promote safety, health and general welfare; to accomplish coordinated development; to guide development and growth, as well as the improvement of governmental processes and functions; to guide the type and location of streets, public grounds and other facilities; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; to permit respective municipalities to minimize such problems as may presently exist or which may be foreseen and to provide for the harmonious community development of Lycoming County by:

- A. Assisting in the orderly and efficient integration of subdivisions within the County of Lycoming.
- B. Ensuring conformance of subdivision and land development plans with public improvement plans.
- C. Coordinating intermunicipal public improvement plans and programs inclusive of infrastructure to serve developments.
- D. Ensuring the protection of soil and water resources and drainage ways.
- E. Supporting the safe and efficient movement of traffic, including pedestrians and bicycles as well as other modes.
- F. Ensuring equitable handling of all subdivision and land development plans by providing uniform standards and procedures.
- G. Fostering the development of adequate sites for recreation, conservation, scenic, and other open space purposes.
- H. Encouraging the utilization of flood prone areas in a manner that does not increase flood hazards.
- I. Respecting the goals and objectives of adopted comprehensive plans.

The purpose statement only provides a broad-brush overview of how the ordinance sections that follow are specifically applied to your plan.

1.2 JURISDICTION

The Lycoming County Planning & Community Development (PCD) Department on behalf of the LCPC shall have the authority to administer and enforce the provisions of this Ordinance; the LCPC shall approve or disapprove subdivision and land development plans for property within the political boundaries of Lycoming County that is not otherwise governed by a municipal adopted subdivision and land development ordinance in accordance with the PAMPC. Under this authority, no subdivision or land development of any lot, tract or parcel of land shall be made, no street, sanitary sewer, storm sewer, storm water management facilities, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants abutting thereon, except in accordance with this ordinance.

1.3 FEE SCHEDULE

Ordinance administrative and review fees shall be paid to the County of Lycoming. Review fees are designed to cover part of the costs of the plan review provided as a service by PCD Staff. A technical review and inspection fee is designed to cover the actual cost of the engineering aspects of required improvements and amenities by professional consultants, engineers and staff. The technical review and inspection fee is covered up-front by the County, who in turn, requires reimbursement from the applicant.

Fees are to accompany a complete plan submission with a completed application form. Review fees of the consultant engineer used by the PCD Staff to support the LCPC are to be reimbursed by the applicant. If the consultant engineer for the County charges a fee that an applicant disagrees with, the dispute resolution steps are to be followed as outlined in the PAMPC.

1.31 Review Fee Schedule

The Lycoming County Board of Commissioners shall establish by Resolution a schedule of fees for the review, inspection, and approval of all subdivision and land development proposals. The review fees will cover staff administrative duties, initial site visit, and plan processing. Minor land development or single lot subdivision fees are to partially recover staff costs and provide a public service to assist applicants. Multi-lot, major subdivision and land development fees are designed to recover PCD Staff time and related costs based on the complexity and size of the proposed development. Fees for the LCPC's consulting engineer, other engineers and other consultants engaged to evaluate and review the proposed plans are billed to the applicant through the County fiscal process. Continued plan revisions and updates provided by the applicant that arise may lead to additional fees. As a public service

the PCD Staff provides a review of sketch plans at no fee to the applicant. For a schedule of fees related to this Ordinance, see the adopted fee resolution.

1.32 Administrative and Inspection Fees

These fees cover PCD Staff costs for plan review, inspection, enforcement activities of improvements and amenities required by this Ordinance, and any condition of plan approval. The fee shall be made payable to the County of Lycoming. The consultant contracts establish a fee schedule for professional consultant engineering services.

Such review fees shall be reasonable and in accordance with the ordinary and customary charges for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant engineer for comparable services which are not reimbursed or otherwise imposed on applicants. Fees charged to the municipality relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.

1.33 Dispute Resolution Process

The PAMPC Section 503(1) – (i through iii) describes the process. In the event the applicant disputes the amount of review fees from professional consultant engineers used by the LCPC, the procedure for resolution of such disputes shall be as defined in the PAMPC Section 503 (1) i through iii; (Act 247 as amended).

1.4 DISCLAIMER OF LIABILITY

The approval of a subdivision or land development plan shall not constitute a representation, guarantee, or warranty of any kind by the LCPC, the County, or by any official or employee thereof as to the practicability or safety of the proposed use, and shall create no liability upon the County, its officials or employees under this Ordinance. Additionally, the LCPC review of plans in accordance with the PAMPC, Section 502, as amended, shall not constitute a representation, guarantee, or warranty of any kind by the LCPC, the County, or by any official or employee thereof as to the practicability or safety of the proposed use, and shall create no liability upon the County, its officials or employees.

1.5 CONFLICT WITH OTHER ORDINANCES

The provisions of this Ordinance shall be the minimum requirements to meet the purposes stated herein. Where the provisions of this Ordinance impose greater restrictions than those of any statute, other ordinance or regulation, such as but not limited to: State enabling statutes, pre-emption, local zoning or building codes, etc., the provision of this Ordinance shall prevail. Where the provisions of any statute, pre-emption, other ordinance or regulation impose greater restriction than those of this Ordinance, the provision of such statute, pre-emption, ordinance or regulation shall prevail.

1.6 WORD USAGE

Unless the context otherwise requires, the following definitions shall be used in the interpretation and application of this Ordinance. Words used in the present tense include the future; the singular number shall include the plural; the word “structure” shall include the word “building;” the word “used” shall include “arranged,” “designed,” “constructed,” altered,” “converted,” “rented,” “leased,” or “intended to be used;” and the word “shall” is mandatory and not optional; and the words “may”, “encourage” and “guideline” are permissive. The word “auto” shall mean “automobile,” “truck,” “semi-trailer,” “truck trailer,” “motorized conveyance” “vehicle” or “motorized vehicle,” except farm or construction equipment and machinery. Road and street are terms with the same meaning. The word “person” shall mean any individual, group of individuals, agent, partnership, company, corporation, association, institution, cult, cooperative enterprise, or sect. In any provisions of this Ordinance prescribing a procedure, requirement, fine, penalty, imprisonment or combination thereof, the term “person” shall include the officers, and directors of any corporation or legal entity having officers and directors and the requirements or effects and responsibilities imposed herein shall apply individually and collectively. Time periods referenced in “number of days” include weekends and holidays in the total.

1.7 COMPREHENSIVE PLANS

The provisions of respective adopted comprehensive plans are resources that are applicable to any proposed subdivision and land developments that are within the geographic areas of those plans.

1.8 ACRONYMS

Abbreviations of terms used in this Ordinance follows:

AADT:	Average Annual Daily Traffic (volume)
ASA:	Agricultural Security Area
BMP:	Best Management Practice
CIP:	Capital Improvement Program
COE:	U.S. Army Corps of Engineers
PCD Staff:	The staff assigned to address any efforts to process a plan before the LCPC
DCED:	Pennsylvania Department of Community and Economic Development
DCNR:	Pennsylvania Department of Conservation and Natural Resources
DEP/PADEP:	Pennsylvania Department of Environmental Protection
EDU;	Equivalent Dwelling Unit
EMS:	Emergency Management Services
EPA:	U.S. Environmental Protection Agency
FAA:	Federal Aviation Administration
FEMA:	Federal Emergency Management Agency

FHWA:	Federal Highway Administration
FIA:	Flood Insurance Administration
FIRM:	Flood Insurance Rate Map
FIS:	Flood Insurance Study
GPS:	Global Positioning System
GIS:	Geographic Information Systems
HAZ-MAT:	Hazardous Materials
HMGP:	Hazardous Mitigation Grant Program
LCPC:	Lycoming County Planning Commission
NFIP:	National Flood Insurance Program
OLDS:	On-Lot Sewage Disposal System
PAMPC:	Pennsylvania Municipalities Planning Code
PCD:	Planning & Community Development Department (of Lycoming County)
PennDOT/PADOT:	Pennsylvania Department of Transportation
PEMA:	Pennsylvania Emergency Management Agency
PFBC:	Pennsylvania Fish and Boat Commission
PGC:	Pennsylvania Game Commission
PHMC:	Pennsylvania Historical and Museum Commission
PNDI:	Pennsylvania Natural Diversity Inventory
SEO:	Sewage Enforcement Officer
SLDO:	Subdivision and Land Development Ordinance
SMP:	Stormwater Management Plan
TIP:	Transportation Improvement Program
Act 167:	The Storm Water Management Act of Pennsylvania enacted to correct existing stormwater management problems and to prevent future problems through stormwater planning at the watershed level. (32P.S. Section 680.1, et seq)
Act 247	The Municipalities Planning Code (PA MPC) 53 P.S. Section 10101 et seq as reenacted in 1988)
Act 537:	The Sewage Facilities Act of Pennsylvania enacted to correct existing sewage disposal problems and prevent future problems through proper planning of all types of sewage facilities, permitting of individual and community OLDS, as well as uniform standards for designing OLDS. (35 P.S. Section 750.1 et seq)

ARTICLE II: PLAN SUBMITTAL SPECIFICATIONS

2.0 GENERAL REQUIREMENTS

All subdivision and land development plans shall meet the requirements outlined in the following sections. A plan is considered complete when all required information is provided and determined acceptable to the PCD Staff.

A Sketch Plan is an informal plan for review of the proposed development with the PCD Staff in support of the LCPC. The Preliminary Plan and Final Plan include the same basic submittal information but have differences. An approved Preliminary Plan is not to be recorded, but allows improvements to be started on site. Since the preliminary plan is not recorded – lots are not to be sold and buildings are not to be built. An approved final plan is to be recorded within 90 days from approval, and with that a financial guarantee is provided with the final plan that ensures that those improvements are installed to the benefit of the future lot owners. Once the final plan is approved by the LCPC and recorded in the County Recorder's Office, subdivided lots can be sold.

2.1 SKETCH PLAN

Applicants are encouraged to discuss possible subdivision and land development intentions with the PCD Staff prior to the formal submission of a plan. Upon sketch plan submission, PCD Staff will discuss the plan with the applicant. Submission of a sketch plan will not constitute formal filing of a plan; therefore, no application and review fee is required. A sketch plan is strongly encouraged for multi-lot and any land development plans, as well as plans involving any areas of sensitive natural features. A sketch plan shall be legible and show the following minimum data:

1. Title block, containing the name and address of the property owner, municipality, date, and approximate scale of the drawing.
2. Site topography with north arrow.
3. Tract boundary sketch, showing the proposed subdivision or land development in relation to the entire tract.
4. Location sketch, showing the relation of the tract to the road and highway system of the area.
5. General street and lot layout, including the approximate boundary dimensions and acreage of the area to be developed, and the location of

existing and proposed buildings, erosion control and stormwater facilities, soils test sites, septic systems or sewers, water mains or wells, utilities, streets, rights-of-ways, easements, floodplains, watercourses, and other significant natural or manmade features as applicable.

6. Overall layout of the development is encouraged to include future road access upon request by staff at the time of consideration of any final plans, of parcels not previously approved on a preliminary plan, or where land is remaining under the same ownership.

Although some of the above information may not be available, the applicant is encouraged to supply as much related information as possible to have successful plan discussion with PCD Staff.

2.2 PRELIMINARY PLAN AND THE FINAL PLAN

- A. The preliminary/final plan shall be drawn to a scale not to exceed 200 feet to the inch on either black ink and white or blue ink and white prints. Scales that are traditionally used with standard engineer's or architect's scales are encouraged. Color copy information is not to be on the plan to be recorded. Other than allowed as a minor residential land development or minor subdivision, the minimum sheet size shall be 18"x 24", or larger, for the copy to be recorded. Larger sheet sizes may be provided upon request if necessary to illustrate the characteristics of the land, show the scope of the development intensity, provide a readable scale, and/or due to circumstances unique to the proposal. A final plan drawn on two (2) or more sheets shall include a cover sheet showing a composite drawing of the various sections and lots involved.

The final plan shall be submitted on a data interchange readable file (dxf), in a program such as "AutoCAD or Intergraph." Where the applicant is unable to produce this type of file, the plan shall be on a scanable quality drawing acceptable to staff using office equipment of PCD.

- B. The preliminary and final plan shall show the following data:
 1. Title block containing the name of the owner of the tract, lot numbers, completed ownership signature block, name of the developer other than the owner, deed reference, property tax map and parcel identification number, municipality, date, scale, and name and profession of individual preparing the plan. Certification is required in accordance with the, "Engineer, Land Surveyor and Geologist Registration Law," except when appropriate for the plan to be prepared using professional services as set forth in the definition of the "practice of landscape architecture" under Section 2 of the "Landscape Architects Registration Law" in accordance with PAMPC Section 503 (1). All plans of subdivision shall

be certified by the seal of a Pennsylvania Registered Professional Land Surveyor; and plans involving the practice of engineering or otherwise involving engineering calculations, design or analysis shall be certified by the seal of a registered professional engineer. As may be applicable, State Plane Coordinate method using the 2 point minimum shall be included with the set of points by GPS or other method shall be included on the plat for final approval.

2. Location map showing the relationship of the subject property to adjoining properties, the adjacent road and highway system and municipal boundaries located within 1/2 mile of the property boundary.
3. Tract boundary sketch showing the relationship of lots and boundaries within the development to the entire tract.
4. Identification of adjoining properties and previously subdivided parcels by property owner name and deed reference.
5. North arrow, proposed boundary/lot lines in bearings and distances to the nearest second and distances to the nearest 1/100th of a foot that provide a survey of the area to be subdivided or developed, closing with an error of not more than one (1) foot in 5,000 feet and existing lot lines.
6. Lot information that includes a) existing and proposed pins set in the field, b) dimensions of areas to be dedicated to public use, delineated or notated, c) building setback lines, total number of parcels, dwelling units, or non-residential building area in square feet, d) a consecutive numbering or labeling system to identify each lot and acreage of each lot (public or private road right-of-way area is not to be included within a respective lot size total and remaining acreage), e) zoning district classifications and zoning district boundary locations, f) municipal boundaries, and g) dimensions of areas to be dedicated to public use.
7. Location, name, dimensions, of all existing and proposed cartway widths, rights-of-way of proposed streets, paved area, driveways, parking areas, and easements located on, adjacent and appurtenant to the tract, including street names. Duplication of existing street names whether public or private within the county shall be avoided. Proposed street names shall be established in accordance with the County 911 addressing and municipal procedures. Bearings and distances are required for the proposed rights-of-way.

Plan information shall be provided for the PCD Staff and LCPC to assess compliance with Section 4.13. G. and Table 2 of this Ordinance (below) regarding driveway slopes. When required by the LCPC to be included with the subdivision or land development submission, the plan

shall show the location of existing steep slope areas (15-25%) and severe slope areas (greater than 25%) specific to a proposed driveway. These areas may be delineated from 20 ft. (60dm) contours taken from U.S. Geological Survey topographic maps. If this source is considered inaccurate or inappropriate, or a greater level of detail is necessary, a field survey compiled by a registered land surveyor, engineer, landscape architect, or geologist may be required. Other contour mapping such as the County GIS 2-foot contour mapping is acceptable.

Prior to disturbance of a steep or severe slope area in excess of 2,000 square feet, an erosion and sedimentation control plan shall be required. As supplement to this control plan, a soil suitability analysis shall be performed by a professional soil scientist, which applies to highly erodible and/or unstable soils, as well as for the disturbance of all severe slope areas in excess of 2000 sq. ft. This analysis shall evaluate the potential impact of any proposed development disturbance upon the stability and integrity of the slope, and include mitigation techniques. A professional engineer shall certify the mitigation techniques. Severe slopes shall not be developed unless a supporting structure has been engineered and provided with a certification of a professional engineer.

8. Location, size and other pertinent information relating to existing and proposed site features such as: fill, structures, roadways, driveways, sidewalks, paths, parking areas, trails, recreation areas, utilities, exterior lighting, landscaping, fences, watercourses, floodplains, wooded areas, wells of any kind, sewers, public/private water mains, sewage facilities, gas pipelines, culverts, overhead and underground transmission lines and distribution lines, fire hydrants, benchmarks and other significant natural or man-made features located on the site. PA One Call information, based on Act 287 shall be located on the plan as applicable. Building elevations at a scale not less than ¼ inch equals a foot, catalogue cuts or prototypical illustrations noting exterior materials are encouraged with land development applications. For signs that are pole mounted, location of sign bases may be included on the plan in accordance with the applicable zoning ordinance.
9. Location of all soil percolation test sites and/or deep test pit sites. Location by bearings and distances triangulation to the nearest marker or monument, of all suitable soil test probe and percolation test sites conducted for each parcel being subdivided or developed in unsewered areas. Where public sewers are provided, the sewer main and lateral locations shall be shown on the plan. Public sewer information may be available and shown from GIS data of the respective sewer service provider.

10. Location of floodplain boundaries including floodway and floodfringe locations if such data is available on the NFIP mapping or as a part of the FIS. If such information is not obtainable, the floodplain shall be generally located utilizing the best available data shown on the Flood Insurance Rate Map for the municipality, Corps of Engineers Floodplain Studies, or mapping of previous floods. The 100 year flood elevation shall be noted on the print whenever such data is available in the FIS, wherever feasible... In such instances, the applicant shall obtain Zoning Administrator/Officer concurrence with the noted flood elevation, before plan approval.
11. An additional sheet or tract sketch containing proposed and existing topographic contours at least with vertical intervals up to twenty (20) feet, and datum and benchmark to which contour elevations refer. Topographic contours of two (2) foot intervals may be required on flat sites and/or on sites intended for intensive development.

Detailed topographic contours may not be necessary in low-density subdivisions such as minor subdivisions, without steep or severe slopes, involving no public water or sewer systems and where a site inspection provides sufficient information for approval.

Plans involving lot addition or single lot subdivisions do not need to show the required topographic contours where a site inspection by PCD Staff or consultant engineer of the LCPC provides sufficient information for approval and any potential driveway slope complies with information required in #7 above.

12. Existing profiles and proposed cross-sections and center-line profiles for each proposed street, and preliminary/final designs of other improvements such as: proposed bridges, culverts or similar facilities.
13. Notice on the plan that a Highway Occupancy Permit must be obtained from the PennDOT before construction of access onto the state highway can be initiated, if the proposal abuts a state road. The access permit approval must be obtained and illustrated on the plan when the use of a new lot is known at the time of submission.
14. For property to access or abut a municipal street there should be a plan note and a notice that the property owner should contact the local municipality concerning road access permit requirements before construction of access or driveways onto the municipal street may be initiated. The access permit approval must be obtained and illustrated on the plan when the use of the new lot is known at the time of submission.

- C. The preliminary/final plan submission shall include the following supporting documents and information:
1. Sketch plan of proposed phased street layout of access or rights-of-way on a separate plan page. Where the preliminary plan covers only part of the subdivider's holdings this sketch is for the remainder of the affected parcel.
 2. Copies of land use control(s) related documents such as: Zoning Hearing Board action, conditional use approvals by elected officials, protective covenants, deed restrictions, right-of-way language, easement language, deeds of dedication, ownership association by-laws and maintenance management agreements of all common areas. Plan notes shall cross-reference these documents.
 3. Preliminary/final cross-sections and centerline profiles for each street and preliminary/final designs of bridges, culverts and other improvements.
 4. Documentation that the applicant has provided for future sewage disposal. Preliminary/final designs of proposed sewerage systems that include a public authority, municipal or home owner association provider; or evidence that the soils on every lot, including the residual lot, are capable of supporting the installation of on-lot subsurface sewage disposal systems. If required, feasibility studies to ensure that the subdivider has adequately planned for sewage disposal in accordance with Section 4.3 of this Ordinance below.
 5. Where appropriate, approval letters or permits issued by local water authorities or the DEP for water supply systems, preliminary/final designs of such systems, inclusive of fire hydrants. If required, feasibility studies in accordance with Section 4.4 of this Ordinance below.
 6. A SMP with storm water control improvements for the proposed subdivision in accordance with the requirements of Section 4.5 of this Ordinance below.
 7. Other documentation and certificates of approval from the proper authorities as may be required. When applicable, approvals from public agencies, letters of commitment, easement agreements, and deeds of dedication, protective covenants, or similar documentation as may be required by the LCPC to fulfill the purposes of this Ordinance.
 8. Where the land included in the proposed subdivision has a gas pipeline, petroleum or petroleum products transmission line or power

transmission or utility line right-of-way located thereon, a copy of the recorded document for such pipeline or transmission line may be required to be submitted to verify the location and width of said easement or right-of-way.

9. If any portion of the proposed development is in a flood hazard area, additional information concerning protection and use of this area shall be submitted as required by law or regulation. Such information shall include assurances that all utilities and facilities such as streets and sewer, gas, electrical and water systems are located and constructed to minimize flood damage, and that adequate drainage is provided so as to reduce exposure to flood hazards.
10. Such evidence as may be necessary to show that effective soil conservation measures have been planned and are to be implemented in accordance with Title 25, Chapter 102 of the DEP's Rules and Regulations as amended. For further information concerning specific requirements, the applicant is referred to the most current Soil Erosion and Sedimentation Control Manual, DEP, the Lycoming County Conservation District Erosion and Sediment Control Handbook. The Lycoming County Conservation District Office should be contacted with questions.
11. If alteration or relocation of a stream or watercourse is proposed, or if development within fifty feet of a stream bank is proposed, a permit must be obtained from the DEP and proof of such submitted to the PCD Staff. Prior to such alteration or relocation, adjacent communities, the State Coordinating Agency for the NFIP, and the FIA must be notified. Under no circumstances shall any stream alteration or relocation take place that will lower the stream's flood carrying capacity.
12. Review fee and completed application form.
13. A timetable for the installation and completion of improvements.
14. Where appropriate, the following shall be submitted guaranteeing the satisfactory completion and maintenance of improvements and common amenities in accordance with Section 3.2 herein:
 - a. A written statement from the applicant and verification in writing from the governing body that the improvements and common amenities proposed to be dedicated have been inspected by the municipal engineer and found to be completed in accordance with the specifications shown on the approved preliminary plan and this Ordinance, and that the financial guarantee provided by the applicant for maintenance is satisfactory; or

- b. An estimate of the cost of completion of required improvements, prepared by a registered professional engineer; a timetable for the completion of improvements; an executed improvement agreement; and, a suitable financial security such as a bond, certified check, or irrevocable letter of credit in an amount equal to 110% of the cost of completion estimated as of ninety (90) days following the date scheduled for completion by the applicant; or
- c. Documentation verifying compliance with Section 3.2 of this Ordinance (below) including a written statement from the applicant and certification from a registered professional engineer that the improvements and common amenities have been installed, inspected by the engineer and found to be completed in accordance with the specifications shown on the approved preliminary/final plan and this Ordinance; and a bond, certified check or other financial security deemed satisfactory to the LCPC or PCD Staff.

D. **In addition to C. above, the final plan** shall include the following supporting documents and information:

- 1. Corrected and updated material from the preliminary plan.
- 2. Review fee, inspection fee, and completed application form.

2.21 Minor Land Development Plan

Minor land development plans shall show the items set forth in Section 2.1 of this Ordinance (above) and shall include the following additional items:

- 1. A minimum of four (4) copies of the plan at a scale not to exceed 200 feet to the inch.
- 2. Deed reference and tax parcel number of the property;
- 3. Two (2) copies of all proposed agreements or documents impacting future land use such as: right-of-way descriptions, easement agreements, deed restrictions, maintenance agreements, protective covenants, lease/tenant agreements, association by-laws, etc.
- 4. Two (2) copies of the DEP Planning Module, SEO and local agency approvals, or other documentation as evidence that future sewage needs of the property have been addressed.

NOTE: The requirements above are minimum standards. The LCPC or PCD Staff may require the applicant to submit additional information.

2.22 Major Land Development Plan

Major land development proposals shall conform to the plan specifications set forth in Section 2.2 of this Ordinance (above) and shall include the following additional information:

1. Number of units and square footage of existing and proposed structures;
2. Location and dimensions of vehicular parking areas and access drives;
3. Location, height, dimensions, and setbacks of all existing and proposed structures;
4. Locations and dimensions of leaseholds, rights-of-way and easements together with pertinent record information.

NOTE: The requirements above are minimum standards. The LCPC or PCD Staff may require the applicant to submit additional information.

ARTICLE III: PLANNING PROCEDURES

3.0 GENERAL PROCEDURES

The requirements and procedures established within this article shall apply to all subdivisions and land developments requiring approval of the LCPC. Before acting on any subdivision or land development the LCPC may hold a public hearing after public notice.

3.01 Sketch Plan (Pre-application/Option)

Applicants are urged to discuss possible subdivision and land development intentions with the PCD Staff prior to the formal submission of a plan. A sketch plan may be prepared and presented for review and discussion with the LCPC or PCD Staff at that time. Submission of a sketch plan will not constitute formal filing of a plan; therefore, no application and review fee is required.

3.02 Preliminary Plan

- A. Subdivision or land development plans proposing streets, sanitary sewers, stormwater controls, or other required improvements shall be considered as preliminary plans unless a performance bond or other performance assurance has been filed with the municipality or the LCPC in accordance with Sections 3.1 and 3.2 of this Ordinance (below) allowing a Final Plan submission.
- B. Preliminary plan approval shall constitute approval of the general scheme of the subdivision or land development as to the character and intensity of development and the arrangement and approximate dimensions of streets, lots, and other planned features.
- C. Preliminary Plan approval binds the applicant to the general scheme of the approved plan and entitles the applicant to proceed with the detailed design and installation of improvements in accordance with an approved timetable for the completion of improvements. Such approval also allows the applicant to proceed with the preparation of the final plan; but does not authorize the sale of lots or building. Approved preliminary plans shall not be recorded.

3.03 Final Plan

- A. If required infrastructure improvements have been installed in accordance with an approved preliminary plan or otherwise have been installed in accordance with the standards contained herein as certified by a registered professional engineer and if additional improvements, engineering certification, or financial guarantee are not required by this Ordinance, then the LCPC may consider the proposed subdivision or land development plan as a final plan.
- B. The final plan shall conform in all respects to the general scheme in the approved preliminary plan; otherwise, the plan submitted shall be considered as a revised preliminary plan. Upon completion of the installation of improvements

or within the construction timetable approved by the LCPC, the applicant shall submit a final plan as confirmation that required improvements and common amenities have been installed in conformance with the approved preliminary plan.

- C. The applicant shall have a period of five (5) years from the date of preliminary plan approval in which to submit a final plan. If the applicant fails to submit a final plan within the said five year period, the approved preliminary plan shall become null and void, unless the applicant submits and the LCPC approves a written request for an extension of time, as well as a timetable for completion of improvements prior to the approved preliminary plan's expiration date.
- D. The final plan may be submitted in sections, each covering a portion of the entire subdivision or land development shown on the preliminary plan. Each section of a residential subdivision (except for the last) shall contain a minimum of 25% of the total number of dwelling units depicted on the preliminary plan unless the LCPC approves a lesser percentage.
- E. The applicant must provide financial security amounting to 110% of the cost of improvements in instances where final approval and plan recording are proposed before the installation of required improvements. A condition of final plan approval shall be that immediately upon completion of the improvements, or within an approved timetable set by the LCPC, the applicant shall submit for approval an as-built final plan depicting and confirming that required improvements and common amenities have been installed in conformance with the final plan which was recorded prior to the completion of improvements. Any deviations or changes from the originally approved and recorded final plan shall necessitate that the revised final plan (depicting as-built conditions) be reconsidered for approval by the LCPC subject to all of the requirements, procedures, rules, and regulations prescribed herein for subdivision and land development.
- F. Where land under the same ownership is remaining, a sketch plan showing the overall layout of the remaining land is encouraged at the time of consideration of any final plan.
- G. Unless expressly prescribed otherwise in this Ordinance, a land development plan shall comply in all respects with the provisions of Section 2.2 of this Ordinance. (above)
- H. Final approval of a land development plan that is not used to create new lots shall not authorize the sale of lots by deed, but may authorize lot development and the allocation or lease of land or space between or among two or more occupants provided all necessary zoning, building, and other permits have been obtained by the applicant. Land development proposals shall meet the Design and Construction Standards outlined in applicable Articles.

- I. Zoning coordination is a necessary step with any land development plan.

The following section describes the applicant's role and the PCD Staff assistance in the team effort to bring a plan through the submission process and approval steps. The applicant has the primary responsibility to see the plan meets all requirements including those from other land use controls and agencies. The PCD Staff will assist by providing contact information for other agencies. PCD Staff is available to attend meetings to discuss the plan with the applicant and the staff of other agencies or respective municipal officials. The applicant includes the agent of the applicant acting on their behalf.

3.1 PLAN FILING AND APPROVAL

3.11 Plan Submission Procedures

- A. Plan submissions proposed for either preliminary or final approval shall be in compliance with the provisions of this Ordinance. It is the responsibility of the applicant to coordinate their plans with private and public agencies in the manner set forth in this Ordinance.
- B. The applicant shall submit to the County Subdivision and Land Development Ordinance Administrator (or other designee of the Department Director for PCD), a complete and fully executed "application for development" accompanied by a minimum of six (6) copies of the plan, two (2) copies of required supporting documentation, and all necessary plan processing/review fees no less than twenty-one (21) calendar days in advance of the regular meeting of the LCPC at which the plan is to be considered. Fewer copies of the plan may be submitted, based on factors determined by the PCD Staff such as when distributing copies to other agencies are limited. A submitted plan application shall be considered complete and duly filed only after the PCD Staff reviews and accepts all required plans, materials, and review fees.
- C. Within fourteen (14) calendar days of receipt of an application for development, the Subdivision and Land Development Administrator shall inform the applicant in writing of any deficiencies in the completeness of the application, citing each appropriate section of this Ordinance and specifying whether the plan constitutes a major or minor plan filing. If the Subdivision and Land Development Ordinance (SLDO) Administrator determines the plan to be complete, the statutory period required for taking action on a plan duly filed shall commence from the date said plan is determined to be complete.
- D. LCPC Chairperson approvals of minor subdivision and land development plans shall be subject to acceptance by the LCPC during their next regularly scheduled meeting as ratification of the agenda item.

- E. The SLDO Administrator shall view each site, evaluate the proposed plan, and make a recommendation to the LCPC (on the basis of all information gathered and available) before any LCPC action is taken on the plan.
- F. From the time a plan, whether preliminary or final, is duly filed as provided for in this Ordinance, and while such plan is pending approval or disapproval, no change or amendment of any zoning, subdivision or other governing ordinance applicable to the plan shall affect the decision on such plan adversely to the applicant. The applicant shall be entitled to a decision in accordance with the provisions of said ordinances in effect at the time the plan was duly filed.

3.12 Review by Local Officials and Coordination

Upon receipt of a subdivision or land development plan proposed for either preliminary or final approval, the PCD Staff shall forward one (1) copy of the plan to the secretary of the municipality in which the property is located. The respective governing body and local permit officials are to review the plan for compliance with municipal land use regulations. A minimum of thirty (30) days shall be allowed for this review unless the governing body agrees in writing to a period of less than thirty (30) days. Plans determined by local officials to be non-compliant with local land use regulation and/or requiring land use approval action by administrative proceeding (e.g. special exception, conditional use, road access permit, etc.) are not considered complete and shall not be approved by the LCPC until the plan has been changed to comply with local regulation or until confirmation of a favorable local land use decision has been received from the appropriate official(s).

3.13 Proposed Improvements

The governing body of the local municipality, other than the County, shall have final authority to approve or disapprove relevant aspects of a plan involving the alteration, maintenance, construction, installation, dedication or acceptance of municipal facilities and improvements. The LCPC will continue to have authority over all aspects of the plan as set forth in Section 1.2 of this Ordinance (above.) If necessary the thirty (30) day municipal review period may be extended to enable the local governing body to deliberate and review the adequacy of proposed or modified improvements during its next scheduled public meeting. Municipal officials shall provide written comment to the SLDO Administrator concerning the acceptability or deficiencies of said plan and improvements within reasonable time after their municipal meeting.

3.14 Coordination with County Zoning

- A. Upon receipt of an application for development, the Subdivision and Land Development Administrator shall notify the County Zoning Administrator that an application has been received and make available a copy of the complete application and accompanying documents for the County Zoning Administrator's mutual use in determining compliance with County Zoning Ordinance requirements. At the time of the Zoning Administrator review, a

zoning permit application as may be necessary to be acted on in a coordinated effort with the application for development.

- B. It is the intent of these regulations that, whenever possible, subdivision and land development review is carried out simultaneously with the review of a zoning permit application under the County Zoning Ordinance. To assist in this regard, plans submitted for subdivision and land development approval that also require zoning permit approval shall be simultaneously submitted to the County Zoning Administrator in the format necessary for fulfilling the requirements of a permit application under the County Zoning Ordinance. Due to the zoning compliance step the period for subdivision and land development review may be extended. Plans requiring approval by the County Zoning Hearing Board (e.g. special exception, variance, appeal, etc.) shall not be scheduled for the LCPC action until the Zoning Hearing Board proceeding is completed. Should the development plan be appealed in accordance with the zoning permit process, then the LCPC will stop any action until the appeal proceeding is completed. This ensures the LCPC reviews a plan submission that has met the zoning application requirements and all the information is known to render a valid LCPC outcome.
- C. Within fourteen (14) days of receipt of an application for development is made (in accordance with A. above) the County Zoning Administrator shall inform the SLDO Administrator in writing of any zoning issues or deficiencies pertinent to the plan under review. Plans determined by the County Zoning Administrator to be non-compliant with County Zoning would also extend the review period in order to adjust the plans as applicable.
- D. Refer to PAMPC Section 915.1(Act 247 as amended) for essential coordination of any action by the LCPC when a Zoning Hearing Board or pending zoning permit is appealed, as discussed in B. above.

3.15 Review by Other Agencies

Upon receipt of a subdivision or land development plan proposed for either preliminary or final approval, the PCD Staff shall forward one (1) copy of the plan to such agencies or bodies which may reasonably be determined by PCD Staff to have relevant input, jurisdiction, or potential impact (e.g. officials of an adjacent municipality to the municipality where the proposal is located, the local school district, the Pennsylvania DEP, the PennDOT, the Lycoming County Conservation District, water and sewer authorities) related to the proposed plan. Officials of such agencies or bodies shall be allowed fourteen (14) days to provide written review and comment concerning the plan.

3.16 LCPC Review and Preliminary/Final Plan Approval

- A. The LCPC shall render a decision and communicate it to the applicant not later than ninety (90) days from the date the application is determined to be complete by the SLDO Administrator. The period of time is based on the regular meeting

of the LCPC next following the date that the plan is filed. Should the next regular meeting occur more than thirty (30) days following the filing of the plan, the said ninety (90) day period shall be measured from the thirtieth (30th) day following the day the plan is deemed to be complete. The maximum time period is 120 days based on the above schedule. A time period extension may be granted by the applicant in writing.

- B. At a scheduled public meeting the LCPC shall consider the plan to determine its conformity to the design and construction requirements contained in this Ordinance. The LCPC shall notify the applicant of its decision in accordance with the following:
 - 1. Within fifteen (15) days after this meeting, the LCPC shall provide written notification to the applicant or its agent as well as the municipality and respective zoning officer of the LCPC actions, specifying what changes or additions, if any, will be required prior to consideration of the final plan.
 - 2. If the proposed plan is not approved, the LCPC's decision shall specify the defects found and cite the provisions of the Ordinance that have not been met.
 - 3. Failure of the LCPC to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application.
- C. The LCPC may grant final or preliminary plan approval subject to conditions. The LCPC shall list all such conditions within fifteen (15) days of the date of conditional approval and present such listing to the applicant for concurrence. Failure of the applicant to notify the LCPC in writing of his/her rejection of the conditions within thirty (30) days of the conditional approval date or the date of the written notification whichever is later, shall signify the applicant's concurrence with the conditional approval granted.
- D. The LCPC may offer a mediation option as an aid in completing procedures authorized by this section. In exercising such an option, the LCPC and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX, 908.1 of the PAMPC (Act 247 as amended).
- E. When requested by the applicant in order to facilitate financing, the LCPC shall furnish the applicant with a signed copy of a resolution indicating approval of the final plan contingent upon the applicant obtaining a satisfactory financial security. The final plan or record plan shall be neither signed nor recorded until the financial improvement agreement is executed. The resolution or letter of conditional approval shall expire and be deemed to be revoked if the financial security agreement is not executed within ninety (90) days, unless the LCPC

grants a written extension; such extension shall not be unreasonably withheld, and it shall be placed in writing at the request of the developer.

- F. In order to administer this Ordinance in a timely manner, plans for minor subdivision and land development may be signed by the LCPC Chairman for final approval in accordance with the following conditions:
1. The plan meets the requirements of this Ordinance and has been received, properly processed, and recommended for final approval by the SLDO Administrator, with the concurrence of the LCPC Executive Director or designee;
 2. The plan, considered cumulatively with existing conditions and/or prior plan approval(s), may require treatment as a major subdivision or land development; (i.e.: multiple individual principal buildings and/or building additions adding up to more than 2500 sq.ft. over time).
 3. The plan does not require LCPC modification, waiver action or approval of improvements requiring financial guarantee;
 4. The Chairman, Executive Director, or designee, as he/she feels necessary, may defer action on a plan to the LCPC for consideration at the next regularly scheduled meeting;
 5. At each regular meeting of the LCPC, the PCD Staff shall make a summary report of plans approved by these procedures.

3.2 INSTALLATION AND APPROVAL OF IMPROVEMENTS

3.21 General Requirements

- A. Improvements required by the LCPC may include streets, access drives, parking areas, walk-ways, curbs, gutters, street lights, fire hydrants, trees, sidewalks, water mains, sanitary sewers, water supply systems, stormwater facilities, utilities, landscaping, parks, or other such improvements as required by this Ordinance. Construction of improvements may proceed after compliance steps (such as zoning, sewer and water “will serve” letters or perc test results, and highway access permits) are met and only after a preliminary plan has been approved. The final plan must include the respective constructed condition illustrating installed items as an “as-built” in the case of improvement installation under an approved preliminary plan.
- B. Prior to final plan approval, required improvements shall be installed by the applicant. Alternatively, a suitable financial guarantee shall be provided ensuring the provision of the installation and maintenance of improvements to the standards set forth in this Ordinance. In summary, the final plan shall not be approved until: 1) final detailed design of the improvements is approved and the

improvements have been installed, inspected and determined to be in a satisfactory state of repair; or 2) a suitable financial guarantee of the installation and maintenance is provided. Approval of the final plan and installed improvements is based on PCD Staff and LCPC professional consultant review.

- C. If required improvements have been installed in accordance with an approved preliminary plan, or if said improvements have been previously installed in accordance with the standards contained herein as certified by a registered professional engineer; and, if additional improvement, engineering certification, or financial guarantee are not required by this Ordinance, then the LCPC may consider the proposed subdivision or land development plan as a final plan.

3.22 Completion of Improvements

- A. The applicant shall notify the PCD Staff at least two (2) working days prior to commencing the installation of required improvements to arrange for periodic inspections by the LCPC consultant engineer, and any other professional consultants brought in to review the improvements.
- B. When all necessary improvements have been completed, the applicant shall cause the final plan to be prepared and submitted and shall notify the PCD Staff in writing by certified or registered mail of said completion. The PCD Staff shall, within ten (10) days after receipt of such notice, authorize an inspection by the LCPC consultant engineer of the aforesaid improvements. A report shall be made in writing by certified mail to the applicant within thirty (30) days of the inspection authorization and shall indicate approval or rejection of the completed improvements. If the report is a non-approval or rejection, said report shall contain a statement of reasons for non-approval or rejection that cites relevant sections of this Ordinance or approved plans supporting each reason.
- C. Upon receipt of a PCD Staff written report (on behalf of the LCPC) of non-approval or rejection, the applicant shall proceed to correct or complete those improvements. Upon completion of said improvements, the applicant shall notify the PCD Staff in accordance with the procedures contained in Section 3.22B. of this Ordinance (above.)

3.23 Improvement Guarantee

- A. In lieu of completion of any improvements required as a condition of final plan approval, the applicant may file an improvement guarantee with the municipality or the LCPC in the form of a financial security in the amount of 110% of the cost of the improvements estimated as of ninety (90) days after the date of scheduled completion of improvements. The cost of the required improvements shall be established by a qualified Professional Engineer selected by the applicant and shall be submitted to the LCPC consultant engineer for approval. Official contractor estimates may also be submitted for approval with

concurrence from the LCPC consulting engineer. The LCPC may choose to reject such estimate for good cause shown.

- B. If the applicant and the LCPC are unable to agree upon an estimate, the estimate shall be recalculated and recertified by a qualified professional engineer chosen mutually by the LCPC and the applicant. The estimate certified by this engineer shall be presumed fair and reasonable, and shall be the final estimate. In the event an engineer is so chosen, fees for the services of the ~~said~~ third engineer shall be paid equally by the LCPC and the applicant.
- C. Should the completion of the required improvements require more than one (1) year, the LCPC may increase the amount of financial security by an additional amount that follows the provisions of PAMPC Section 509 (f).
- D. If a development is projected over a period of years, the LCPC may authorize submission of plans by stages, which shall be subject to such requirements or guarantees as the LCPC deems essential for the protection of any finally approved section of the development.
- E. If water mains or sanitary sewer lines, or both, or gas, electric, cable t.v., or telephone lines (as applicable) along with apparatus or facilities related thereto are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the municipality, then financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required.
- F. If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plan, the municipality or County shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, on the lots or land as depicted on the final plat on actual completion of the improvements depicted upon the approved final plan. Occupancy permits for any building or buildings to be erected shall not be withheld if improvements necessary for the reasonable use or occupancy of the building or buildings, such as improvement of the streets (whether public or private) which provide access to and from existing public or private streets to such buildings are completed or built to mud-free or otherwise permanently passable condition, and/or the completion of all other improvements as depicted on the approved plan, either upon the lot or lots or beyond the lot or lots in question.

3.24 Release from Improvement Guarantee

- A. On behalf of the LCPC, the PCD Staff may authorize the release to the applicant of such portions of the financial security necessary for payment to the contractor or contractors performing the installation of required improvements. Any

request for the release of funds shall be in writing to the PCD Staff. Within 30 days from receipt of the request and not more than 45 days, the PCD Staff is to have the LCPC consultant engineer inspect and certify that the improvements to be covered by the funds have been completed satisfactorily. Prior to final release of funds at the time of completion and certification by the LCPC consultant engineer, the PCD Staff may require retention of 10% of the estimated cost of the improvements to be released upon receipt of the as-built plan.

- B. Under certain conditions the PCD Staff may agree to other procedures for the release of portions of any posted financial security so long as the work has been done in accordance with the terms of plan approval.
- C. When all necessary improvements have been completed, the applicant shall notify the PCD Staff in writing by certified or registered mail of said completion. The PCD Staff shall, within ten (10) days after receipt of such notice, authorize an inspection by the LCPC consultant engineer of the aforesaid improvements. A report shall be made in writing by certified mail to the applicant within thirty (30) days of the inspection authorization and it shall indicate approval or rejection of the completed improvements. If rejected, said report shall contain a statement of reasons for non-approval or rejection.
- D. For major subdivisions and land developments, the applicant shall prepare and submit an “as-built” final plan as verification that required improvements have been installed as approved on the Final Plan and in accordance with the standards herein. Upon approval of the completed improvements shown on the final plan, the PCD Staff shall release to the applicant those funds remaining in the financial security deposit including all interest accrued. Prior to release of such funds, the applicant shall guarantee to the LCPC in writing the structural integrity of the improvements for a period of one (1) year. The as-built plans shall show all features required to be shown for required improvements and the overall layout as specified on the approved Final Plan. Any deviations from approved plans shall also be shown and noted such as to actual locations, size, grade, elevation, field verified connections with utilities and associated reference to LCPC or PCD Staff concurrence with the change to approved plans prior to the change in the field. Based on any variations from the approved Final Plan, the PCD Staff has the prerogative to require the applicant to record as-built plan sheets with the Lycoming County Register and Recorder. As-built plans may be submitted on a data interchange readable file (.dxf), in a program such as AutoCAD or Intergraph. Where the applicant is unable to produce this type of file, the plan may instead be submitted on a scanable quality drawing.
- E. If any portion of the completed improvements shall be found unacceptable, the aforementioned written report shall contain a statement of reasons for rejection that cites relevant sections of this Ordinance supporting such reasons. The applicant shall proceed to correct or complete those improvements, and upon

completion the applicant shall notify the PCD Staff according to the procedures contained in Section 3.22 of this Ordinance (above.)

- F. Should the PCD Staff fail to comply with the time limitations as provided, all improvements will be deemed to have been approved and the applicant shall be released from all liability pursuant to the financial guarantee agreement.

3.25 Dedication of Improvements

- A. If the applicant proposes to dedicate improvements to the local municipality, a deed that dedicates the land and such improvements shall be recorded with the final plan. A copy of the deed and a letter from the respective municipal Governing Body stating their intention to accept ownership and maintenance responsibility for the improvements shall be submitted with the subdivision plan.
- B. As post construction warranty for defects and workmanship, where the municipality accepts dedication of all or some of the required improvements, the local municipality or the LCPC may require up to 15% of the actual cost of installation of said improvements for financial security. The security is to insure the structural integrity of those improvements for a term not to exceed eighteen (18) months from the date of acceptance for dedication.
- C. The LCPC may approve a final plan without an offer of dedication of streets or other improvements, provided that such improvements are noted as private on the final plan. In such instances, the applicant shall be required to set forth in each deed, lease, or conveyance an arrangement between the applicant and buyer or lessee for future maintenance of said improvements and provide a notice of the private status in the chain of title for the property.

3.3 RECORDING OF FINAL PLAN

- A. The applicant shall record a copy of the approved plan in the Office of the Lycoming County Register and Recorder upon notification and within ninety (90) days of final plan approval, or ninety (90) days after the date of delivery of an approved plan signed by the LCPC following completion of conditions imposed for such approval, whichever is later. Delivery of the approved plan is satisfied by: a) the pick-up and signing for the plan by the applicant in the Lycoming County Planning and Community Development Department Office, or b) the date of certified mail delivery as indicated on return receipt of the plan sent to the applicant. Should the applicant fail to record the final plan within such ninety (90) day period, the LCPC's approval shall become null and void, unless the applicant requests a time extension in writing and the LCPC grants said extension before the expiration date. In a case when the ninety (90) day recording deadline is not met and no extension of time is granted, the applicant may request a re-approval to be considered at the next available LCPC meeting. The final plans shall be filed with the Lycoming County Register and Recorder

before proceeding with the sale of lots or Zoning Occupancy certificate of buildings and structures.

- B. Recording the final plan after approval of the LCPC shall have the effect of an irrevocable offer to dedicate all streets and other public ways not identified as being private to public use, and to dedicate or reserve all park reservations and other public areas to public use unless reserved by the subdivider as hereinafter provided. LCPC approval shall not impose any duty upon the municipality concerning maintenance or improvement of any such dedicated streets, parks, areas or portion of same until actual appropriation of the same by ordinance or resolution, or by entry, use, or improvement.
- C. The recording of an approved final plan of land development authorizes the conveyance of lots, tracts, parcels or other divisions of land or space provided all other necessary permits and required approvals have been obtained.
- D. As-built or corrected final plans shall be subject to the same requirements, procedures, rules, and regulations prescribed herein for a subdivision and land development plan, and shall include a reference to the Map Book and Page Number of the previously recorded final plan which is being corrected.

3.4 RESUBDIVISION, REAPPROVAL AND REPLATTING

For any replatting, plan revision, or resubdivision of a final plan of subdivision or land development, including corrected final plans, the same requirements, procedures, rules, and regulations shall apply as prescribed herein for the original subdivision and/or land development.

ARTICLE IV: DESIGN AND IMPROVEMENT STANDARDS

4.0 GENERAL STANDARDS OVERVIEW

The standards outlined in this Section shall be considered minimum standards and shall be applied by the LCPC in evaluating plans for proposed subdivision or land development. As may be deemed appropriate or necessary to protect the public health, safety or welfare, the LCPC may require more restrictive standards. Whenever other applicable regulations impose more restrictive standards, those regulations shall apply.

- A. Land subject to flooding or land deemed by the LCPC to be uninhabitable because of other hazards to life, health or property (such as excessive slopes based on steep or severe slope conditions prior to development, soil instability or inadequate weight bearing strength, or unsafe vehicle access) shall not be plotted for residential occupancy, nor for such other uses as may increase danger to life, health, or property or aggravate the flood hazard. Engineered solutions with the seal of a certified engineer in the respective field that addresses the above factors may be required to verify that dangers to life, health, or property or flood hazards are addressed and alleviated.
- B. Innovative site design that recognizes and enhances the character of the municipality and the County will be encouraged and may be permitted. Among the criteria for approval will be consistence with the Comprehensive Plan of the Municipality and the County. All such subdivisions and land developments must be environmentally sensitive to existing natural and manmade features in the area and should be designed to not be detrimental to the quality of life.
- C. The LCPC and the applicant may mutually agree to the reservation or dedication of land for community facilities to serve the proposed subdivision or land development.

4.01 Site Planning

- A. Water: Potable water supplies shall be sufficient to handle demand. In areas not served by a public water system, the LCPC may require the applicant to demonstrate that a reliable, safe and adequate water supply exists to support future water usage demands of proposed lots and their subsequent development. (Section 4.4 of this Ordinance below)
- B. Erosion and Sedimentation Control: If earth disturbance is proposed, the applicant may be required to submit an erosion and sedimentation control plan for the property. The applicant shall ensure that property situated down gradient of the site will not be adversely impacted by stormwater run-off of rain water and that exposed ground surfaces are stabilized or protected with mulch, vegetative cover or other suitable material both during and after development. Prior to the granting of final approval, the LCPC may require the applicant to

consult with and obtain a written report from the Lycoming County Conservation District concerning proposed erosion and sedimentation control measures. (Section 4.5 of this Ordinance below)

- C. Stormwater Run-Off: The applicant may be required to submit a Stormwater Management Plan (SMP) of proposed measures and facilities to control, retain or slow down surface water run-off. The installation of stormwater management improvements such as: level spreaders, detention basins, swales, culverts, rip-rap, gabion stone, etc. or utilizing other best management practices such as rain gardens and other water filtration/filtering techniques, etc. may be required. The applicant shall ensure that the rate of post development run-off does not exceed that of pre-development. (Section 4.5 of this Ordinance below.)
- D. Sewage Disposal: The applicant shall provide evidence that a Sewage Facilities Planning Module has been approved by the DEP or delegated agency, or that sewage facilities planning is not required under the Sewage Disposal Facilities Act. In addition, the applicant shall provide sufficient documentation to demonstrate that future sewage needs of the property have been adequately addressed. Documentation required to be submitted may include confirmation from the governing body that the proposed method of sewage disposal is consistent with the Municipality's Official Sewage Facilities Plan, notification from the governing body or jurisdictional authority that public sewerage facilities are available, DEP confirmation that the proposal qualifies as an exception to new land development plan revision requirements, verification from the sewage enforcement officer that existing facilities function properly and will adequately support future needs, a copy of soil test results verifying that each lot will accommodate the installation of an on-lot subsurface sewage disposal system(s), confirmation that the appropriate sewage waivers have been granted, and/or a copy of a sewage permit for each lot or use. (Section 4.3 of this Ordinance below)
- E. Access and Off-Street Parking: The slope, design and quality of access drives shall be such that safe and reliable vehicular access is available throughout the year. In order to avoid traffic safety hazards created by the parking of motor vehicles along public roads during periods of snowy or icy road conditions, all driveways shall be designed, improved and maintained to be permanently passable for the entire length leading from the public street to the required off-street parking spaces. Streets and pedestrian access ways shall be of sufficient size, location, number, grade, width, alignment, visibility, and proximity to provide safe and unintrusive access. (Section 4.1 of this Ordinance below)
- F. Internal Parking and Circulation: Individual parking spaces shall have sufficient turnaround area to preclude traffic safety hazards due to motor vehicles backing over or onto a public/private road. If centralized parking areas are utilized, the vehicular circulation system within any such area shall be safe and conveniently accessible to a public street. Common/shared parking areas are encouraged.

- G. Arrangement of Buildings and Driveways: Adequate provision shall be made for light, air, access and privacy in the arrangement of the buildings to each other on the same lot. In the event that there is an adopted municipal zoning ordinance or building code, the provisions of this section may not apply. The front or rear of any building shall be at least forty (40) feet from the front or rear of any other principal building. The side of any building shall be at least thirty (30) feet from the side, front, or rear of any other principal building. Common parking areas and access drives are encouraged to be situated not closer than twenty-five (25) feet from the front of any building and a safe distance from the side or rear of any building. (Section 4.1 of this Ordinance below)
- H. Solid Waste Storage, Recycling, Collection and Disposal: Major land development proposals shall include an acceptable method of providing for solid waste storage, collection and disposal and a means of effectively screening trash and recyclable receptacles and storage areas from the street and adjacent properties. Site locations for the waste pick-up shall be situated as not to interfere with public vehicular flow within the layout.
- I. Leaseholds and Condominiums: Proposals involving the conveyance or lease of individual units within a single structure shall include an exact description of the area(s) or unit(s) involved. Compliance with zoning is a pre-requisite step where land is to be conveyed or leased with a dwelling unit within such structure.
- J. Screening and Landscaping: To protect adjacent land uses from intrusive uses, the LCPC may require mitigation (via bufferyards) that entails the placement of effective natural or man-made screening and landscaping improvements referred to in Section 3.2. The LCPC may use the performance standards set forth in the Lycoming County Zoning Ordinance or applicable municipal zoning ordinance as guidance when requiring site screening and landscaping.

The above J. provides the details of plants to be installed but encourages that the existing vegetation be retained on a site for development to eliminate installing new buffer plantings.

- K. Open Space: Usable open space area, exclusive of streets, parking areas, structures, and service areas, shall be provided for intensive developments according to either the County Zoning or any other applicable municipal ordinance for any development under this Ordinance.

4.02 Major Land Development

Major land developments shall comply with the standards and requirements of this Section as well as other applicable provisions of this Ordinance not in conflict herewith.

- A. Access to public streets shall be limited to well-defined entrance and exit lanes. Exit lanes may be required to be physically separated from entrance lanes by dividers or planting islands.
- B. Painted lines, signage, arrows, and dividers (as applicable) shall be provided to control parking and internal circulation. Customer parking and circulation are encouraged to be separated from delivery, fire lanes, service and loading areas.
- C. Shopping centers, malls, and other similar mixed nonresidential uses, that are open to the public and share parking, shall be provided with enough parking spaces so not to use public or private streets for said parking—The use of permanent arrangements for van pools or bus routing to the tract may reduce the number of required parking spaces when sufficient data is provided with the application. Off-street parking spaces will preferably be located within 250 feet of the proposed use and will avoid impeding pedestrian circulation, delivery and loading areas and transit stops where applicable.
- D. Off-street parking and loading areas shall be in accordance with applicable zoning ordinance sections that apply parking lot standards and are illustrated on the land development plan. Such areas shall be designed to eliminate the need to back over or into a public right-of-way. Vehicles shall have sufficient parking site area to maneuver in so that access to the street is in accordance with applicable zoning provisions. Sufficient truck maneuvering area shall be provided to not interfere with other traffic of vehicles, pedestrians and bicycles.
- E. All parking areas, service drives, loading areas, and exit and entrance lanes shall be graded and surfaced according to the specifications for surfacing of local streets.

4.03 Recreation and Open Space

- A. The LCPC encourages negotiation for the dedication of land consisting of area that is part of the total tract that is suitable for park and recreational use and/or fees in lieu of area.
- B. Any mutually agreed-upon recreation space should be suitable for specified outdoor recreational uses. Recreation space is encouraged to be located where it is easily and safely accessible from all areas of the land development or subdivision, and free of safety and health hazards. Recreation space is also encouraged to have suitable physical characteristics for the specified recreational use, including well-drained soils and appropriate topography for its shape and size, connections with existing or proposed greenway networks, and public/private recreation and park facilities where applicable.
- C. Where recreational or park space is provided, the applicant shall submit with the subdivision or land development plan a proposal that provides for the maintenance of such space. An agreement that assigns maintenance responsibility for the recreational or park space shall be recorded with the final plan and referenced in the deeds to each parcel within the development.

Acceptable ownership of the tract and corresponding maintenance may take a variety of forms such as by the municipality, a public authority, a non-profit homeowners association, private ownership with specified arrangements to provide this function on the open space tract, etc. The dedicated recreational or park space tract must be continued in the recreational or park space function in perpetuity. In the future, the ownership of the recreation or park space may be transferred upon submitting an updated form of transfer, acceptable to the LCPC that defines or provides for the continued compliance with this provision.

- D. The park and recreational facilities must be in accordance with 1) principles and standards contained herein, 2) any adopted park and recreation plan, and 3) the County Comprehensive Plan, 4) the County Recreation Open Space and Greenway Plan, and 5) plans specific to an area of the County, such as Multi-Municipal Comprehensive Plan, etc. Standards include area sufficient for development based on potential age groups of residents, criteria for local or neighborhood level park needs, proximity of tract development to existing or planned pedestrian/bike trail routes, and passive recreation and open space features that may transcend tract boundaries. A continuation of connections among park and recreation areas is encouraged.
- E. The applicant may, upon agreement by the LCPC, pay a fee to the County in lieu of dedication of land. The fees are to be used only for the purpose of providing park or recreational facilities accessible to the development.
 - 1. Any fees paid shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision. The amount thereof shall be estimated by a qualified Professional Engineer pursuant to Section 3.22 of this Ordinance discussing Improvement Guarantees (above).
 - 2. A fee authorized under this subsection shall upon its receipt by the County be deposited in an interest-bearing account, clearly identifying the specific recreation facilities for which the fee was received. Interest earned on such accounts shall become funds of that account. Funds from such accounts shall be expended only in properly allocable portions of the cost incurred to construct the specific recreation facilities for which the funds were collected.
 - 3. If the LCPC or designee fails to utilize the fee paid for the purposes set forth in this subsection within three (3) years from the date such fee was paid, the County shall refund such fee plus interest accumulated thereon from the date of payment upon request from any person who paid the fee under this subsection. A time extension is an acceptable method of exceeding the three (3) year period upon agreement from the developer.

- F. The park site dedication, improvements and expenditure of any fees collected in lieu are encouraged to occur during the first phase of development.

4.1 STREETS AND DRIVEWAYS

4.11 Classifications

- A. The State Highway System includes all public streets and highways operated and maintained by PennDOT.
- B. The Municipal Street System includes all public streets and roads maintained by the local municipality. Subdividers proposing public dedication of streets within a subdivision shall submit road design and construction plans that meet the minimum specifications of the LCPC and municipality as a part of the plan submission process. A deed, dedicating the land or right-of-way to be used as a public street to the municipality shall be recorded with the final plan.
- C. Private Streets include all streets not dedicated, accepted, and maintained as public streets. Private streets may be permitted if designed and constructed in accordance with the standards of this Ordinance and provided the following conditions are satisfied.
 - 1. The plan shall include a centerline survey of the road and a right-of-way boundary description and a notation identifying the road as being private. In some cases a survey of the perimeter of the road right-of-way area may be submitted instead of the road centerline survey.
 - 2. The plan shall include the placement of property markers or monuments at each right-of-way point of tangent greater than one degree (1°) and at each intersection of a property boundary line and a right-of-way line.
 - 3. The applicant shall provide documentation that all owners having use of a planned right-of-way are subject to an arrangement for maintenance and upkeep of the private road. Documentation may include but need not be limited to association by-laws, deed restrictions, maintenance agreements or similar instrument(s) that are to be publicly recorded. Each deed, lease, or conveyance shall set forth an arrangement between the subdivider, owners or lessees for maintenance and management of the private road and right-of-way or shall reference a previously recorded instrument which adequately addresses right-of-way width, location, use and maintenance.
 - 4. Where an existing private right-of-way is proposed to provide access to a new subdivision, the subdivider shall provide evidence that the entire length of right-of-way leading from the subject property to a municipal street is of a defined width and grade in accordance with this Ordinance and that a legal description of said right-of-way is on public record.

5. The applicant must provide evidence that all property owners having right-of-way are party to an arrangement for maintenance of the private road. If a maintenance arrangement has not been previously recorded by deed or other legal instrument, the subdivider shall submit a complete legal description of the right-of-way and a road maintenance agreement properly executed by all property owners having right-of-way. Said legal description and agreement shall be recorded simultaneously with the final plan.

4.12 Access Permits

- A. Proposed subdivisions and land developments abutting a state road shall contain a notice on the Plan that a Highway Occupancy Permit must be obtained from the PennDOT before construction of access onto the state highway can be initiated.
- B. Plans of subdivision or land development abutting a municipal street shall contain a notice on the Plan that an access permit may be required by the municipality before construction of access onto the municipal street is initiated.
- C. Prior to approval of any plan involving a public road, the subdivider may be required to submit evidence that an access permit can be issued for each parcel or use. The location of the respective permitted physical access shall be shown on the Final Plan.

4.13 Design

Minimum design standards for driveways and private and public streets serving residential, commercial, and industrial developments are shown in Table 1 and Table 2, and are further detailed in the following sections. If unique circumstances with any site should arise, the Table 1 and Table 2 standards may be modified in coordination with the PCD Director and LCPC consulting engineer concurrence. If concurrence cannot be reached, the applicant may proceed with the option of seeking a waiver from the LCPC.

- A. Access Rights-of-Way/Easements
 1. Alleys or service drives may be proposed as access, provided a minimum right-of-way width of (20) twenty feet is utilized and alternative access to the municipal street system is available.
 2. Provision for additional street right-of-way may be required by the LCPC for public safety and convenience, or for access to off-street parking.
 3. Where a subdivision abuts an existing street of inadequate width, the applicant may be required to provide additional right-of-way for said street in conformance with the right-of-way widths required under Table 1 of this Section. Additional right-of-way may also be requested in

accordance with any adopted Official Map. In no case, however, shall the applicant be required to dedicate more than the additional right-of-way necessary to provide one-half of the required right-of-way if he abuts only one side of the street.

B. Culs-de-Sac

1. Culs-de-sac shall not exceed 1,000 feet in length or serve more than 20 lots or dwelling units. In unusual situations, the LCPC may approve without a waiver additional length of cul-de-sac if it is determined that the increased length will not jeopardize public safety. Intermediate turnarounds are required and shall be constructed to the same standards as the cartway at intervals of approximately 500 feet along culs-de-sac exceeding 1,000 feet in length. Culs-de-sac for non-residential development are discouraged, due to the usual importance of secondary point(s) of access for public health and safety.
2. Any street dead-ended for access to an adjoining property, or because of authorized phase development, shall be provided with a temporary all-weather turnaround of at least six (6)-inch subbase material.
3. Innovative alternatives to the standard circular turnaround may be considered where area equivalent to the space requirement for turnarounds in Table 1 is provided, or where the applicant can reasonably show the design layout of the turn around will meet the need of the development considering the types of vehicles and turning radius requirements.

C. Street System

1. Local streets within a new subdivision shall be laid out to discourage through traffic. However, provision for the extension and continuation of collector streets to and from adjoining areas shall be required.
2. Where a subdivision or land development proposes access onto an existing or proposed collector or arterial street, the LCPC may require marginal access streets, reverse frontage lots, or such other treatment as will protect abutting properties, reduce the number of intersections with the street, and separate local and through traffic.
3. Where land is large enough for future subdivision, or wherever necessary for the extension or coordination of adjacent streets, suitable access and street openings for such an eventuality shall be provided. The LCPC may require the applicant to prove the access and street openings will meet the street intersection design requirements of this Ordinance.

4. Local and collector streets shall not empty into the same side of collector and arterial streets at intervals of less than 600 feet.
5. The distance between the centerlines of streets opening onto the opposite sides of an existing or proposed street shall be located with appropriate sight distance and to allow for vehicle maneuverability. Vehicle round-a-bouts are encouraged for some intersections based on the intensity level of development.

D. Street Grades and Alignment

1. All street intersections are preferred to be provided with a leveling area having a grade of four percent (4%) or less for a distance of twenty-five (25) feet with residential uses and forty-five (45) feet with non-residential uses measured outward from the edge of the shoulder or curb of the intersecting street. This leveling area shall not produce a change in grade exceeding eight percent (8%) or as allowed by PennDOT Chapter 441.
2. Whenever street lines are deflected in excess of five (5) degrees, connection shall be made by horizontal curves.
3. Vertical curves shall be used in changes of grade exceeding one percent (1%).
4. As a guideline street crown grades shall be (2.05%) 1/4 inch to (3.135%) 3/8 inch per foot for paved streets and (3.135%) 3/8 inch to (4.1667%) 1/2 inch per foot for stabilized streets. As a guideline, the preferred shoulder cross slope shall be three (3) percent but in no case shall it be less than the slope of the adjacent road. The PennDOT Publication 70M: Guidelines for the Design of Local Roads and Streets is to be followed as reference to install the approved street crown grade and shoulder cross slope.

E. Street intersections

1. Multiple intersections involving the junction of more than two (2) streets shall be avoided whenever possible.
2. Right angle intersections shall be used whenever practical. When local streets intersect collector streets or streets of the State Highway System Network, the angle of intersection between the street centerlines shall not be less than seventy-five (75) degrees. The angle of intersection between the street centerlines of local subdivision streets shall be not less than sixty (60) degrees. Vehicle round-a-bouts are encouraged for some intersections based on the intensity level of development.

3. Street curb intersections shall be rounded by a tangential arc with a minimum radius of fifteen (15) feet for local subdivision streets, and twenty-five (25) feet for intersections including collector streets. Road intersections where curbs are not used shall be rounded by a tangential arc with a minimum radius of thirty-five (35) feet for local subdivision streets, and fifty (50) feet for intersections including collector streets.
4. Radius corners shall be provided on the property lines substantially concentric with the curb radius.
5. Clear sight-triangles of seventy-five (75) feet shall be provided and maintained at each intersection. No significant obstructions or plantings higher than thirty (30) inches or tree limbs lower than eight (8) feet shall be permitted within this area.
6. A horizontal curve at the street centerline shall not begin for at least twenty- five (25) feet from the shoulder of the intersecting street.

F. Curbs and Street Verge

1. Curbs and/or sidewalks may be required where deemed appropriate due to either the character of the area or the intensity or type of development being proposed. Stabilized shoulders and drainage swales shall be used wherever curbs are not required.
2. Curbs and sidewalks shall be installed to provide handicapped access in accordance with State and Federal guidelines.
3. Sidewalks situated within road rights-of-way shall be at least four (4) feet wide and four (4) inches thick except at points of vehicular crossing where they shall be at least six (6) inches thick and reinforced with welded wire fabric mesh or an equivalent.
4. Concrete used for curbs shall be prepared and installed in accordance with PennDOT and Municipal standards for road construction.
5. All drainage and stormwater controls planned in conjunction with street improvements shall be incorporated into the development's SMP.
6. As a guideline the preferred shoulder cross slope shall be three (3) percent but in no case shall it be less than the slope of the adjacent road. The PennDOT Publication 70M: Guidelines for the Design of Local Roads and Streets is to be followed as reference to install the approved shoulder cross slope.

G. Driveways

1. All proposed subdivided lots or land developments shall be situated such that safe driveway access onto a public or private road can be provided. Safe driveway access shall be defined as that portion of a property on which a driveway could be constructed in accordance with both the minimum guidelines contained in Table 2 of this Ordinance and PennDOT's standards for access to and occupancy of highways by driveways and local roads, or PennDOT standards as revised. These standards shall also apply to existing lots of record for municipalities under this Ordinance.
2. Where potential safety hazards such as excessive slope or areas of limited sight distance exist, the LCPC may require construction of driveways as a condition of approval. Such driveways shall be constructed according to either the guidelines contained in Table 2 or to standards equal to or exceeding PennDOT's standards for access to and occupancy of highways by driveways and local roads. Alternatively, the LCPC may require that the lot(s) be subject to locating the driveway on the plan and a deed restriction requiring that such guidelines be complied with when driveways are constructed.
3. Each subdivision plan proposing access onto a State Highway shall contain a notice stating that a Highway Occupancy Permit (or access permit) must be obtained from PennDOT for state roads or the municipality for municipal roads, before construction of the new driveway access.
4. The LCPC shall require driveways serving five (5) or more dwelling units or serving nonresidential development be designed and constructed to satisfy public standards and the specifications of Table 2 of this Ordinance (below).

Roads to be built in the Designated Growth Areas of Lycoming County are strongly encouraged to be constructed with paved surfaces and considered for dedication as public roads. Outside of the Designated Growth Area, roads may be installed at a cartway width that is narrower and due to the character of the rural area, gravel surfaces are encouraged. Roads installed outside the Growth Area may remain private and would serve fewer lots. The tables that follow provide the approved road standard options that an applicant may consider in planning the community development. The Designated Growth Area maps are available on the County website (www.lyco.org) for reference.

TABLE 1

MINIMUM DESIGN STANDARDS FOR PRIVATE AND PUBLIC STREETS*			
Local Streets:			
Lot Width:	<100'	≥100'	
RIGHT-OF-WAY WIDTH:	50'	50'	
CARTWAY WIDTH:	20' +curbs or 20' +mountable curbs ⁴	18' + 4' shoulders ¹	
GRADE:			
Minimum	.75%	.75%	
Maximum	12%	12%	
SIGHT DISTANCE:	150' min. measured along the Centerline (C/L), 3'9" above grade		
CURVES:	150' min. radius @ center line		
TURN AROUNDS:			
Right-of-Way Diameter	100'	100'	
Cartway Diameter	80' + curbs ⁴	80'	
Collector Streets for all lot widths:			
RIGHT-OF-WAY WIDTH:			
Major	50' 60' ⁵		
Minor Collectors	50'		
CARTWAY MIN. WIDTH:	26' + curbs ^{2, 3, 4} or 22' + 4' shoulders on each side		
GRADE:			
Minimum	.75%		
Maximum	7% encouraged; 9–10% some sections		
SIGHT DISTANCE:	300' @ C/L 3'9" above grade		
ALIGNMENT:			
Horizontal Curves	450' min. radius @ centerline		
Reverse Curves	100' minimum tangent between reverse curves		
Private Streets which serve a proposed area and with future subdivision:			
Accessing:	1-4 EDUs/Lots or Principal Bldgs.	5-9 EDUs/Lots or Principal Bldgs.	≥ 10EDUs/Lots or Principal Bldgs.
RIGHT-OF-WAY WIDTH:	50'	50'	50'
CARTWAY WIDTH:	foot Note 6.	16'	same as local
GRADE: Minimum		.75%	same as local
Maximum	15%	15%	same as local
TURNAROUNDS:			
Right-of-Way Diameter		80'	same as local
Cartway Diameter		60'	same as local

*FOOTNOTES:

1. If the street grade is greater than 8%, eight (8) foot-graded shoulders shall be provided on each side.

2. No street parking is permitted.
3. Left-hand turning lanes are to be provided at intersections of major collectors with arterials.
4. Curbing may not be appropriate under certain circumstances and may be waived.
5. In Growth Area.
6. Refer to Table 2 for standards.

TABLE 2

DRIVEWAY DESIGN STANDARDS with Footnotes					
<u>DEVELOPMENT</u> <u>TYPE</u>	<u>Min.</u> <u>Width</u>	<u>Max.</u> <u>Grade</u> ¹	<u>Min. Curb</u> <u>Radius</u> ²	<u>Min.</u> <u>Interval</u> ³	<u>Min. Sight</u> <u>Distance</u> ⁴
Single-Unit Residential	10 ft.	15%	10 ft.	40 ft.	150 ft.
Multi-Unit Residential ⁵	20 ft.	12%	15 ft.	40 ft.	200 ft.
Non-Residential	20 ft.	8%	15 ft.	40 ft.	300 ft.

FOOTNOTES:

1. All driveways shall provide a stopping or leveling area having a grade less than or equal to 5% for a distance of twenty-five (25) feet for residential uses, and forty-five (45) feet for non-residential uses measured from the edge of the shoulder or curb of the intersecting street. The leveling area shall intersect the street or road at an angle of no less than sixty (60) degrees and preferably ninety (90) degrees. All driveways with 100 trips per day or less are permitted to be up to a 15% maximum grade. Any request to increase the maximum grade of a driveway beyond the limits in Table 2 must also include an associated increase to the length of leveling area.
2. Where dropped curbs are used to provide driveway access, the minimum width of the dropped curb shall be sixteen (16) feet for single unit residential use and thirty-five (35) feet for multi-unit and non-residential uses. The transition from the normal driveway width to the width of the dropped curb shall begin ten (10) feet back from the edge of the curb for single unit residential and fifteen (15) feet back for multi-unit and non-residential uses.
3. Minimum intervals for single-unit residential developments shall apply between an intersection and the first driveway only. Minimum intervals for other types of development shall apply between any two points of access, including both driveways and public streets. Minimum intervals that may be established by the respective municipal zoning ordinance shall apply if more restrictive.
4. Minimum sight distance shall be measured from the point of intersection of the driveway centerline ten (10) feet from the cartway (gravel or paved) edge. No significant obstructions shall be permitted within this area that interferes with sight distance. Any vegetation that exceeds thirty (30) inches in height or low tree limbs less than eight (8) feet above driveway centerline within the required sight triangle must be removed at owner's expense. PennDOT sight distance chart- from Chapter Number 441 may be used for reference.
5. For the purposes of driveway design, the multi-unit residential design criteria shall be used for driveways providing access to five or more dwelling units or equivalent dwelling units, unless higher standards are deemed necessary due to either the intensity of development or to unique and identifiable safety concerns.

4.14 Construction Standards and Specifications

A. Streets and Roads

1. Streets and roads shall be surfaced to the grades and dimensions drawn on plans, profiles, and cross-sections submitted by the applicant and approved by the LCPC. Before paving the street surface, the applicant shall install the required utilities and provide adequate drainage facilities for the streets. The pavement subbase, base, and wearing surface for residential, commercial, and industrial developments shall be constructed to the specifications as applicable included in Table 3 of this Ordinance (below) unless a specific substitute is requested and approved by the LCPC or soils conditions require more stringent standards.
2. Upon PCD Staff review, access to three (3) or fewer lots or dwelling units may be provided via an existing road designed and constructed to standards less than those specified in Tables 1 (above) and 3 (below) of this Ordinance. In such instances, the right-of-way shall be at least thirty-three (33) feet in width and the road cartway shall be at least minimum width of 16 feet (see Table 3), shall be graded, drained and stabilized with a sound all-weather driving surface, which is reasonably smooth and free from mud, dust, and standing water. The LCPC may require the applicant provide an independent engineering analysis of the road's suitability as an access for the projected use. In the case where an existing road does not meet any of the applicable Ordinance standards, and the number of lots or dwellings is to be limited by deed or other land use control, the current road may be acceptable, without a waiver by the LCPC when the applicant provides an independent engineering analysis of the road's suitability as an access for the projected use.
3. If deemed necessary by the LCPC, improvement requirements for existing private streets shall be determined by the total number of lots/structures being served as specified in Tables 1 and 3. The total number of lots/structures is in the aggregate, and status of the existing private street may be part of the plan submission evaluation. The applicant may be responsible for improving the condition of any existing street proposed as access based on the plan submission evaluation in accordance with the provision 2) above.

B. Shoulders

Shoulders shall be constructed of 2RC material (or 2A if specifically approved), as per PennDOT specifications, Form 408, to a compacted depth equal to the depth of the base and wearing surface. The finished surface elevation of the shoulder shall meet the finished elevation of the cartway. The finished surface material shall be coordinated in advance with officials of the respective municipality for the improvements in rights-of way to be dedicated. Shoulder material shall be coated in conjunction with surface treatment of cartway.

TABLE 3

CONSTRUCTION STANDARDS FOR PRIVATE AND PUBLIC STREETS++		
SURFACE COURSE	TYPE OF MATERIAL ¹	DEPTH OF MATERIAL AFTER COMPACTION ²
Major Collectors: Over 20 EDU's		
PREFERRED Residential:		
Surface Treatment		
Wearing Surface		9.5 or 12.5mm [1 1/2"]
Base: bc/bc/binder		19 or 25mm [4"]
Subbase*	Subbase ³	6"
ALTERNATE Residential:		
Surface Treatment	**	Double Application
Wearing Surface		
Base: bc/bc/binder		4"
Subbase *	Subbase ³	6"
Commercial/Industrial:		
Surface Treatment		
Wearing Surface		9.5 or 12.5mm [1 1/2"]
Base: bc/bc/binder		19 or 25mm [5"]
Subbase*	Subbase ³	6"
Minor Collectors: 10-19 EDUs		
PREFERRED: Residential		
Surface Treatment		
Wearing Surface		1.5"
Base bc/bc/binder		3"
Subbase *	Subbase ³	6"
ALTERNATE ⁶ : Residential		
Surface Treatment	**	Double Application
Wearing Surface		
Base bc/bc/binder		3"
Subbase *	Subbase ³	6"
PREFERRED: Commercial/Industrial:		
Surface Treatment		
Wearing Surface		9.5 or 12.5mm [1 1/2"]
Base: bc/bc/binder		19 or 25mm [4"]
Subbase*	Subbase ³	6"
ALTERNATE ⁶ : Commercial/Industrial:		
Surface Treatment	**	Double Application

Wearing Surface		9.5 or 12.5mm [1 1/2"]
Base: bc/bc/binder		19 or 25mm [4"]
Subbase*	Subbase ³	6"
Table 3 cont'd.		
CONSTRUCTION STANDARDS FOR PRIVATE AND PUBLIC STREETS++		
SURFACE COURSE	TYPE OF MATERIAL ¹	DEPTH OF MATERIAL AFTER COMPACTION ²
Local Street Serving 5-9 EDUs: ⁴		
Surface Treatment	**	Double Application
Wearing Surface	--	--
Base	--	--
Subbase*	Subbase ³	6"
Private Street Serving 1 to 4-6 EDUs/Lots or Principal Buildings: ⁴		
Wearing Surface	--	--
Base	--	--
Subbase*	Subbase ³ Shale, Stone, mud free	--

++ FOOTNOTES:

1. All Components of the pavement structure shall be in accordance with PennDOT specification, Form 408; uses of industrial, commercial examples as applicable may differ from material in Table 3. (See also PennDOT Pub. 70M, Guidelines for Design of Local Roads & Streets, most current version)
2. Compaction shall be by PennDOT Standards as applicable.
3. Subbase shall extend six (6) inches beyond finished width of cartway on each side to provide necessary support for wearing surface.
4. Private streets serving five (5) to nine (9) lots shall be constructed to standards for local streets.
5. 2RC material may be approved as a substitute, under certain circumstances.
6. Must be approved by the municipality if presented for acceptance.

* Sub-base material shall consist of 2A stone or other approved material by the LCPC Consulting Engineer.

** Applicant is encouraged to consider adding emulsion coating to surface treatment

4.2 BLOCKS, LOTS, AND EASEMENTS

4.21 Blocks

- A. The length, width and shape of blocks shall be determined with regard for:
 - 1. The suitability to provide adequate sites for development;
 - 2. Zoning requirements;
 - 3. Topography; and,
 - 4. Safe and convenient vehicular and pedestrian circulation internal to the development as well as connected with an external network whether existing or proposed.
- B. Pedestrian walkways may be required where necessary for safety, to assist circulation, or to provide access to community facilities. Such walkways shall have a minimum easement width of not less than ten (10) feet and a sidewalk of not less than four (4) feet in width.
- C. Blocks should have a minimum length of 300 feet and a maximum length of 1000 feet so far as practical. Blocks shall not exceed 1000 feet in length; unless, special consideration has been given to the requirements for providing satisfactory fire protection.
- D. In large blocks with interior parks or playgrounds, or blocks where access to schools, shopping centers, or public gathering places is desirable, the LCPC may require a walk, trail, greenway, path or crosswalk traversing the block to provide pedestrian and bicycle access to such facilities. Such walkways shall have a minimum right-of-way width of twelve (12) feet and an eight (8) foot minimum width of pavement or other suitable mud-free wearing surface.

4.22 Lots

- A. All lots created by subdivision or land development shall conform to the minimum lot area and dimensional requirements of the applicable Municipal or County Zoning Ordinance.
- B. The LCPC may require larger lot sizes where specific site conditions such as excessive slope or marginal soil conditions for sewage disposal are known to exist; or, if more than one on-lot sewage system is involved on a single lot.
- C. All lots shall abut or have direct access to a public street via a right-of-way of sufficient width. Irregular shaped lots that result in unusable area or reserve strips that benefit no one are prohibited.

- D. All lots to be laid out are to consider effects of the Official Map adopted according to PAMPC Article IV, Planned Residential Development adopted according to PAMPC Article VII, and Traditional Neighborhood Development adopted according to PAMPC Article VII-A as applicable to the area.
- E. A parcel being subdivided for the purpose of being added to an existing, adjacent lot of record need not be subject to the design and improvement standards contained herein. The addition lot status is to be denoted on the plan to be considered as one for subdivision, land development and zoning purposes and, note that the lot is combined under one deed description and in one deed of record with the intended grantee's existing property. In lieu of a single property description, the LCPC may allow combined parcels to be described separately in a single deed, provided a notation is placed in the deed corresponding to the plan note indicating that the parcels are to be considered as one for subdivision, land development and zoning purposes. In this manner, the owner is precluded from the individual sale of combined parcels as separate lots without approval under the terms and conditions of this Ordinance.

4.23 Easements

- A. When easements are required for utilities, water lines, sewerage facilities, access, etc., such easements shall be centered on or adjacent to lot lines wherever possible. Placing easements adjacent to the street right-of-way is encouraged.
- B. Where a subdivision or land development is traversed by a water course, drainage way, channel, or stream, a drainage easement shall be provided that conforms substantially with the line of such water course, drainage way, channel, or stream and of sufficient width for the purpose of: 1) preserving the unimpeded flow of natural drainage; or 2) widening, deepening, relocating, maintaining, improving, or protecting such drainage facilities where deemed necessary; or 3) installing a stormwater, sewer or drainage control facilities.
- C. Easements shall be of sufficient size and dimension to serve the intended use. Wherever possible, various service facilities listed in A. above should be encompassed within a single easement.
- D. Easements shall be provided wherever deemed necessary by the LCPC for public and utility infrastructure, inclusive of designated public infrastructure areas.
- E. Any other easement of a tract-wide coverage or sub-area shall be noted on the plan for the control of development rights, such as a “conservation easement,” “drinking watershed protection,” and so on.
- F. In instances when a proposed one-lot subdivision and its residual have their own respective existing street frontages which will comply with provisions of this

ordinance, in unique circumstances easements may be used for shared vehicle access to the lots where proposing a right-of-way over existing driveway(s) will cause setback conflicts when measured from the building to a right-of-way.

4.3 SEWAGE DISPOSAL FACILITIES

4.31 General

- A. The applicant shall adequately address future sewage needs for each proposed lot, either by making provision for the extension of public sewerage or by ensuring that the appropriate testing has been conducted to guarantee that the soils of each lot will accommodate the installation of an on-lot subsurface sewage disposal system.
- B. Sewage disposal system(s) shall be designed to comply with local and state requirements for the protection of groundwater and surface waterways.
- C. To adequately protect the health, safety and welfare of the public wherever public sewage facilities are not available, sufficient soils testing shall be conducted on every parcel regardless of lot size, unless the parcel contains an existing septic system sign-off by the Sewage Enforcement Officer or the municipality has concurred with applicant's request for a sewage planning waiver and the approved DEP form is completed.
- D. The proposed method of sewage disposal shall be:
 - 1. consistent with the Official Sewage Facilities Plan for the Municipality,
 - 2. proposed by the developer, and;
 - 3. subject to the approval of the Governing Body as applicable.
- E. The LCPC shall evaluate the adequacy of the proposed means of disposal according to the following order of preference:
 - 1. Connection to a public sanitary sewer system in accordance with local and state requirements; or,
 - 2. sufficient soil testing to demonstrate that the soils of the site will accommodate on-lot subsurface sewage disposal and that future sewage needs for the entire property can be met; or,
 - 3. Provision by the developer for a completely private sanitary sewer system using a treatment plant, community system, alternate or experimental system designed and constructed in accordance with local and state requirements.

4.32 Sewage Planning

- A. Preliminary Plans - Unless connection to, or provision for, a public sanitary sewer system is proposed, or as otherwise described above, the applicant must ensure that the soils of the site are generally suitable by passing a perc test, for the installation of on-lot subsurface sewage disposal systems. The applicant or future lot owner must then secure a permit to install the septic as designed following the plan approval process. For preliminary planning purposes, sufficient soils testing must be conducted or verified by the Municipal Sewage Enforcement Officer to ensure that the soils of the site are generally suitable for on-lot disposal. All soil test site locations shall be shown on the preliminary plan and Soil Type and Soil Boundary locations must be shown on the preliminary plan.
- B. Final Plans - Unless connection to or provision for a sanitary sewer system is proposed, or as otherwise described above, the applicant shall provide documentation that every parcel will accommodate the installation of an on-lot subsurface sewage disposal system prior to obtaining final plan approval. The location of all suitable soil test sites shall be shown on the final plan as well as Soil Type and Soil Boundary locations.
- C. Sewage Planning - The applicant shall provide sufficient information for the LCPC to determine that the ultimate method of sewage disposal is consistent with the Official Sewage Facilities Plan for the Municipality and will satisfy future sewage needs. Such information shall include a copy of the appropriate Components of the Sewage Facilities Planning Module requesting approval as an exception, supplement or revision to the Official Sewage Facilities Plan in addition to supporting documentation such as agency reviews, test results, alternative analyses, etc. The LCPC requires the applicant to submit verification from a qualified professional that the proposed means of sewage disposal is adequate and will not endanger public health, safety or welfare.
- D. Plan Revisions - All proposals involving a Revision to an Official Sewage Facilities Plan shall include a complete set of the appropriate module components and supporting documentation. Final subdivision or land development approval shall not be granted unless future sewage needs have been addressed to the satisfaction of the LCPC and the Resolution of Plan Revision has been adopted and approved by the respective municipal Governing Body.
- E. Other Requirements - The applicant shall submit evidence of sewage planning approval by the Governing Body if the proposal involves any of the following:
 - 1. on-lot sub-surface sewage disposal for more than ten (10) lots having been created from a tract since May 15, 1972, regardless of lot size; or,

2. Alternate, experimental, community or package sewage treatment facilities, such as spray irrigation or the land application of sludge or effluent, or,
3. Effluent discharge to a surface waterway, water body or groundwater; or,
4. Sewer extensions.

Within the following section, further details of the DEP permit process for sewage approval are provided. Information below is summarized from the DEP permitting requirements and is applicable to the formation or configuration of lots to be created by this Ordinance.

4.33 On-Lot Disposal

- A. Prior to final approval, the appropriate soils testing shall be conducted on every parcel, regardless of lot size, to ensure that the soils of each lot will accommodate an on-lot sewage disposal system or as otherwise described above. Said testing shall be conducted or verified by the Municipality's Sewage Enforcement Officer in accordance with local and state standards for such tests.
- B. In environmentally sensitive areas, or in areas where soil test results reveal marginal soil conditions for the proper functioning of on-site systems, the LCPC may require additional testing or an additional suitable site per lot to be reserved or otherwise set aside for the installation of a replacement on-site system should the primary system fail. See Section 4.64 of this Ordinance (below).
- C. Proposed sewage absorption areas shall maintain the following minimum isolation distance between the soil test site with resulting absorption areas and the features named. These coincide with DEP Act 537 permitting requirements as may be amended. The more restrictive requirement applies in comparing the following section with any DEP amended requirements:
 1. Ten (10) feet - property line, easement, right-of-way, driveway, surface drainage way, pressured water line, swimming pool, occupied structure, rock outcropping, and slope exceeding 25%.
 2. Twenty (20) feet - other active on-lot systems.
 3. Fifty (50) feet - streams, lakes or surface water.
 4. One hundred (100) feet - individual water supply well, spring or water suction line, whether on the same lot or an adjacent lot.
- D. In unsewered areas, proposals not involving on-lot sewage disposal now or in the future, or if a septic system exists on a lot, applicants may process a DEP

waiver of the soil testing requirements contained herein. Such proposals will be considered on a case-by-case basis and shall comply with the following:

1. Upon request the applicant shall submit a written overview to the-LCPC describing the reason sewage disposal will not be necessary and requesting a DEP waiver of the soil-testing requirement contained herein.
2. The applicant shall submit evidence that the appropriate waiver(s) of the Pennsylvania Sewage Facilities Act (Act 537) requirements have been granted by the respective municipal Governing Body or delegated local agency. The PCD Staff will consider concurrence by signing the waiver only if the Act 537 soil testing requirements have been waived by the Governing Body or delegated local agency. For existing septic systems, the applicant must prove that the designated Sewage Enforcement Officer has signed the waiver form stating the long term sewage disposal needs for respective lot(s) are met with the existing septic system(s).
3. The plan shall include a description of the intended use and a statement that a sewage disposal system will not be installed on the property. Any lot issued a soil-testing waiver by the Municipal Sewage Enforcement Officer must be labeled as a land use appropriate to justify a waiver, and the LCPC approval may require the plan to contain a note labeling the lot “not for development” as an approval condition. The note provided on the DEP Planning Waiver and Non-Building Declaration form describing the above can be used on the plan

4.34 Sanitary Sewerage Systems

- A. Newly constructed sanitary sewer systems and extensions or alterations thereto shall include a letter of certification from a registered professional engineer that said sewerage facilities have been designed and constructed to the standards and specifications of this Ordinance, the service providers, and the DEP. In no case shall the LCPC release an improvement guarantee or grant preliminary or final plan approval until such certification has been received.
- B. The LCPC reserves the right to retain an independent registered professional engineer to certify that the proposed sewer system has been constructed according to the specifications of Part II of the Water Quality Management Permit. The applicant shall be responsible for the costs of all consultant engineering reviews and inspections.
- C. If a public sanitary sewer system will be installed adjacent to the site in the near future as indicated in the official sewage plan, official map or other official document, the LCPC may require the installation of a capped system, or "dry lines" (mains only), within appropriate easements or road right-of-way. In lieu

thereof, the LCPC may require evidence of surety payment sufficient to cover the cost of said improvements that are approved by the respective Authority.

- D. All proposals for new public sanitary sewer systems, extensions to the existing public sewer systems, or the installation of "dry lines," shall be approved by the officially designated agency of local, state, or other unit of government, prior to final approval.

4.4 WATER SUPPLY

4.41 General

- A. In the Designated Growth Area subdivisions and land developments are strongly encouraged to connect to existing public water systems unless the applicant shows that such connection or installation is not feasible. The LCPC may require the applicant to submit a feasibility study prepared by a Registered Professional Engineer to show that the use of an existing public water system is impractical and unnecessary.
- B. If water is to be provided by other than private individual wells, the applicant shall present evidence to the LCPC that the subdivision or land development is to be supplied by a certified public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement or a commitment or agreement to serve the area in question, whichever is appropriate, shall be acceptable.
- C. In coordination with the local Fire Department officials and water authorities, fire hydrants shall be installed within all land developments and subdivisions that are intended to be connected to a public water system. Minimum flows shall be based upon the standards of the American Insurance Association and National Board of Fire Underwriters. Hydrants shall be spaced to provide necessary fire flow so that each residence is within sufficient distance of a hydrant to obtain the best level of health and public safety.
- D. Fire hydrants are encouraged but not required to be installed within subdivisions and developments to be connected to a private water system.

4.42 Public Water Systems

- A. Proposed public water systems to serve new land development and lots shall be designed and constructed in accordance with the service provider requirements and the DEP regulations. The applicant shall submit a copy of the appropriate DEP approval letter or permit allowing construction and operation of the new public water system.

- B. Proposed extensions to existing public water systems to serve new land development shall be designed and constructed in accordance with the DEP regulations. The applicant shall submit to the LCPC a letter from the appropriate water authority approving the extension to the existing system.
- C. The water system supply shall be sufficient to provide for necessary flow and peak demand based upon full development. If fire protection is provided, the system shall be capable of satisfying the required fire protection demand, plus the required domestic demand of the land development.
- D. Property sale of any dry line installation shall not occur before the water line connection to the service main is physically completed when a lot is not using a private well.

4.43 Individual and Non-Public Water Systems

- A. Where appropriate, the LCPC may require a DEP approval letter or permit for the construction and operation of a non-public water system proposed to service new subdivisions or land developments.
- B. Where groundwater problems are known to exist, or where anticipated levels of development may result in water supply problems at the site or within the vicinity, the LCPC may require:
 - 1. Applicant to demonstrate that a reliable, safe and adequate groundwater supply exists to support the water usage demands of the proposed subdivision or land development within the capacity of available water resources.
 - 2. Applicant to demonstrate that their proposed water usage demand will have no adverse impact on the current water pressure or flows on neighboring properties.
- C. To conserve groundwater resources and to provide a reasonable assurance that the quality and quantity of available groundwater is sufficient to support present and future development, the following standards shall apply:
 - 1. The Applicant may be required to submit a report prepared by a qualified professional hydrologist, hydro geologist, geologist or other individual approved by the LCPC describing aquifer and water quality tests conducted at the site, summarizing the results and significance of such tests, and making a recommendation as to the suitability of the source for the intended use.
 - 2. A test well shall be required for proposals involving the withdrawal of 10,000 or more gallons per day and for land developments and

subdivisions involving twenty (20) or more lots (in aggregate-phases) created from a single tract held in single ownership as of May 15, 1972. An additional test well shall be required for each additional group of ten (10) or fewer lots. The location of each well shall be determined by the applicant, subject to the consultation of the LCPC consultant engineer. Such test wells to serve an individual lot shall be drilled, cased and grout sealed at least five (5) feet into bedrock and shall have a production capacity of not less than five (5) gallons per minute that is potable and suitable for domestic use, or land development use.

3. The required capacity of each test well shall be minimally determined by a pump test conducted for a minimum duration of four (4) hours. The report of such test shall provide the following information:
 - a. the static water level;
 - b. the measured and recorded water level at a minimum of one (1) hour intervals during the test;
 - c. the pumping rate and water level immediately preceding the end of the pump test; and,
 - d. the water level one (1) hour after the cessation of pumping.
4. In the proximity of known groundwater problems, near streams or wetlands, within flood prone areas and in other areas that pose a threat to groundwater resources and surface water bodies, the LCPC may require aquifer and water quality tests to be conducted or verified by a qualified professional. The final report of the qualified professional shall establish that: 1) the water tested meets the minimum public health drinking water standards as set forth in the National Safe Drinking Water Regulations, 2) the proposed water supply is capable of meeting the peak demand rate with or without a storage system, and 3) the proposed well or wells will not adversely impact other wells in the immediate surrounding area. The immediate surrounding area is determined on a case-by-case basis included with the report of the qualified professional.

4.44 Alternate Water Systems

Where groundwater supply is inadequate in quantity and/or quality and where a public water system is shown by the subdivider to be infeasible, the LCPC may consider proposals to provide the subdivision or land development with water by an acceptable alternate means.

4.5 STORMWATER MANAGEMENT

4.51 Purpose

The stormwater management provisions contained in this Section are intended to provide protection against uncontrolled stormwater runoff and ensure that downstream property owners and surface waterways are not adversely impacted by increased stormwater runoff resulting from subdivision and land development.

Briefly, stormwater management controls shall be designed to ensure that the runoff rate from the site during and after construction shall be no greater than the rate of runoff from the site prior to development. Runoff water quality is also to follow rules of DEP.

4.52 General Requirements

- A. The LCPC may require the submission of an applicant-prepared Stormwater Management Plan (SMP) for any proposal and in conjunction with the requirements of a respective municipal stormwater ordinance in which:
 - 1. The total impervious area of the tract will increase as a result of required improvements or future development; or,
 - 2. site characteristics relating to soil type, slope, vegetative cover or similar features could result in accelerated stormwater runoff or stormwater management problems as lot development occurs; or,
 - 3. stormwater runoff problems exist within, adjacent to, or down gradient of the proposed subdivision or land development.
- B. All subdivision and land development proposals shall meet the requirements of the applicable municipal Stormwater Management Ordinance, guidelines of respective County Stormwater Management Plan or Watershed Management Plan in effect or hereinafter adopted or amended. The LCPC consultant engineer or designee shall provide review and analysis of all the proposed stormwater management plans in accordance with the adopted Ordinances and Management Plans.
- C. The LCPC may request the Lycoming County Conservation District to review and provide comment on Erosion and Sediment Control Plans.

4.53 Plan Requirements

- A. The SMP for the proposed subdivision or land development shall include a brief description of:

1. Existing drainage patterns and stormwater runoff characteristics of the site, including any existing drainage or stormwater runoff problems and facilities;
 2. The anticipated impact that future property development will have on existing stormwater runoff and drainage patterns;
 3. The type of structural and nonstructural improvements planned to control post development stormwater runoff;
 4. Existing drainage pattern of the site in context with the watershed; and
 5. Erosion and sedimentation control measures.
- B. The SMP shall consider the potential for accelerated soil erosion resulting from the construction of improvements, high density development, or sensitive site characteristics. The applicant may be required to plan for and implement conservation measures designed to protect existing vegetation and minimize the area and time of disturbance. Required conservation measures may include the construction of structural improvements to the site such as diversion terraces, grassed waterways, and sedimentation basins.
- C. The proposed location of both structural and nonstructural improvements and best management practices (BMP's) shall be shown on the plot plan. The LCPC may also require the applicant to include on the plot plan topographic contours, both existing and proposed, at an interval of five (5) foot or less in order to comprehensively evaluate successful stormwater management.
- D. Separate, detailed specifications, including cross-sections, profiles, etc., shall be submitted for all structural stormwater control improvements, such as swales, seepage pits, and retention and detention basins.
- E. The SMP submission shall provide for ownership and maintenance of all stormwater control improvements within the land development and subdivision in accordance with the following:
1. Drainage ways and easements shall be designed to function with minimal maintenance and shall be consistent with the requirements of Section 4.23.
 2. If the applicant proposes to dedicate improvements to the municipality, the plan submission must include a copy of the deed and a letter from the Supervisors or Council stating their intent to accept ownership and maintenance responsibility for the improvements. If approved, the deed of dedication shall be recorded with the final plan.

3. When not dedicated to the public, proposals shall set forth an arrangement for private ownership, use, maintenance of proposed improvements to be recorded with the final plan and referenced in the deeds to each property within the subdivision. The applicant shall provide documentation such as: a right-of-use and maintenance and management agreement, proposed deed restrictions, protective covenants, homeowner association by-laws, etc. which adequately addresses these items.

4.54 Design Standards

- A. Stormwater management controls shall be designed to ensure that runoff rate from the site during and after construction shall be no greater than the rate of runoff from the site prior to development.
- B. Stormwater control improvements shall be designed to increase the infiltration of surface water within a respective site, and to control the release rate of runoff from the site through temporary storage of stormwater. Control measures may include, but need not be limited to, deed covenants which restrict impervious area on each lot, drainage easement provisions, parabolic swales, seepage pits, rain gardens, detention and retention basins, groundwater recharge infiltration facilities or other BMP'S.
- C. Details and specifications of proposed stormwater control improvements shall be evaluated by the LCPC, in consultation with the County Conservation District, on a case-by-case basis. Additionally, if the proposed stormwater control improvements are intended for municipal dedication, the municipal officials shall be requested to review and comment on the proposed design of the improvements as it may affect future maintenance of the facilities.
- D. If the proposal involves drainage to a municipal street or municipal property, the applicant shall seek the municipal officials' review and comment on the adequacy of the proposed plan with regard to existing stormwater controls and problems in the area of the proposed subdivision or land development. It shall be the responsibility of the applicant to provide technical data, which substantiates the projected capability of the proposed improvements to control runoff from the development.
- E. In instances where the LCPC determines the applicant's submitted SMP to be inadequate, the LCPC may require additional structural or non-structural improvements to be designed to improve control of runoff from the site. If a proposal could potentially result in stormwater runoff problems or if problems are known to exist, the LCPC may require the SMP to be designed by a Registered Professional Engineer using an accepted methodology approved by the LCPC. The applicant is encouraged to discuss the methodology to be used with the County consultant engineer prior to finalizing the SMP.

4.6 FLOODPLAIN MANAGEMENT

4.61 Purpose

In accordance with the intent and requirements of the National Flood Insurance Program (NFIP) and PA Floodplain Management Act (Act 166 of 1978), the floodplain management regulations contained in this Section are intended to protect property owners from increased flood hazards resulting from development in the floodplain, and to protect potential buyers from purchasing land that may not be suitable for development. In the event that there is an adopted municipal zoning ordinance or other ordinance with regulatory floodplain provisions this section may not apply.

4.62 General Requirements

- A. For the purpose of this Ordinance, the regulatory floodplain shall be the 100-year floodplain. All plans for subdivision or land development within the regulatory floodplain shall comply with the requirements of the applicable municipal Floodplain Management Ordinance and regulations in effect at the time of plan submission.
- B. Assurance must be provided that the flood carrying capacity within any altered or relocated portion of any watercourse is maintained. Notification must occur, in upstream and downstream situations, to adjacent municipal officials and the NFIP State Coordinator (PA DCED) prior to any alteration or relocation of a watercourse, with copies of such notification submitted to the FEMA Map Service Center.
- C. Land areas susceptible to flooding shall be identified on the plan using the most current NFIP Flood Insurance Rate Map. If detailed FEMA mapping is not available for a particular area, the best available elevation and floodway information from Federal, State, or other sources acceptable to the LCPC shall be used to determine the flood hazard area.
- D. When buildings and site area for buildings are included in the land development plan, and if detailed elevation data is available, then the base flood elevation shall be indicated on the plan. The lowest floor elevation and floodproofing information shall also be shown.
- E. Subdivision and land development proposals for properties located within any designated floodplain area must comply with the most restrictive of any applicable municipal, state and federal floodplain management regulations.
- F. The LCPC requires the applicant to include a notice on the recorded final plans and in every deed stating that the subdivision or land development is located within the floodplain, and that any development of lots within the subdivision

must occur in conformance with all federal, state, and local floodplain management regulations.

- G. All adopted plans such as the County Comprehensive Plan, County Hazard Mitigation Plan, County Stormwater Management Plan, multi-municipal comprehensive plan(s); area-wide hazard mitigation plan(s) or other applicable plans may be used as guidance in the review of any subdivision or land development plan on a case-by-case basis.

4.63 Plan Requirements

- A. All subdivision and land development plans for property located within a designated floodplain area must show the location of the 500-year and 100-year Floodplain, the Floodway Fringe and the location of the Floodway, if available, according to the most current NFIP mapping for the affected area.
- B. Where applicable, and as required by the State Coordinating Agency for the NFIP, a copy of a Special Permit Application shall be submitted for information and evaluation along with the subdivision or land development plan.

4.64 Design Standards

- A. The finished elevation of new streets shall be not more than one (1) foot below the 100 year flood elevation. Drainage openings shall be sufficient to discharge floodwaters without unduly increasing flood heights.
- B. All new or replacement water and sanitary sewer facilities and systems shall be located, designed, and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
- C. No part of any on-site sewage system shall be located within any identified floodplain area except in strict compliance with all state and local regulations for such systems.
- D. All other utilities, such as gas and electrical lines and telephone systems, shall be located and constructed to minimize the chance of impairment during a flood. All transmission lines, including natural gas and electrical, shall be clearly delineated on the plan and installed in accordance with industry standards.

4.7 UTILITIES

- A. The applicant shall provide evidence that the location and installation of utilities has been reviewed by the appropriate utility service providers for any proposal involving required improvements of more than three (3) parcels.
- B. Easements for utilities shall have a minimum width of ten (10) feet and shall be in accordance with Section 4.23 of this Ordinance (above).

- C. Telephone, electric, television cable and other such utilities shall be installed in accordance with the PA Underground Utilities Act (Act 287 as amended) and shall be installed underground wherever feasible. Underground installation of utilities shall not be required where:
1. Subdivisions of three (3) or fewer lots border an existing right-of-way served by overhead utility lines and do not require road improvements; or,
 2. Utilities are proposed to service commercial or industrial properties; or,
 3. The applicant provides prior approved documentation that a waiver of the requirements of Act 287 has been granted by the Public Utilities Commission.
- D. Underground installation of the utility distribution and service lines are strongly encouraged to be completed prior to street paving and the installation of storm sewers, gutters, curbing and sidewalks. All street right-of-way and other easements where utility lines are to be installed shall be graded to within six (6) inches of final grade before trenches are excavated.

4.8 MONUMENTS AND MARKERS

Monuments shall be of concrete or stone at least six (6) inches by six (6) by thirty (30) inches and shall be marked on top with copper or brass dowel/disc or any alternate acceptable to the LCPC. Monuments shall be set at the intersection of lines forming angles in the boundaries of the subdivision and at the intersection of street lines. Markers shall be iron pipes or bars thirty (30) inches by three-quarters (3/4) of an inch in diameter and set at all points where lines or lines and curves intersect. The markers used as benchmarks, whether existing or new, shall be noted on the plan with a GPS/GIS coordinate method acceptable to the LCPC. Removal of existing benchmarks must follow acceptable methods.

4.9 DEVELOPMENTS OF REGIONAL SIGNIFICANCE AND IMPACT

The PAMPC recommends that County governments identify and implement planning and land use policies, regulations and guidelines to ensure compatibility of land uses among contiguous municipalities. This may include areas under direct county SLDO jurisdiction. The County seeks to ensure compatibility of land uses between contiguous municipalities, to minimize primary and secondary impacts associated with developments of regional significance, provide buffers and other mitigation techniques between disparate uses, and to protect the health, safety, and welfare of Lycoming County residents. The adopted Lycoming County Comprehensive Plan and respective Multi-Municipal Comprehensive Plans include areas in future land use maps noted generally as Development of Regional Significance and Impact. The process is also in accordance with the PAMPC 502. 1(b) for comments to be provided between contiguous municipalities on a proposed subdivision, change of land use, or land development. The determination of development of regional significance and impact will be made by the LCPC staff using the guidelines provided in this Section and Article V that follows.

4.91 General Standards and Overview

These standards are to be used in conjunction with Article V that explains the types of uses and provides the threshold guidelines of use categories for Development of Regional Significance and Impact. This Ordinance section outlines information needed with the goal to minimize impacts, where possible, from developments of regional significance when an applicant's property is traversed by, or passes in close proximity to a municipal boundary.

A. Guidelines for designation:

1. **Character:** Development on existing or planned land use that may cause excessive land use, environmental impacts; or that is inconsistent with the existing or planned land use on adjacent parcels or within adjacent municipalities.
2. **Magnitude:** Development with a disturbance area, footprint or impervious area, of area over five acres to require an NPDES approval within all phases of the development proposal in its entirety.
3. **Traffic Volume and Roads:** Development for which PennDOT requires applicant to submit a Traffic Impact Study. Major state or

municipal roads are to be used for circulation among adjacent municipalities.

4. **Location:** Development of parcels traversed by a municipal boundary, or located within one mile of any adjacent municipality.
5. **Exempt from this section:** The requirements for the conditions related to developments of regional significance shall not apply to subdivision for a conventional single family residential detached dwelling and/or land development plans submitted for agricultural purposes.

B. Application Procedures

1. A conference with the LCPC Executive Director or designee shall be conducted prior to plan submission. The conference shall not be considered as a formal application for the proposed development. The submission of any report, sketch plan, plat or map prior to such conference shall not constitute submission of a plan nor shall such materials be binding on subsequent submissions by the applicant. The PCD Staff review provided shall not be binding at the time of the conference.
2. A written narrative statement shall be provided with the plan submission and shall include information of land ownership, and the substance of covenants, grants of easements or other restrictions proposed to be imposed on the use of land, buildings and structures.

C. Development Standards

All subdivisions and/or land development plans shall be subject to the provisions set forth in this Ordinance, the applicable Zoning Ordinance and the respective adopted Comprehensive Plan. Site guidelines for developments of regional significance and impact follow:

1. General Site-Guidelines

- a. The total site disturbance area, footprint and or impervious area (as applicable) shall be located at an acceptable distance from any public or private potable well water sources based on standards.
- b. Vegetative screen bufferyard shall be provided around the entire disturbance(s). The County Zoning Ordinance standards for landscape buffering shall be used as guidance in discussion and application of a vegetative screen with the LCPC.
- c. Existing wooded areas within bufferyards shall be maintained. Logging shall only be permitted via previously approved selective tree removal to continue the buffering function.

2. Traffic

As a guideline, in accordance with PennDOT Publication 273 and as per the Section 4.9.1. B. 3, the applicant would be requested to prepare and submit a TIS.

- a. Site operations shall only be serviced by a road with direct access to an approved street with approved access point.
- b. Based on the scale of vehicles (truck/cars); and the range of daily vehicle trips (24hr period), site driveways or points of access to any site shall only be permitted from a street other than a local street (except when the local street is a frontage or service road based on the road network.)
- c. Trucks hauling materials to and from the site shall not be permitted to enter or exit the site from any other road in another municipality within the County. This standard may be waived by the LCPC if written permission is granted by the municipality in which the other road is located.
- d. Privately owned internal roads may be constructed on the site.
- e. Rail service as applicable may be required.
- f. Public transit access and boarding facilities may be required.
- g. A pedestrian circulation plan shall be provided.
- h. All transportation improvements that are determined to be necessary shall be constructed prior to final site inspection by the PCD Staff or authorized consultants.

3. Guidelines for Mitigation of Impacts

- a. Any existing or proposed elements of the County's transportation network that will be rendered inoperable by the proposed development shall be relocated at applicant's expense in such a manner to ensure that the intended need is served. Such relocations shall be subject to LCPC and possibly the respective governing body approval as may be required by title/easements/rights-of-way. The transportation network includes, but is not limited to, roads, trails, and other systems.
- b. Whenever access to a subdivision, land development, or any phase thereof, requires the crossing of land of another municipality, the applicant shall provide assurance that such access shall be permitted by that municipality and that the road(s) to be used shall be improved, if necessary, to accommodate access.
- c. Financial surety may be required to guarantee all necessary improvements resulting from all or selected activities.
- d. An environmental assessment plan shall be provided to identify and mitigate impacts of all phases of the proposed development on public health and safety, including but not limited to: air quality, water quality, stream flow, fish and wildlife, nuisance management, dust control, litter control, plants, aquatic habitat,

threatened or endangered species, water uses, and land use. Proof of environmental impairment liability insurance may be required. Special attention should be given to the avoidance and minimization of land disturbance activities within an Exceptional Value (EV) or High Quality (HQ) sub-watershed or other areas of environmental concern or natural resources based on the character of any area.

- e. A mitigation plan shall be submitted to identify procedures for the removal of any mud or debris on any public or private road from traffic entering or exiting the site proposed for development. A wash-down facility may be required to clean vehicles prior to their entry on to a public road. All mud or debris shall be kept off the public roads.
- f. An outdoor illumination plan shall be required. Lighting on the site shall use full cut-off fixtures with shielding in appropriate areas to limit light spillover onto any adjacent properties and roads. Lighting shall only illuminate area on the ground and buildings/structures and shall not illuminate the sky above the site.
- g. A site security plan may be required, based on the use.
- h. Since the siting and operation of developments of regional significance may have considerable impacts on the County and its municipalities, an agreement between the County and the applicant shall be required. The agreement shall identify the potential impacts to be addressed and detail any mitigation processes to be enacted by the applicant and fees or services to be authorized between the applicant, the County, and any designated Authority, service provider/entity, or municipality. Enforcement of the agreement rests with the County.

4. Monitoring

The applicant shall secure all necessary federal, state, and/or local permits. All materials, including but not limited to those associated with permits submitted to federal, state, and/or local governing body or regulatory agency shall also be made available, as requested by the Planning Department for review, comment and applicable approval.

ARTICLE V: LAND DEVELOPMENTS

Upon approval by a zoning permit for the use, the criteria below would apply to the land improvements. The zoning compliance step is a prerequisite to processing a land development for approval. Such land developments may include a variety of uses as approved by the appropriate zoning ordinance. As a land development plan is prepared, the criteria below define improvements such as roads, access, sewer and water, and stormwater as examples. The following examples of developments of regional significance and impact related to each type of development will serve as guidelines to aid the LCP C staff in its determination of whether a project is regionally significant or not.

5.10 MOBILE HOME PARKS

5.11 General Requirements

A notice shall be placed on the land development plan stating that it shall be the responsibility of the mobile home park owner to maintain all mobile home park facilities, including roads, sewage disposal facilities and water supply, or connections to public authority sources; and areas designated as open space. In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

5.12 Design Standards

- A. Access to mobile home lots within the development shall be provided via an internal street system designed and constructed in accordance with the standards set forth in Section 4.1 of this Ordinance (above).
- B. Mobile home parks shall be provided with sewage disposal and water supply facilities designed and constructed in accordance with DEP standards and Sections 4.3 and 4.4 of this Ordinance (above).

5.13 Development of Regional Significance and Impact Threshold Guideline

- A. Development of 25 dwelling units or more within 1,000 feet of the municipal boundary.

5.20. MULTI-UNIT HOUSING DEVELOPMENTS

5.21 General Requirements

In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

- A. The applicant shall submit with the land development plan a description of the type of multi-unit housing proposed, the exterior architectural building elevations from all sides, the exterior building materials contemplated, and indication of total number of dwelling units per structure.
- B. All multi-unit housing developments shall conform to any applicable zoning ordinance as a prerequisite of plan submission.
- C. The applicant shall submit with the land development or subdivision plan a proposal for the maintenance of all facilities, and grounds that are shared or otherwise under common ownership by residents of the proposed development. If the applicant proposes to subdivide and convey individual dwelling units within a single structure, an agreement that assigns maintenance responsibility for commonly used facilities and grounds shall be recorded with the subdivision and referenced in the deed to each property.

5.22 Design Standards

- A. Access to and within multi-unit housing developments shall be designed and constructed in accordance with the Design and Improvement Standards for Streets, Driveways, Pedestrian and Bikeway set forth in section Sections 4.1 and 4.2 of this Ordinance (above).
- B. Multi-unit housing developments shall be provided with sewage disposal and water supply facilities in accordance with DEP standards and Sections 4.3 and 4.4 of this Ordinance (above).
- C. A SMP prepared in accordance with the corresponding Section(s) of this Ordinance, shall be submitted with all plans under this Section.

5.23 Development of Regional Significance and Impact Threshold Guideline

- A. Development of 25 dwelling units or more within 1,000 feet of the municipal boundary.

5.30 RECREATIONAL VEHICLE PARKS AND CAMPGROUNDS

5.31 General Requirements

In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

- A. A note shall be placed on the land development plan stating that the recreational vehicle (RV) park or campground has been designed for intermittent recreational use and that recreational vehicles, trailers, and tents used for full-time occupancy of more than 180 consecutive days shall not be permitted within such developments when located in Flood Hazard areas mapped from the NFIP. The RV Park that permits full-time occupancy of more that 180 consecutive days located in the Flood Hazard areas mapped from the NFIP must follow the

permitting requirements for construction of a mobile home in the hazard areas as applicable, if permitted by the respective zoning ordinance.

- B. A note shall be placed on the plan stating that it shall be the responsibility of the RV Park or campground owner to maintain all park facilities, including internal roads, sewage facilities, potable water, and areas designated as open space and labeled as private facilities.
- C. A SMP prepared in accordance with the corresponding Section(s) of this Ordinance, shall be submitted with all plans under this Section.

5.32 Design Standards

- A. An internal RV park or campground system of private streets, cartways or roads shall be designed and constructed in accordance with the standards set forth in Section 4.1 of this Ordinance (above).
- B. RV parks and campgrounds shall be provided with sewage disposal and water supply facilities designed and constructed in accordance with DEP standards and Sections 4.3 and 4.4 of this Ordinance (above).

5.33 Development of Regional Significance and Impact Threshold Guideline

- A. Development of 15 pads or more within 1,000 feet of the municipal boundary.

5.40 COMMERCIAL, INDUSTRIAL AND AGRICULTURAL DEVELOPMENT

5.41 General Requirements

In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

- A. Commercial land development proposals including, but not limited to, shopping centers, motels, and other similar types of development, and industrial land developments, inclusive of: principal agricultural buildings, industrial parks and multi-tenant residential mixed with commercial buildings, shall comply with the standards and requirements of this Section as well as other applicable provisions of this Ordinance not in conflict herewith.
- B. Commercial, Industrial, Residential, Mixed Use and Agricultural developments shall comply with any applicable Zoning Ordinance.
- C. A SMP prepared in accordance with the corresponding Section(s) of this Ordinance, shall be submitted with all plans under this Section.

5.42 Design Standards

- A. When determined appropriate by PCD Staff based on land use intensity, access to public or private streets shall be limited to well-defined entrance and exit vehicle lanes. Exit lanes shall be separated from entrance lanes by dividers, line

painting, or planting islands. The planting islands are encouraged to be designed to form a gateway or primary entrance that is both safe and attractive.

- B. Painted lines, arrows and dividers shall be provided to control parking and internal circulation. Signage to aid in safe directional flow is encouraged. Whenever possible, customer parking and pedestrian circulation shall be separated from vehicle routes, delivery service drives, and loading areas. The pedestrian circulation shall be identified on the site with line painting, raised curb walkways, and /or crosswalks of material different from the asphalt paved parking as examples.
- C. Proposed sewage disposal and water supply facilities shall be designed and constructed in accordance with the requirements of the Section of this Ordinance and DEP regulations.
- D. Buffer yard area may be required in accordance with the applicable Section of this Ordinance or respective Zoning Ordinance.
- E. Public transit access and boarding facilities shall be provided where applicable.

5.43 Parking and Loading Areas

In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

- A. Off-street loading areas shall be provided for all commercial, mixed use or industrial activities. Sufficient truck maneuvering area shall be provided so as not to interfere with other vehicle, pedestrian and bicycle traffic. Such areas shall be designed to eliminate the need to back over or into public rights-of-way.
- B. Loading areas used for dumpster/trash pickup are to follow the same limits above.
- C. All parking areas, service drives, loading areas, and exit and entrance lanes shall be graded and surfaced according to the specifications for paving of local subdivision streets contained within this Ordinance, or more appropriate standards approved by the LCPC.

5.44 Development of Regional Significance and Impact Threshold Guideline

- A. Any commercial use, but not limited to retail, office, mixed use of offices/retail/restaurants/light industrial building development of 150,000 sq.ft. at any site; 75,001 to 149,999 sq. ft. within 1 mile of the municipal boundary; or 75,000 sq.ft. within one-half mile of the municipal boundary.
- B. Lodging facilities of 75 rooms or more within one-half mile of a municipal boundary.

- C. Lodging of 12 rooms or more at any site outside of the Designated Growth Area.
- D. Any new gambling/betting facility of any size within Lycoming County.
- E. Kennels of any size within one-half mile of a municipal boundary.
- F. Airports, hospitals, medical centers, institutional/private educational provider of any size or 25 % expansion within one-half mile of municipal boundary.
- G. Wholesale, distribution, truck terminal of a building size greater than 100,000 sq. ft., 3 diesel fuel pumps; or one acre or truck parking, or 10 truck parking spaces within one-half mile of a municipal boundary; or within one mile of a municipal boundary outside of the Designated Growth Area.
- H. Sports complexes, amusement attractions, regional recreational facilities which accommodate over 500 daily visitors, or that includes a market area of a one-hour drive for visitors; of any tract size within Lycoming County.
- I. Quarries, asphalt and cement plants of any size or expansion by more than 50% within one-half mile of municipal boundary.
- J. Industrial Park with uses that generate new vehicle trips in excess of 1,000 average daily trips (ADT) for all phases within one-half mile of a municipal boundary.
- K. Any potential land developments not noted above that generate new vehicle trips in excess of 1,000 ADT or have the potential to create adverse environmental or human impacts, stormwater runoff, wastewater collection and treatment within one-half mile of municipal boundary.

5.50 JUNK YARDS, WASTE TIRES, NATURAL GAS AND OIL LAND USES, AND OTHER POTENTIAL PUBLIC SAFETY HAZARD DEVELOPMENTS

The purpose of this section is to establish standards regulating minimum health, safety and emergency access for such developments and their improvements in municipalities under the jurisdiction of the Lycoming County Subdivision and Land Development Ordinance where the respective Zoning Ordinance does not address the aspects of the uses as follows.

5.51 General Requirements

- A. Developments under this section must not pose a threat to public health, safety or welfare.

- B. Developments under this section must not pose a threat to groundwater, surface water resources, or any other natural resources whether on-site or within the vicinity.
- C. A SMP prepared in accordance with the corresponding Section(s) of this Ordinance, shall be submitted with all plans under this Section.
- D. An Emergency Access and Pollution Prevention Plan must be submitted.

5.52 Design Standards

In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

- A. Access to any development under this section shall be limited to well-defined entrance and exit lanes. Adequate internal access shall be provided that addresses emergency vehicle access and arrival and site evacuation.
- B. Retaining existing or installing screen plantings shall be required around the perimeter in accordance with the respective zoning provisions that correspond to bufferyard sections within an applicable Zoning Ordinance.
- C. All uses under this Section shall be enclosed by a metal chain-linked security fence with a six (6) foot minimum height.

5.53 Development of Regional Significance and Impact Threshold Guideline

- A. Any potential land developments noted above that generate new vehicle trips in excess of 1,000 ADT or have the potential to create adverse environmental or human impacts, stormwater runoff, wastewater collection and treatment within one-half mile of a municipal boundary.

5.60 CLUSTER HOUSING DEVELOPMENTS

The following standards and requirements apply to developments within municipalities that have zoning provisions that permit cluster developments for residential detached, semi-detached, attached building configuration or mixed types of residential uses. Whether on a single lot or individual lots and corresponding grouping of open space portions, the cluster development is to be recorded. This type of development should be designed to achieve:

- A. A characteristic of design and site planning in which houses and multi-unit dwelling buildings are grouped together on a tract of land and each cluster serves as a module which is set off from other building groupings. The use of open space tract(s) gives visual definition to the cluster of lots or development.
- B. The preservation of unique physical and natural features on land intended to remain open, undeveloped, or in a deed-restricted agricultural use. This cluster arrangement benefits the adjacent cluster residences as well as the community in the vicinity.

- C. Efficient use of the land for public facilities and infrastructure required to serve the new residential buildings.

5.61 Design Standards

In the event that there is an adopted municipal zoning ordinance some provisions of this section shall not apply.

- A. Plans for proposed cluster housing developments shall include a minimum parent tract size of ten (10) acres. One of the factors in determining the maximum number of dwellings shall be by the capacity of the tract to treat sewage on-site by a method acceptable to DEP. Off-site sewage treatment is another option to serve the development of the tract.
- B. A minimum of 50% of the development tract shall be allocated to and shall remain common open space. Roads, parking areas, structures or service lanes are not counted toward the common open space. The applicant shall submit with the subdivision plan a proposal that provides for the maintenance of such open space. A perpetual agreement assigning maintenance responsibility for the open space shall be recorded with the final plan and referenced in the deeds to each lot within the development. Such items shall be considered on a case-by-case basis in the open space perpetual agreement which prohibits future development and defines the range of permitted activities. For example, the clearing of woodland habitat shall generally be prohibited, except as necessary to create trails, active recreation facilities, and/or to install subsurface septic disposal systems or spray irrigation facilities, or other DEP approved systems.

The following methods of ownership for common open space areas and facilities may be used either individually or in combination. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Acceptable ownership methods shall include:

- 1. Fee Simple Dedication to the Municipality. The municipality may, but shall not be required to, accept any portion of the common facilities, provided that:
 - a. There is no cost of acquisition to the municipality; and,
 - b. The municipality agrees to and has access to maintain such facilities.
- 2. Condominium Association. Common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant state law. All open space land and common facilities shall be held as a “common element.”

3. Homeowners' Association. Common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in state regulations and statutes. In addition, the following regulations shall be met:
 - a. The applicant shall provide the municipality and County a description of the organization of the proposed association, including its by-laws and all documents governing ownership, maintenance, and use restrictions for common facilities;
 - b. The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development;
 - c. Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units therein and their successors in title;
 - d. The association shall be responsible for maintenance and insurance of common facilities;
 - e. The by-laws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his/her dues. Such dues shall be paid with the accrued interest before the lien may be lifted;
 - f. Written notice of any proposed transfer of common open space and facilities by the association or the assumption of maintenance for common facilities must be given to all members of the association and to the municipality no less than thirty (30) days prior to such event; and
 - g. The association shall have adequate staff to administer, maintain, and operate such common facilities.
4. Private Conservation Organization or the County. With permission of the municipality and County, an owner may transfer either fee simple title of the open space or other forms of easements on the open space to a private non-profit conservation organization or to the County provided that:
 - a. The conservation organization is acceptable to the municipality and to the LCPC and is a bona fide conservation organization intended to exist indefinitely;
 - b. The conveyance contains appropriate provisions for proper reverter or retransfers in the event that the organization or LCPC on behalf of the County becomes unwilling or unable to continue carrying out its functions;
 - c. The open space land is permanently restricted from future development through a conservation easement and the

municipality or County is given the ability to enforce these restrictions; and

- d. A maintenance agreement acceptable to the municipality is established between the owner and the organization or County.

5. Dedication of Easements to the Municipality or County. The municipality or County may, but shall not be required to, accept easements for public use and enjoyment of any portion of the open space land or facilities. In such cases, the facility remains in the ownership of the condominium association, homeowners' association, or private conservation organization while the easements are held by the municipality or County. In addition, the following regulations shall apply:

- a. There shall be no cost of acquisition to the municipality or County;
- b. Any such easements for public use shall be accessible to the residents of the municipality and County; and
- c. A satisfactory maintenance agreement shall be reached between the owner and the municipality or County.

6. Non-Common Private Ownership. The required open space land may be included within one large “conservancy lot with homestead of caretaker” provided that 1) the open space is permanently restricted from future development through a conservation easement, except for those uses listed in the Zoning District, and 2) that the municipality or County /LCPC is given the ability to enforce these restrictions.

7. Maintenance. At the time of preliminary plan submission, the applicant shall provide a Plan for Maintenance of Open Space Lands and Operation of Common Open Space Facilities in accordance with the following requirements:

- a. The Plan shall define ownership;
- b. The Plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (i.e. lawns, playing fields, meadow, pasture, cropland, woodlands, etc.);
- c. The Plan shall estimate staffing needs, insurance requirements, and associated costs and define the means for funding the maintenance of the open space and operation of any common facilities on an on-going basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs;
- d. At the municipality’s or LCPC’s discretion, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities for up to one year; and,

- e. Any changes to the maintenance plan shall be approved by the LCPC.
 - f. In the event that the organization established to maintain the common open space lands and facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the municipality or County may assume responsibility for maintenance, in which case any escrow funds may be forfeited and any permits may be revoked or suspended.
 - g. The municipality or County may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner, condominium association, homeowners' association, conservation organization, or individual property owners who make up a condominium or homeowners' association and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the municipality in the office of the Prothonotary of the County.
- C. All cluster housing developments shall conform to any applicable zoning ordinance.
- D. Vehicle access to and within the cluster housing development shall be provided in accordance with Subdivision Design and Construction Standards for Streets and Driveways contained in this Ordinance.
- E. Cluster housing developments shall be provided with sanitary sewer system and water supply facilities in accordance with DEP standards and this Ordinance.

ARTICLE VI: ADMINISTRATION AND ENFORCEMENT

6.0 WAIVERS

- A. The provisions of this Ordinance are the minimum standards for the protection of public safety, health, and welfare.
- B. The applicant must show to the LCPC's satisfaction that the mandatory provision of this Ordinance which is considered unreasonable and causes unique and undue hardship as it applies to the proposed subdivision or land development. The LCPC may grant a waiver in writing to such applicant from such mandatory provision so that substantial justice may be done and the public interest secured. The request shall demonstrate that:
 - 1. The requirement, if denied, will create an unreasonable and unnecessary hardship on the applicant.
 - 2. The waiver, if approved, will not nullify the intent of this Ordinance.
 - 3. The waiver seeks the minimum relief necessary.
- C. All requests for a waiver shall be in writing and shall accompany and be a part of the application for development. A waiver request may be submitted with a sketch plan that has been drawn in sufficient detail that the LCPC can act on the request. The outcome of the waiver provided with a sketch plan be included as part of the application for development.
- D. In granting waivers and such modifications, the LCPC may impose any conditions as will, in its judgment, encourage innovative design and secure substantially the objectives of the standards or requirements waived or modified. Failure by the applicant to accept such conditions will result in the request being denied.

6.1 RECORDS

The LCPC shall maintain an accurate public record of all the plans upon which it takes action and of its findings, decisions, and recommendations in relation thereto.

6.2 AMENDMENTS

The Lycoming County Commissioners may, from time to time, revise, modify, and amend this Ordinance by appropriate action taken at a scheduled public meeting, in accordance with the applicable provisions of the PAMPC, as amended.

6.3 PREVENTIVE REMEDIES

- A. In addition to other remedies, the LCPC, as authority outlined in Section 1.0 of this Ordinance, and the Lycoming County Board of Commissioners may

institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages, and to prevent illegal occupancy of a building, structure, or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring property shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

B. The County Zoning Administrator, County Subdivision and Land Development Administrator, and/or respective municipal zoning officer under the jurisdiction of this Ordinance may refuse to issue any permit or grant any approval necessary to further improve or develop any real property that has been developed or that has resulted from a subdivision of real property in violation of any ordinance adopted pursuant to this article. This authority to deny such a permit or approval shall apply to any of the following applicants:

1. The owner of record at the time of such violation.
2. The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
3. The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
4. The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

C. As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the LCPC may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

6.4 ENFORCEMENT REMEDIES

A. Any person, partnership or corporation who or which has violated the provisions of the Lycoming County Subdivision and Land Development Ordinance upon being found liable therefore in a civil enforcement proceeding commenced by the LCPC before the district justice with appropriate jurisdiction shall pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the LCPC as a result thereof. No judgment shall commence or be imposed, levied, or be payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor appeals the judgment in a timely manner, the LCPC may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a

violation continues shall constitute a separate violation, unless the district justice determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth (5th) day following the date of the determination of a violation by the district justice; thereafter, each day that a violation continues shall constitute a separate violation.

- B. Upon petition and cause shown, the court of common pleas may grant an order of stay tolling the per diem judgment pending a final adjudication of the violation and judgment.
- C. Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the LCPC the right to commence any action for enforcement pursuant to this Section.

6.5 VALIDITY

Should any section, subsection or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole, or of any other part thereof.

6.6 EFFECTIVE DATE

The Lycoming County Subdivision and Land Development Ordinance shall become effective for all preliminary and final plans submitted to the LCPC on or after January 23, 2014.

This Ordinance was ordained and enacted this 23rd day of January, 2014, by the Board of Commissioners of the County of Lycoming and shall be effective on this 23rd day of January, 2014.

Board of Commissioners, County of Lycoming, By:

Jeff C. Wheeland, Chairman

Ernest P. Larson, Vice Chairman

Tony R. Mussare, Secretary

ATTEST

Ann M. Gehret, Chief Clerk

CERTIFICATION

I, Ann M. Gehret, Chief Clerk of the Board of County Commissioners of the County of Lycoming do hereby certify that the foregoing ordinance, "Lycoming County Subdivision and Land Development Ordinance," was duly adopted at a properly convened meeting of the Board of Commissioners of Lycoming County held on this 23rd day of January, 2014, at which meeting a quorum was present and voted in favor thereof. I further certify that adoption of said Ordinance was preceded by a public hearing as required by the Pennsylvania Municipalities Planning Code, which hearings were advertised in accordance with provisions of said act.

Chief Clerk, Board of Commissioners, County of Lycoming

Date

ARTICLE VII DEFINITIONS

7.0 DEFINITIONS

Access Drive: A vehicle access of durable all weather mud-free permanently passable surface which provides access from a street or road to a lot, such as a driveway, service road, road, private access within a right-of-way.

Accessory Structure: A structure detached from a principal building on the same lot and customarily incidental and subordinate to the principal building or use.

Adjoiner: The lot or lots, that are adjacent to another lot where lot additions or lot consolidation are concerned.

Administrator: The Subdivision and Land Development Administrator or other individual authorized by the LCPC to administer and enforce the provisions of this Ordinance.

Agricultural Purposes: The use usually of more than ten (10) acres of land for the purpose of producing agricultural commodities, which shall include but not be limited to: growing grains, fruits, vegetables, nursery plants, Christmas trees, or timber, raising poultry or livestock, or producing agricultural commodities through dairying or greenhouse production. In some instances, the use of land for agricultural purposes may involve the construction of barns, silos, feed lots, and/or farm-related accessory and principal buildings.

Alley: A public or private way permanently reserved as a secondary means of access to abutting property.

Anchoring System: A system of tie-downs and anchors designed and installed on mobile home pads in accordance with the standards of the PA Department of Community and Economic Development to resist the flotation, collapse, and lateral movement of mobile homes.

Applicant: A landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors, and assigns.

Application for Development: Every application, whether preliminary, tentative or final. Required to be filed and approved prior to start of construction or development, including but not limited to an application for a building permit, zoning permit, for the approval of a subdivision plat or plan or for the approval of a land development plan.

Aquifer: A geological unit in which porous and permeable conditions exist and thus are capable of yielding usable amounts of water.

Aquifer Recharge Area: An area that has soils and geological features that are conducive to allowing significant amounts of surface water to percolate into groundwater.

Block: A unit of land area usually somewhat square or rectangular in shape that is bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways, or any other barrier to the continuity of development.

Bufferyard: An area of land together with a specified type and amount of plantings and any structures of earth-berms or wall and fences which may be required to be installed to mitigate conflicts between land uses at the time of land development, inclusive of peripheral street bufferyards.

Building: Any structure having a roof supported by columns, or enclosed with exterior walls or fire walls and built, erected, and framed of component structural parts.

- a. Building, Principal: The main structure on a given lot designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind.
- b. Building, Accessory: A detached subordinate building, the use of which is customarily incidental and subordinate to that of the principal building, and which is located on the same lot as that occupied by the principal building.

Campground: A tract or tracts of land or any portion thereof used for the purpose of providing two or more spaces for travel trailers or tents, with or without a fee charged for the leasing, renting, or occupancy of such space.

Cartway: The surface of a street, road, highway, or alley and driveway available for vehicular traffic; a roadway.

Centerline: A line located exactly in the center of the width of any cartway, right-of-way, easement, access, road, or street, whether existing or proposed.

Chairman: The Chairman of the Lycoming County Planning Commission (LCPC.)

Clear-cutting: The indiscriminate removal of trees, shrubs, or undergrowth with the intention of preparing real property for non-agricultural, non-timber harvest/regeneration development purposes inclusive of streets and highways. This definition shall not include the selective removal of tree species when the soil is left relatively undisturbed.

Clear Sight Triangle: An area of unobstructed vision at street intersections. It is defined by lines of sight between points at a given distance from the intersection of the street centerlines.

Cluster Development: A development technique design that concentrates buildings in specific areas on a tract to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas, including prime agricultural soils. The remaining land may best be suited to continue as an integral natural system or function that continues to be connected to similar area adjacent to the tract. Also known as rural character design.

Commission: The Lycoming County Planning Commission, noted as LCPC.

Common Open Space: A parcel or parcels of land, an area of water, or a combination of land and water within a development site or subdivision that is designed and intended for the use or enjoyment of residents or employees of a development, not including streets, off-street parking areas, and areas set aside for public facilities.

Community Facility: A building or structure or non-structural improvement such as an easement for utilities or stormwater controls, jointly owned and/or maintained by property owners within a subdivision, or by a governmental agency, to provide a service to the public.

Condominium: A building or group of buildings in which units are owned individually and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis. A condominium may also include a separate interest in other portions of such real property. Condominium association approval may be required as a prerequisite to any individual owner application for land development, zoning, or building permit to have an effect or before placement of such improvement on, in, or within the purview of the condominium association.

Conservation Area: Parcels or portions of land tracts officially designated by the municipality, county, state, or federal agencies or set aside by a land owner with a conservation easement for the protection of historical or environmentally sensitive resources (plant, animal, or geologic) from the disruption from any activity or development that would alter their natural character or integrity or ecological balance and function. Environmentally sensitive and valuable lands protected from any disturbance activity that would alter their ecological integrity, balance, community character, and/or public function, except in cases of overriding public interest. Conservation areas include but are not limited to freshwater marshes, shallow grassy ponds, hardwood swamps, natural stream and river shorelines, certain biota communities, and other areas of significant biological productivity or uniqueness.

Conservation Easement: A legally recorded document whereby a landowner grants a right or interest in real property, parcel or tract, that is intended and appropriate to retaining land or water or historic resources in their natural, scenic, open, wooded, or historic state; such easement to be held in perpetuity or for a specified time by an organization or governmental entity that knowingly accepts responsibility to monitor and maintain that condition or state. As a form of easement, such information (whether existing or proposed) must be illustrated or noted on any plan.

Consultant Engineer: A professional engineer licensed as such in the Commonwealth of Pennsylvania, duly hired as engineer for the Lycoming County Planning Commission to conduct engineering reviews on behalf of the LCPC.

Contour: That horizontal plane which is the same mean elevation from sea level, normally referred to as contour lines on topographic maps.

Conversion Apartment: Dwelling units created by converting a large building (single-unit dwellings, barns, or similar structures) into a multi-unit structure.

County Comprehensive Plan: A land use and growth management plan prepared by the LCPC and adopted by the County Commissioners which establishes broad goals and criteria for municipalities to use in preparation of land use regulations, which includes the Subdivision and Land Development Ordinance (SLDO).

Cul-de-sac: A local street, one end of which is closed and consists of a circular or other acceptable configuration for vehicles to turn around.

Curb: A physically constructed barrier, usually of concrete, asphalt, or other durable weather resistant material used to control access or stormwater flow or to define the edge of a roadway.

DCNR: The Pennsylvania Department of Conservation and Natural Resources, an agency of the Commonwealth charged with management of State parks, forests, and natural resources.

Decision: Final adjudication of any board or other body granted jurisdiction under any land use ordinance or this act to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the court of common pleas of the county and judicial district wherein the municipality lies.

Dedication: The offer and acceptance of conveyance of ownership of a private parcel of land, right-of-way, or roadway to the municipality, county or Commonwealth of Pennsylvania.

Deed: The written instrument of conveyance of land or property, bearing signatures of the parties thereto or their agents.

Deed Restriction: A covenant incorporated into the deed and accepted as obligatory by all signatory parties thereto that specifies a requirement or limitation on the use of that parcel of land as a permanent covenant unless otherwise specified.

Density: The number of dwelling units per acre of land.

DEP: The Pennsylvania Department of Environmental Protection, an agency of the Commonwealth charged with regulation of designated activities in order to protect the environment.

Designated Growth Area: A region within the county or counties described in an adopted municipal or multimunicipal or County Comprehensive Plan. The area preferably includes and surrounds a city, borough or village. And within which residential and mixed use development is permitted or planned for at densities of one unit to the acre or

more, commercial, industrial and institutional uses are permitted or planned for and public infrastructure services are provided or planned.

Detention Basin: A device specifically designed and constructed to slow down or contain stormwater or snowmelt for prevention of damage, erosion and sedimentation.

Determination: Final action by an officer, body or agency charged with the administration of any land use ordinance or applications there under, except the following:

- (1) The governing body;
- (2) The zoning hearing board; or
- (3) The planning agency, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

Development of Regional Significance and Impact: Any land development that because of its character, magnitude, or location has the potential to impact a community to have substantial effect on the health, safety, or welfare of citizens in more than one municipality.

Development Plan: The provisions for development, including a planned residential development, a plat of subdivision, all covenants relating to use, building façade appearance, location and bulk of buildings and other structures, landscaping to be installed, intensity of use or density of development, streets, ways, parking facilities, common open space, and public facilities. The phrase “provisions of the development plan” used herein shall mean the written and graphic materials referred to in this definition.

Developer: Any landowner, agent of such landowner, or tenant with the permission of such landowner who makes or causes to be made a subdivision of land or a land development.

Development: See definition of Land Development.

District, Zoning: A mapped area of a municipality as laid out on the adopted County or municipal zoning map to which a uniform set of land use regulations applies.

Drainage Area: That land or combination of land and water masses that is located within a topographic setting such that stormwater or snowmelt water runoff flows to a specific waterway or watercourse.

Driveway: That portion of a property providing vehicular access between dwellings, parking facilities and uses from a public or private street or right-of-way.

Dropped Curb: A section of curbing that is lowered to the street pavement level to permit access into a property or properties.

Dwelling or Dwelling Unit: Any structure or part thereof designed to be occupied as living quarters for a single household unit. Hotels and boarding/lodging houses are not included.

- a. Dwelling, Attached: A structure designed for and occupied by two (2) or more dwelling units, each having at least one (1) wall in common with an adjacent unit, i.e. townhouse and garden apartment units.
- b. Dwelling, Detached: A freestanding structure intended to be used for a single household.
- c. Dwelling, Mobile Home: See definition of Mobile Home.
- d. Dwelling, Two Unit: A structure consisting of two (2) dwelling units, including twin or double and duplex structures and two - unit conversion apartments. At least a portion of one wall or floor/ceiling is in common with the adjoining dwellings.
- e. Dwelling, Multi-Unit: A structure consisting of three (3) or more dwelling units, including row houses, town houses, apartment buildings, and conversion apartments, or units arranged for condominium ownership consisting of three (3) or more units.

Easement: A defined right of use or privilege granted to a person, government agency, or public utility company for a designated limited use of land for a private, public, or quasi-public purpose.

Elevation: The vertical position from mean sea level expressed in standard units of linear measure as specified by the U.S. Geological Survey.

Equivalent Dwelling Unit: The term of measurement used in sewage calculations, stating an amount of sewage flows usually in gallons per day (gpd.) A single family residence may have an equivalent dwelling unit at 400 gpd flow, and multi-family dwelling, institutional or industrial (non-residential) sewage flows are assigned equivalent dwelling units based on DEP criteria of 400 gpd of flow. Source: DEP Chapter 71.1; 73.17

Erosion and Sedimentation Control: Design, construction, and on-going operational measures intended to manage the flow of surface water runoff so as to prevent erosion and sediment buildup in waterway channels.

Facade: The exterior wall of a building exposed to public view or that wall viewed by persons not within the building.

Financial Security: Any form of performance bond or other security that shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct business within the Commonwealth.

Note: If discrepancies arise, the current Federal Emergency Management Agency flood related definitions shall supersede the flood definitions below.

Flood: A temporary inundation of normally dry land areas.

- a. Flood, One Hundred Year: A flood that, on the average, is likely to occur once every 100 years, i.e. that has a one percent chance of being equaled or exceeded in any given year; for the purposes of this Ordinance, the Regulatory Flood.
- b. Flood, Regulatory: A flood having a one percent (1%) chance of being equaled or exceeded in any given year; the one hundred (100) year flood.

Flood Fringe: That portion of the one hundred (100) year floodplain outside the floodway.

Flood Hazard Area: The boundary of this area shall coincide with the boundary of the one hundred (100) year flood. A relatively flat or low land area adjoining a stream, river, or watercourse that is subject to partial or complete inundation, or any area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain: For the purposes of this Ordinance, the floodplain shall be defined the same as the Flood Hazard Area.

Floodway: The designated channel or area of a river or other watercourse and the adjacent land areas required to carry and discharge floodwaters of a given magnitude. For purposes of this Ordinance, the floodway shall be capable of accommodating a flood of the one hundred (100) year magnitude.

Floor Area, Gross: The sum of the areas of the several floors of a building, including areas used for human occupancy in basements, attics, and penthouses, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics not used for human occupancy, or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of any Ordinance, or any such floor space intended and designed for accessory heating and ventilating equipment. It shall include the horizontal area at each floor level devoted to stairwells and elevator shafts.

The sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls. The term gross floor area shall include basements; elevator shafts; stairwells at each story; floor space used for mechanical equipment with structural headroom of six feet, six inches (6'6") or more; penthouses;

attic space, whether or not a floor has actually been laid, providing structural headroom of six feet, six inches (6' 6") or more; interior balconies; and mezzanines.

Floor Area Ratio: Determined by dividing the gross floor area of all buildings on a lot by the area of that lot.

Forestry: The management of forests, timberlands, and woodlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting, and selling trees for commercial purposes that do not involve any *land development*.

Frontage: The front or frontage is that side of a lot abutting on a street or way and ordinarily regarded as the front of the lot, but it shall not be considered as the ordinary side line of a corner lot.

Full-time Residential Occupancy: Continuous use of a lot or parcel for residential purposes. In general, uninterrupted occupancy of a lot or parcel for a period of more than one (1) month at any given time during a year shall be considered continuous use of the lot or parcel.

Future Growth Area: An area of a municipal or multimunicipal plan outside of and adjacent to a designated growth area where residential, commercial, industrial, and institutional uses and development are permitted or planned at varying densities and the public infrastructure services may or may not be provided. Future development at greater densities is planned to be accompanied by an orderly extension or provision of public infrastructure services.

Grade: The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line, or, when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building. Can also refer to the average finished ground level of land along a given side of a building or facility. When stated *at grade*, the term shall mean at the specified surface elevation level. See definition of Slope.

Greenway: A greenway is a corridor of open space. It may vary in scale from narrow ribbons of green that run through urban, suburban, and rural areas to wider corridors that incorporate diverse natural, cultural, and scenic features. They can incorporate both public and private property and can be either land or water based or both. They may follow old railways or canals, ridge tops, stream corridors, shorelines, or wetland. As feasible water trails for non-motorized craft and paths for non-motorized vehicles may be included. These may be platted as easements, rights-of-way, or as fee simple lot descriptions.

Gross Leasable Area: Total floor area of commercial buildings for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors if any, expressed in

square feet and measured from the centerline of joint partitions and from outside wall faces.

Homeowners Association: A formally constituted nonprofit association or corporation made up of the property owners and/or residents of a given area or development or condominium owners association which may, if legally constituted to do so, take permanent responsibility for owning, operating, and maintaining various common properties.

Impervious Surface: Any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land, or any surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Impervious surface shall include materials such as compacted sand, limerock, or clay, as well as most conventionally surfaced streets, roofs due to building coverage, sidewalks, parking areas, graveled driveways and other similar structures.

Improvement Agreement: A binding written agreement guaranteeing the applicant will install the required improvements along with a deposit consisting of cash, a bond, a binding letter of credit, escrow account, or negotiable securities acceptable to the municipality. The agreement designates the municipality as having the unrestricted right to withdraw such funds to complete the required improvements upon failure by the applicant to install the required improvements.

Improvements: Those physical additions, community facilities and changes to the land that may be necessary to produce usable and desirable lots.

Intensive Development: Land uses with higher impacts from density of dwelling units per acre, building sizes, traffic, environmental effects, etc... or uses compared to other lower impact developments within a given area (such as two-dwellings per acre, multifamily, commercial, or industrial).

Intermittent Recreational Use: Use of a lot or parcel for other than full time occupancy, for seasonal or leisure time, and for other recreational activities whether public or private.

Junkyard: Any area, lot, land, parcel, building or structure or part thereof used for the storage, collection, processing, purchase, sale, or abandonment of wastepaper, rags, scrap metal or other scrap or discarded goods, materials, machinery, two or more unregistered, inoperable motor vehicles, or other type of junk.

Land Development:

- (1) The improvement of one (1) lot or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (a) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single non-residential building inclusive of multi-family dwellings in a single structure on a lot or lots regardless of the number of occupants or tenure; or

(b) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features.

(2) A subdivision of land into lots for the purpose of conveying such lots singly or in groups to any person, partnership or corporation for the purpose of the erection of buildings by such person, partnership or corporation.

(3) Development in accordance with Section 503 (1.1) of the PAMPC.

Land development types include:

Development, Commercial: The subdivision or development of a tract of land into lots or spaces which are designed and intended for commercial purposes, including, but not limited to shopping centers, motels, eating establishments, truck service centers, business or professional services and offices, specialty retail and other similar types of development.

Development, Industrial: The subdivision or development of a tract of land into lots or spaces which are designed and intended for industrial purposes, including, but not limited to industrial parks, multi-tenant buildings, manufacturing or assembly, bulk storage and distribution, warehouse, trucking or delivery/mailing terminals and other similar types of development.

Development, Institutional: The subdivision or development of a tract of land into lots or spaces which are designed and intended for institutional purposes, including, but not limited to schools, hospitals, nursing homes, sheltered care homes, prisons, municipal buildings, or other such structures used for public, semi-public or private purposes.

Development, Recreational: The subdivision or development of a tract of land into lots or buildings which are designed and intended for intermittent recreational use and do not have potential for full-time residential occupancy. In general, lots adjacent or proximate to all roads or highways shall be considered to have potential for full-time occupancy.

Development, Residential: The subdivision or development of a tract of land into lots which are designed and intended for full time residential occupancy.

Land Development (minor): Any land development involving no more than the placement or construction of one additional single-family detached dwelling and customarily related improvements and accessory structures on a lot of record; or other land development not involving required infrastructure improvements and involving no more than 2,500 square feet of proposed building footprint improvement to the land surface area.

Land Development (major): Any land development not qualifying as a minor land development.

Landowner: The legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

Land Use Ordinance: Any municipal ordinance or map adopted pursuant to the authority granted in Articles IV, V, VI and VII of the PAMPC. Aspects of this Ordinance may interface with the respective land use ordinance for the purposes of land development and subdivisions.

LCPC: The Planning Commission of Lycoming County

Leveling Area: A safe stopping area at the intersection of streets or the intersection of a driveway and a street that is designed in accordance with the standards of this Ordinance.

Lot: A designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

- a. Lot, Area: The area contained within the property lines of a lot as shown on a subdivision plan, which shall comply with the respective County or Municipal Zoning Ordinance definition for lot area.
- b. Lot, Corner: A lot abutting upon two (2) or more streets, including alleys, at their intersection, or upon two (2) parts of the same street forming an interior angle of less than 135 degrees.
- c. Lot, Depth: The average horizontal distance between front and rear lot lines.
- d. Lot, Flag: Lots that are proposed with narrower frontage on a street than is usually permitted. The panhandle lot shape is an access corridor to the lot(s) located behind other lots with the required street frontage.
- e. Lot, Reverse Frontage: A lot extending between and having frontage on an arterial street and on a minor street, with vehicular access being provided solely from the latter.
- f. Lot, Through or Double Frontage: A lot with front and rear street or alley frontage.
- g. Lot, Width: The width of a lot measured at the front building setback line or at the street frontage that also corresponds to the method of measurement according to any applicable County or Municipal Zoning Ordinance.

Lot Addition: The area of a proposed lot to be subdivided from a tract to be added to an adjacent parcel. A new lot results from forming the residual lot. The new lot from the lot addition is to be treated as one for subdivision, land development and land use purposes.

Lot Consolidation: The creation of a new lot by the removal of internal lot lines of existing adjacent lots.

Lot of Record: Any lot that has been recorded in the office of the Recorder of Deeds of Lycoming County, Pennsylvania.

Lot, Substandard: A lot that has been recorded as a legally created lot prior to the effective date of the Ordinance codified in this title, but which has less than the required minimum area, width or other dimensional aspects established by the zoning district in which it is located.

Mediation: A voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement that the parties themselves create and consider acceptable.

Mobile Home: A transportable single family dwelling intended for permanent occupancy, office or place of assembly contained in one (1) unit, or in two (2) or more units designed to be joined into one (1) integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation. Minor assembly includes approved connections to potable water, sewer, and electrical services.

Mobile Home Lot: A parcel or contiguous parcels of land in a mobile home park improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobile home that is leased by the park owner to the occupants of the mobile home erected on the lot.

Mobile Home Park: A parcel or contiguous parcels of land that has been so designated and improved that it contains two (2) or more mobile home lots for the placement thereon of mobile homes.

Multi-Unit Residential: More than one (1) dwelling or dwelling unit in a single building or an arrangement of multiple single-family detached dwellings as a unified land development.

Municipal Authority: A body politic and corporate created pursuant to the act of May 2, 1945 (P.L. 382, No. 164), known as the “Municipality Authorities Act of 1945”.

Municipal Engineer: A professional engineer licensed as such in the Commonwealth of Pennsylvania and duly appointed as the consulting engineer for a municipality, planning agency, or joint planning commission.

Municipality: A city, borough, or township located within Lycoming County, including the County.

New Construction: Structures for which the start of construction commenced on or after the effective date of this Ordinance, including any subsequent construction.

Open Space: An area that is intended to provide light and air and is designed for either environmental, scenic, resource protection, or recreational purposes. Open space may include but is not limited to lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, farm fields and pastures, wooded areas, and water courses and water bodies. Open space shall not include driveways, parking lots, or other surfaces designed or intended for vehicular travel.

Pavement: A sub-base, base course or surface course placed on a sub-grade to support vehicle or traffic load.

PCD Staff: The Lycoming County Planning and Community Development Department staff

Plan/Plat: A drawn map or plan of a subdivision or land development, whether sketch, preliminary or final. See also definition of Subdivision Plan.

Planning Agency: A planning commission, planning department or a planning committee of the governing body.

Preservation or Protection: When used in connection with natural and historic resources, shall include means to conserve and safeguard these resources from wasteful and destructive use, but shall not be a restriction of forestry, mining, or other uses of natural resources which have been duly permitted.

Production Building: Development of a tract of land, or portion thereof, for a building used for oil and gas operations such as: a compressor station, processing plant, or metering station used as a midstream operation supporting oil and gas production.

Public Grounds:

- (1) Parks, playgrounds, trails, paths and other recreational areas and other public areas.
- (2) Sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities.
- (3) Publicly owned or operated scenic and historic sites.

Public Hearing: A formal meeting held pursuant to public notice by the governing body or planning agency that intends to inform and obtain public comment prior to taking action in accordance with this Ordinance.

Public Infrastructure Area: A designated growth area and all or any portion of a future growth area described in a county or multimunicipal comprehensive plan where 1) public infrastructure services will be provided and 2) outside of which such public infrastructure services will not be required to be publicly financed.

Public Infrastructure Services: Services that are provided to areas with densities of one or more dwelling units to the acre. May include sanitary sewers and facilities for the collection and treatment of sewage, water lines and facilities for the pumping and treating of water, parks, greenways and open space, streets and sidewalks, public transportation, and other services that may be appropriate within the growth area, but shall exclude fire protection and emergency medical services and any other service required to protect the health and safety of residents.

Public Meeting: A forum held pursuant to notice under the act of July 3, 1986 (P.L. 388, No. 84), known as the “Sunshine Act.”

Public Utility: Any closely regulated agency which under public franchise or ownership provides/distributes/collects/transmits/disposes for and to the public: water, storm and sanitary sewage, oil, rail, electricity, gas, steam, telecommunication, telephone, transportation or other similar service. Also includes the use of land for utility purposes whether or not owned, controlled or operated by a public entity whose services are performed for the public.

Quasi Public Utility: Essentially a public use although under some degree of private use or control.

Recreational Vehicle: A vehicular type of portable structure without permanent foundation that can be towed, hauled, or driven and is primarily designed as temporary living accommodation for recreational, camping, and travel use. Includes but is not limited to travel trailers, truck campers, camping trailers, and self-propelled motor homes.

Recreational Vehicle Park: Any site upon which two (2) or more recreational vehicles are to be located, or maintained, or established for occupancy by recreational vehicles of the general public as temporary living quarters.

Regulatory Flood Elevation: The one hundred (100) year flood elevation plus a freeboard safety factor of one and one-half (1-1/2) feet.

Report: Any letter, review, memorandum, compilation, or similar writing made by any body, board, officer, or consultant other than a solicitor to any other body, board, officer, or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body, or agency, nor shall any appeal lie therefrom. Any report used, received, or considered by the body, board, officer, or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

Required Improvements: Infrastructure supporting subdivision and land development that must be designed and constructed in accordance with the standards herein prior to final plan approval. If installed after final plan approval, the improvement agreement is required as a condition of approval.

Residual Property: The lot or parcel created through subdivision that is the remaining portion of the parent tract. The residual property shall be considered as an integral part of the proposed subdivision and shall be required to meet the standards of this Ordinance as it is a new lot.

Right-of-Way: A specific type of easement being limited to use for passage over another person's land; for example, an easement for vehicular passage or public utility passage such as electric transmission line, water main, oil or gas pipeline, sanitary or storm sewer main, shade trees, or other special use.

Right-of-Way, Future: The planned ultimate width of an existing right-of-way based on the criteria established by this Ordinance, applicable County or municipal plans, Official Map per PAMPC Section IV, or PennDOT requirements to attain a certain standard.

Road, Private: A way open to vehicular ingress and egress established as a separate tract for the benefit of certain, adjacent properties. This definition shall not apply to driveways. See also Right-Of-Way and Street.

Road, Public: All public property reserved or dedicated for street traffic. See definitions of Right-of-Way and Street.

Screen Planting: A barrier to mitigate visibility, glare, and noise between adjacent properties made of plant materials such as trees or shrubs that shall be of such indigenous species at time of installation of: six (6) feet in height for conifer trees, two (2) inch caliper trunk size for deciduous trees, and average four (4) foot tall shrubs as will produce a visual screen. Additional techniques include fences, walls, and earth berms or a combination of plants and other techniques.

Service or Auxiliary Park Building for Mobile Home Parks: A structure housing operational, office, recreational, park maintenance, and other facilities built to conform to required local standards.

Setback: The horizontal distance between a structure and a street line or property line.

Shopping Center: A group of commercial establishments planned, developed, owned, and managed as a unit and related in location, size, and type of shops to the trade area that the unit serves. It provides on-site parking in definite relationship to the types and sizes of establishments that most conform to the uses permitted in the zoning district. The portions of the site may be leased, owned by a single owner, or in condominium arrangement.

Shoulder: Portion of the roadway that is adjacent to the cartway and is provided for lateral support of the pavement, emergency stopping, and a minimal amount of recovery area beyond the pavement edge.

Significant Man-Made Feature(s): Above ground or underground man-made features in the context of any particular tract in place at the time of plan survey and that may relate to a structure, building, or complex of buildings that those features may continue off the edges of the tract including but not limited to:

- (1) Any structure that could a) be within any building setback, b) be located on or over any lot line, or c) pertain to any water or gas facility such as a pump house or holding tank;
- (2) Any mobile structure;
- (3) Any possible structure associated with essential services, hazardous materials, and certain exterior storage of fuel, raw materials, products, or equipment;
- (4) Solid waste storage equipment, lumberyard building materials, waste and scrap materials, truck beds, and truck trailers.

Significant Natural Feature(s): Natural features in the context of any particular tract. May also relate to a system or continuation of the feature off the edges of the tract including, but not limited to:

- (1) Steep (15+ %) or severe (25+ %) slopes.
- (2) Natural area, which is an area protected and maintained as permanent open space where disturbance from development activities (other than trails and limited outdoor recreation) is prohibited. This includes area such as federal, state, or conservation agency designated terrain.
- (3) Ridges, as any area of 30% slope or greater surrounding an area of less than 30% slope.
- (4) Wetlands, which includes area(s) where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and that have soils indicative of wet conditions.
- (5) Woodlands, which includes area(s) of planted material covering one (1) acre or more consisting of thirty (30) percent or more of canopy trees having an eight (8) inch or greater caliper, or any grove consisting of eight (8) or more trees having a ten (10) inch or greater caliper.
- (6) Cliffs or rock outcroppings, which are a type of escarpment that is so steep that only the stone is exposed and only small pockets of vegetation are exposed to view.
- (7) Prime agricultural soils rated Class I, II, and III soils as found in the County Soil Survey Book (November 1986) and the County Agricultural Preservation Board.
- (8) Conservation easement areas held by organizations such as the Agricultural Preservation Board, or any conservation agency, government agency, land trust, etc.
- (9) Natural features that represent a unique and important species, represent significant growth, and/or may present a limitation or attribute to the future subdivision and use of property in accordance with Section 4.02 of the County Subdivision Ordinance.

Site Plan: A plan prepared to a graphic scale showing accurately and with complete dimensioning the boundaries of a site and the location of all buildings, structures, uses, and principal site development features proposed for a specific parcel of land. The plan may also contain sketches, text, drawings, maps, photographs, and other material intended to present and explain certain elements of a proposed development, including physical design, siting of buildings and structures, elevations to ascertain exterior appearance, interior vehicular and pedestrian access, the provision of improvements, and the interrelationship of these elements.

Slope: The ratio of rise or fall of the surface elevation line to its length, normally expressed as a certain percent grade or slope, or as so many feet of vertical rise or fall per so many feet horizontal distance. See the definition of Grade.

Special Permit: A special approval issued by the PA Department of Community Affairs, its successor (Department of Community and Economic Development), or a local municipality in accordance with Section 38.6 of DCA's Floodplain Management Regulations for specific types of development and obstructions that present a special hazard to the health and safety of the public or occupants or may result in significant pollution, increased flood levels or flows, or debris endangering life or property when such development or obstructions are located in all or a designated portion of a floodplain.

Specific Plan: A detailed plan for mixed-use development of an area covered by a county, municipal or multimunicipal comprehensive plan, which plan for development when approved and adopted by the participating municipalities through ordinances and agreements supersedes all other applications.

Stabilized: The proper placing, grading and/or screening of soil, earth, or rock to insure resistance to erosion, sliding, or other movement.

State Land Use and Growth Report: A comprehensive land use and growth management report to be prepared by the PA Center for Local Government Services and that shall contain information, data and conclusions regarding growth and development patterns in this Commonwealth and offer recommendations to commonwealth agencies for coordination of executive action, regulation and programs.

Stormwater Management Plan: A plan for managing stormwater runoff prepared by the applicant in accordance with the standards of this Ordinance.

Street: A strip of land including the entire right-of-way for a street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, or any other way intended for use as a means of vehicular and pedestrian circulation.

- a. Street, Alley or Service Drive: A minor privately or publicly owned right-of-way that provides a secondary access primarily for service to the back or sides of

properties and alleviates installing driveway entrances with arterials and/or collectors.

- b. Street, Cul-de-Sac: A street intersecting another street at one end and terminating at the other in a vehicular turn-around, either permanent or temporary for a phased layout.
- c. Street, Local: Streets within subdivisions and developments, including marginal access streets and cul-de-sac streets, which are characterized by short street lengths and low operating speeds. Through traffic is discouraged. Desirable operating speeds from 10-25 mph.
- d. Street, Major Collector: 1) Streets that provide access within the county/municipality serving some traffic generators and community centers; 2) streets that provide connection to the State Highway Network System. Desirable operating speeds from 35-45 mph.
- e. Street, Marginal Access: Streets that are parallel and adjacent to arterial or limited access highways and are intended to provide access to abutting properties and control intersections along collector or arterial streets.
- f. Street, Minor Arterial: Streets or highways that normally are designated State routes serving major generators and population centers. Desirable operating speeds from 45-55 mph.
- g. Street, Minor Collector: 1) Streets that access or pass through large subdivisions and developments; 2) connecting streets that move traffic into and between subdivisions and developments. Desirable operating speeds from 30-35 mph.
- h. Street, Principal Arterial: Streets or highways that are normally designated State routes or U.S. routes serving statewide or regional travel and provide an integrated network of connections to other arterials or interstate highways. Desirable operating speeds are set by state or federal standards.
- i. Street, Private: All streets and rights-of-way open to the public use not dedicated, accepted, and maintained as public streets and shall normally not be designated as public school bus routes or utilized for public services access.
- j. Street, Public: All streets and rights-of-way open to public use and maintained by or dedicated to and accepted by a municipality, the County, the State, or the Federal Government.

Street Line: The limit of a street right-of-way property line or property line.

Street System: All public and private streets and rights-of-way intended for use as a means of vehicular circulation.

- a. Street System, Municipal: All public streets and rights-of-way maintained by local municipalities, including local streets and minor and major collector streets.
- b. Highway System, State: All public streets and rights-of-way maintained by PennDOT, including minor and major collector streets, arterial highways, and Interstate highways.

Structure: Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land, excluding fences and poles, recreational equipment and other similar objects. Includes but is not limited to buildings, sheds, manufactured homes, and other similar objects.

Subdivider or Developer: Any landowner, agent of such landowner, or tenant with the permission of such landowner who makes or causes to be made a subdivision of land or a land development.

Subdivision: The division or redivision of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other divisions of land. It includes changes in existing lot lines, for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership, or building or lot development.

Subdivision and Land Development Administrator: The individual or designee of the Executive Director authorized by the LCPC to administer and enforce this Ordinance.

Subdivision, Major: Any subdivision not qualifying as a minor subdivision

Subdivision, Minor: Any subdivision that meets the following two criteria: it does not involve required public infrastructure improvements and involves only one (1) new parcel and/or any number of lot additions, known as lot-adds

Subdivision Plan: A proposal to subdivide, resubdivide or develop one (1) or more tracts of land. The plan shall include the proposed layout of the subdivision or land development and shall be accompanied by all other supplementary materials required by this Ordinance when submitted for consideration.

- a. Plan, As-built: The complete and exact plan of the approved subdivision or land development plan site elements that have been installed, prepared to ascertain compliance with official approval and suitable to be recorded.
- b. Plan, Final: A complete and exact subdivision plan prepared for official approval and recording as required by statute.

- c. Plan, Lot-Addition: A final subdivision plan that includes any number of lots subdivided that are to be added to an adjacent land of another or the same owner that also results in a lot consolidation.
- d. Plan, Multi-Lot: A subdivision plan proposing the creation of two (2) or more new lots or parcels and a residual parcel. The plan shall be described by the number of new lots created, i.e. a plan creating two (2) new lots and a residual parcel shall be described as a two-lot subdivision plan.
- e. Plan, Preliminary: A subdivision plan of lesser detail than the final plan that indicates the approximate proposed layout of a subdivision as a basis for consideration prior to preparation of the final plan.
- f. Plan, Single lot: A subdivision plan proposing the creation of one (1) new lot or parcel and a residual parcel.
- g. Plan, Sketch: An informal plan not necessarily to exact scale that indicates salient existing features of a tract and its surroundings and the general layout of a proposed subdivision.

Substantially Completed: Where, in the judgment of the LCPC or consultant engineer, at least 90% (based on the cost of the required improvements for which financial security was posted pursuant to section 509 of the PAMPC) of those improvements required as a condition for final approval have been completed in accordance with the approved plan, so that the project will be able to be used, occupied or operated for its intended use.

Surveyor: A licensed professional land surveyor registered in Pennsylvania.

Traditional Neighborhood Development: Development with a general hierarchy of streets laid out in a rectilinear or grid or modified grid pattern of interconnecting streets that may include alleys and blocks that provides multiple routes from origins to destinations and are appropriately designed to equally serve pedestrian and vehicle needs. The area of land developed is characterized by an existing or proposed: compatible mixture of residential units for various income levels with nonresidential commercial and workplace uses, including some structures that provide a mix of uses within the same building. Adaptive re-use of existing buildings may provide this mixed-use function. Residences, shops, offices, workplaces, public buildings, and parks, trails and greenway networks are interwoven within the neighborhood so that all are within relatively close proximity to each other. Traditional neighborhood development is relatively compact, limited in size and oriented toward pedestrian activity, lending its configuration to be a benefit to a healthy community. It has an identifiable center and a discernable edge. The center is in the form of a park, commons, plaza, square or prominent intersection of two or more major streets.

Trip: As defined in the ITE (Institute of Transportation Engineers) trip generation manual

Water Course: Any river, stream, run, drainage way, lake, pond, or other body of water appearing as a permanent or intermittent waterway on U. S. Geological Survey maps.

Water Facility: Any water works, water supply, treatment plant, storage and distribution structures, equipment, components or parts thereof designed, intended, and constructed to provide potable water.

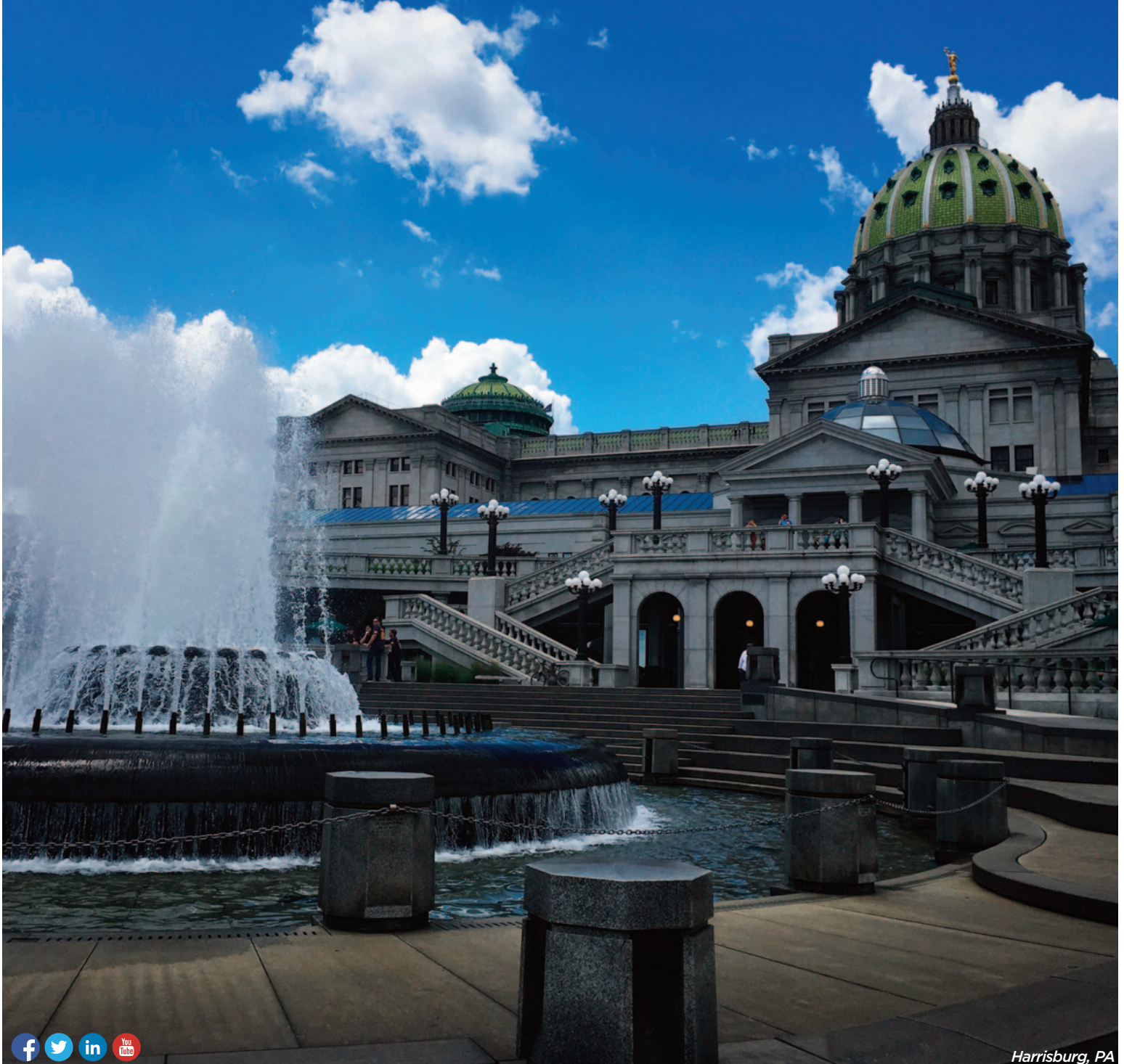
Water survey: An inventory of the source, quantity, yield and use of groundwater and surface-water resources within a municipality.

Water System: A system for the provision of water to individual lots or the public for human consumption.

- a. Water System, Non-Public: All water systems that are not public water systems.
- b. Water System, Public: A water system, as defined by the PA DEP that has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

PENNSYLVANIA MUNICIPALITIES PLANNING CODE

Act of 1968, P.L.805, No.247 as reenacted and amended.
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Current Publications relating to planning and land use regulations available from the Center include:

Pennsylvania Municipalities Planning Code (Act 247, as amended)

Planning Series

- #1 Local Land Use Controls in Pennsylvania
- #2 The Planning Commission
- #3 The Comprehensive Plan
- #4 Zoning
- #5 Technical Information on Floodplain Management
- #6 The Zoning Hearing Board
- #7 Special Exceptions, Conditional Uses and Variances
- #8 Subdivision and Land Development
- #9 The Zoning Officer
- #10 Reducing Land Use Barriers to Affordable Housing

NOTE: These publications are periodically revised or updated to reflect changes in Pennsylvania planning law.

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An Act

To empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second class through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts, adding definitions; providing for intergovernmental cooperative planning and implementation agreements; further providing for repeals; and making an editorial change, further providing for the purpose of the act; adding certain definitions; further providing for various matters relating to the comprehensive plan and for compliance by counties; providing for funding for municipal planning and for neighboring municipalities; further providing certain ordinances; adding provisions relating to projects of regional impact, providing for traditional neighborhood development; further providing for grant of power, for contents of subdivision and land development ordinance, for approval of plats and for recording of plats and deeds; and providing for municipal authorities and water companies and for transferable development rights, further providing for recording plats and deeds, for applicability of ordinance amendments and for validity of ordinance amendments and for validity of ordinance and substantive questions, further providing for planning commission, for zoning ordinance amendment, for procedure for landowner curative amendments, for certain findings, for hearings and for governing body's functions, further providing for purpose of act; defining "no-impact home-based business" and further providing for ordinance provisions, for procedure for landowner curative amendments, for hearing and for governing body's functions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Article 1 – General Provisions

Section 101. Short Title. This act shall be known and may be cited as the “Pennsylvania Municipalities Planning Code.”

Section 102. Effective Date. This act shall take effect January 1, 1969.

Section 103. Construction of Act. The provisions of this act shall not affect any act done, contract executed or liability incurred prior to its effective date, or affect any suit or prosecution pending or to be instituted, to enforce any right, rule, regulation, or ordinance or to punish any offense against any such repealed laws or against any ordinance enacted under them. All ordinances, resolutions, regulations and rules made pursuant to any act of Assembly repealed by this act shall continue in effect as if such act had not been repealed, except as the provisions are inconsistent herewith. The provisions of other acts relating to municipalities other than cities of the first and second class and counties of the second class are made a part of this act and this code shall be construed to give effect to all provisions of other acts not specifically repealed.

Section 104. Constitutional Construction. The provisions of this act shall be severable, and if any of its provisions shall be held to be unconstitutional, the validity of any of the remaining provisions of this act shall not be affected. It is hereby declared as the legislative intention that this act would have been adopted had such unconstitutional provision not been included therein.

Section 105. Purpose of Act. It is the intent, purpose and scope of this act to protect and promote safety, health and morals; to accomplish coordinated development; to provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic, practical, and social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions; to guide uses of land and structures, type and location of streets, public grounds and other facilities; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; to promote the preservation of this Commonwealth's natural and historic resources and prime agricultural land; to encourage municipalities to adopt municipal or joint municipal comprehensive plans generally consistent with the county comprehensive plan; to promote small business development and foster a business-friendly environment in this Commonwealth; to ensure that municipalities adopt zoning ordinances which are generally consistent with the municipality's comprehensive plan; to encourage the preservation of prime agricultural land and natural and historic resources through easements, transfer of development rights and rezoning; to ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable; to encourage the revitalization of established urban centers; and to permit municipalities to minimize such problems as may presently exist or which may be foreseen and wherever the provisions of this act promote, encourage, require or authorize governing bodies to protect, preserve or conserve open land, consisting of natural resources, forests and woodlands, any actions taken to protect, preserve or conserve such land shall not be for the purposes of precluding access for forestry.

Section 106. Appropriations, Grants and Gifts. The governing body of every municipality is hereby authorized and empowered to make such appropriations as it may see fit, to accept gifts, grants or bequests from public and private sources for the purpose of carrying out the powers and duties conferred by this act, and to enter into agreements regarding the acceptance or utilization of such grants, gifts or bequests further providing for recording plats and deeds, for applicability of ordinance amendments and for validity of ordinance and substantive questions.

Section 107. Definitions.

(a) The following words and phrases when used in this act shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Agricultural operation,” an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes

an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

“Applicant,” a landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors and assigns.

“Application for development,” every application, whether preliminary, tentative or final, required to be filed and approved prior to start of construction or development including but not limited to an application for a building permit, for the approval of a subdivision plat or plan or for the approval of a development plan.

“Appointing authority,” the mayor in cities; the board of commissioners in counties; the council in incorporated towns and boroughs; the board of commissioners in townships of the first class; and the board of supervisors in townships of the second class; or as may be designated in the law providing for the form of government.

“Authority,” a body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the “Municipality Authorities Act of 1945.”

“Center for Local Government Services.” The Governor’s Center for Local Government Services located within the Department of Community and Economic Development.

“City” or “cities,” cities of the second class A and third class.

“Common open space,” a parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of a development, not including streets, off-street parking areas, and areas set aside for public facilities.

“Conditional use,” a use permitted in a particular zoning district pursuant to the provisions in Article VI.

“Consistency,” an agreement or correspondence between matters being compared which denotes a reasonable rational, similar, connection or relationship.

“County,” any county of the second class through eighth class.

“County Comprehensive Plan,” a land use and growth management plan prepared by the county planning commission and adopted by the county commissioners which establishes broad goals and criteria for municipalities to use in preparation of their comprehensive plan and land use regulation.

“Designated growth area,” a region within a county or counties described in a municipal or multimunicipal plan that preferably includes and surrounds a city, borough or village, and within which residential and mixed use development is permitted or planned for at densities of one unit to the acre or more, commercial, industrial and institutional uses are permitted or planned for and public infrastructure services are provided or planned.

“Developer,” any landowner, agent of such landowner, or tenant with the permission of such land-owner, who makes or causes to be made a subdivision of land or a land development.

“Development of regional significance and impact,” any land development that, because of its character, magnitude, or location will have substantial effect upon the health, safety, or welfare of citizens in more than one municipality.

“Development plan,” the provisions for development, including a planned residential development, a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase “provisions of the development plan” when used in this act shall mean the written and graphic materials referred to in this definition.

“Electronic notice,” notice given by a municipality through the Internet of the time and place of a public hearing and the particular nature of the matter to be considered at the hearing.

“Forestry,” the management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.

“Future growth area,” an area of a municipal or multimunicipal plan outside of and adjacent to a designated growth area where residential, commercial industrial and institutional uses and development are permitted or planned at varying densities and public infrastructure services may or may not be provided, but future development at greater densities is planned to accompany the orderly extension and provision of public infrastructure services.

“General consistency, generally consistent,” that which exhibits consistency.

“Governing body,” the council in cities, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board of commissioners in counties of the second class through eighth class or as may be designated in the law providing for the form of government.

“Land development,” any of the following activities:

- (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
- (2) A subdivision of land.
- (3) Development in accordance with section 503(1.1).

“Landowner,” the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

“Lot,” a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

“Mailed notice,” notice given by a municipality by first class mail of the time and place of a public hearing and the particular nature of the matter to be considered at the hearing.

“Mediation,” a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

“Minerals,” any aggregate or mass of mineral matter, whether or not coherent. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay, anthracite and bituminous coal, coal refuse, peat and crude oil and natural gas.

“Mobilehome,” a transportable, single family dwelling intended for permanent occupancy, contained in one unit, or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

“Mobilehome lot,” a parcel of land in a mobilehome park, improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobilehome.

“Mobilehome park,” a parcel or contiguous parcels of land which has been so designated and improved that it contains two or more mobilehome lots for the placement thereon of mobilehomes.

“Multimunicipal plan,” a plan developed and adopted by any number of contiguous municipalities, including a joint municipal plan as authorized by this act, except that all of the municipalities participating in the plan need not be contiguous, if all of them are within the same school district.

“Multimunicipal planning agency,” a planning agency comprised of representatives of more than one municipality and constituted as a joint municipal planning commission in accordance with Article XI, or otherwise by resolution of the participating municipalities, to address, on behalf of the participating municipalities, multimunicipal issues, including, but not limited to, agricultural and open space preservation, natural and historic resources, transportation, housing and economic development.

“Municipal authority,” a body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the “Municipality Authorities Act of 1945.”

“Municipal engineer,” a professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the engineer for a municipality, planning agency or joint planning commission.

“Municipality,” any city of the second class A or third class, borough, incorporated town, township of the first or second class, county of the second class through eighth class, home rule municipality, or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

“No-impact home-based business,” a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use. The business or commercial activity must satisfy the following requirements:

- (1) The business activity shall be compatible with the residential use of the property and surrounding residential uses.
- (2) The business shall employ no employees other than family members residing in the dwelling.
- (3) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.
- (4) There shall be no outside appearance of a business use, including, but not limited to, parking, signs or lights.
- (5) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
- (6) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (7) The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.
- (8) The business may not involve any illegal activity.

“Nonconforming lot,” a lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

“Nonconforming structure,” a structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

"Nonconforming use," a use, whether of land or of structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

"Official map," a map adopted by ordinance pursuant to Article IV.

"Planned residential development," an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, or combination of residential and nonresidential uses, the development plan for which does not correspond in lot size, bulk, type of dwelling, or use, density, or intensity, lot coverage and required open space to the regulations established in any one district created, from time to time, under the provisions of a municipal zoning ordinance.

"Planning agency," a planning commission, planning department, or a planning committee of the governing body.

"Plat," the map or plan of a subdivision or land development, whether preliminary or final.

"Preservation or protection," when used in connection with natural and historic resources, shall include means to conserve and safeguard these resources from wasteful or destructive use, but shall not be interpreted to authorize the unreasonable restriction of forestry, mining or other lawful uses of natural resources.

"Prime agricultural land," land used for agricultural purposes that contains soils of the first, second or third class as defined by the United States Department of Agriculture natural resource and conservation services county soil survey.

"Professional consultants," Persons who provide expert or professional advice, including, but not limited to, architects, attorneys, certified public accountants, engineers, geologists, land surveyors, landscape architects or planners.

"Public grounds," includes:

- (1) parks, playgrounds, trails, paths and other recreational areas and other public areas
- (2) sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities
- (3) publicly owned or operated scenic and historic sites.

"Public hearing," a formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act.

"Public infrastructure area," a designated growth area and all or any portion of a future growth area described a county or multimunicipal comprehensive plan where public infrastructure services will be provided and outside of which such public infrastructure services will not be required to be publicly financed.

"Public infrastructure services," services that are provided to areas with densities of one or more units to the acre, which may include sanitary sewers and facilitates for the collection and treatment of sewage, water lines and facilitates for the pumping and treating of water, parks and open space, streets and sidewalks, public transportation and other services that may be appropriated within a growth area, but shall exclude fire protection and emergency medical services and any other service required to protect the health an safety of residents.

"Public meeting," a forum held pursuant to notice under 65 Pa. C.S. CH. 7 (Relating to open meetings).

"Public notice," notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

"Regional planning agency," a planning agency that is comprised of representatives of more than one county. Regional planning responsibilities shall include providing technical assistance to counties and municipalities, mediating conflicts across county lines and reviewing county comprehensive plans for consistency with one another.

“Renewable energy source,” any method, process or substance whose supply is rejuvenated through natural processes and, subject to those natural processes, remains relatively constant, including, but not limited to, biomass conversion, geothermal energy, solar and wind energy and hydroelectric energy and excluding those sources of energy used in the fission and fusion processes.

“Rural resource area,” an area described in a municipal or multimunicipal plan within which rural resource uses including, but not limited to, agriculture, timbering, mining, quarrying and other extractive industries, forest and game lands and recreation and tourism are encouraged and enhanced, development that is compatible with or supportive of such uses is permitted, and public infrastructure services are not provided except in villages.

“Special exception,” a use permitted in a particular zoning district pursuant to the provisions of Articles VI and IX.

“Specific plan,” a detailed plan for nonresidential development of an area covered by a municipal or multimunicipal comprehensive plan, which when approved and adopted by the participating municipalities through ordinances and agreements supersedes all other applications.

“State Land Use and Growth Management Report,” a comprehensive land use and growth management report to be prepared by the Center for Local Government Services and which shall contain information, data and conclusions regarding growth and development patterns in this Commonwealth and which will offer recommendations to commonwealth agencies for coordination of executive action, regulation and programs.

“Street,” includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private.

“Structure,” any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

“Subdivision,” the division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: Provided, however, That the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

“Substantially completed,” where, in the judgment of the municipal engineer, at least 90% (based on the cost of the required improvements for which financial security was posted pursuant to section 509) of those improvements required as a condition for final approval have been completed in accordance with the approved plan, so that the project will be able to be used, occupied or operated for its intended use.

“Traditional neighborhood development,” an area of land typically developed for a compatible mixture of residential units for various income levels and nonresidential commercial and workplace uses, including some structures that provide for a mix of uses within the same building. Residences, shops, offices, workplaces, public buildings, and parks are interwoven within the neighborhood so that all are within relatively close proximity to each other. Traditional neighborhood development is relatively compact and oriented toward pedestrian activity. It has an identifiable center and a discernible edge. The center of the neighborhood is in the form of a public park, commons, plaza, square or prominent intersection of two or more major streets. Generally, there is a hierarchy of streets laid out with an interconnected network of streets and blocks that provides multiple routes from origins to destinations and are appropriately designed to serve the needs of pedestrians and vehicles equally.

“Transferable development rights,” the attaching of development rights to specified lands which are desired by a municipality to be kept undeveloped, but permitting those rights to be transferred from those lands so that the development potential which they represent may occur on other lands where more intensive development is deemed to be appropriate.

“Variance,” relief granted pursuant to the provisions of Articles VI and IX.

"Village, an unincorporated settlement that is part of a township where residential and mixed use densities of one unit to the acre or more exist or are permitted and commercial, industrial or institutional uses exist or are permitted.

"Water survey," an inventory of the source, quantity, yield and use of groundwater and surface-water resources within a municipality.

(b) The following words and phrases when used in Articles IX and X-A shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Board," any body granted jurisdiction under a land use ordinance or under this act to render final adjudications.

"Decision," final adjudication of any board or other body granted jurisdiction under any land use ordinance or this act to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the court of common pleas of the county and judicial district wherein the municipality lies.

"Determination," final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the following:

- (1) the governing body.
- (2) the zoning hearing board.
- (3) the planning agency, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions.

Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal. "Hearing," an administrative proceeding conducted by a board pursuant to section 909.1.

"Land use ordinance," any ordinance or map adopted pursuant to the authority granted in Articles IV, V, VI and VII.

"Report," any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant other than a solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

Section 108. Optional Notice of Ordinance or Decision; Procedural Validity Challenges.

(a) It is the intent of this section to allow optional public notice of municipal action in order to provide an opportunity to challenge, in accordance with section 1002-A (b) or section 1002.1-A, the validity of an ordinance or decision on the basis that a defect in procedure resulted in a deprivation of constitutional rights, and to establish a period of limitations for raising such challenges.

(b) Notice that municipal action has been taken to adopt an ordinance or enter a decision, regardless of whether the municipal actions was taken before or after the effective date of this section, 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 the following:

- (1) The governing body of the municipality.
- (2) In the case of a ordinance, any resident or landowner in the municipality.
- (3) 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.

- (c) Each notice shall contain the following:
- (1) If the notice relates to an ordinance:
 - (i) The municipality's ordinance number.
 - (ii) A brief statement of the general content of the ordinance.
 - (iii) The address of the municipal building where the full text of the ordinance may be reviewed by members of the public.
 - (2) If the notice relates to a decision:
 - (i) The name of the applicant or owner of the subject property.
 - (ii) The street address or location of the subject property.
 - (iii) The file number or docket number of the decision.
 - (iv) A brief description of the nature of the decision.
 - (v) The date upon which the decision was issued.
 - (vi) The address of the municipal building where the full text of the decision may be reviewed by members of the public.
 - (3) In addition to the requirements of paragraphs (1) and (2), the publication of each notice authorized by the section shall contain a statement that the publication is intended to provide notification of an ordinance or decision and that any person claiming a right to challenge the validity of the ordinance or decision must bring legal action within 30 days of the publication of the second notice.
 - (4) The person providing notice as authorized by this section shall provide proof of publication to the municipality adopting the ordinance or decision for retention with municipal records. Failure to comply with this paragraph shall not invalidate any notice provided in accordance with this section or the applicability of the period of limitation in subsection (d).
- (d) Notwithstanding this or any other act, in order to provide certainty of the validity of an ordinance or decision, any appeal or action contesting the validity of an ordinance based on a procedural defect in the process of enactment or the validity of a decision based on a procedural or substantive defect shall be dismissed, with prejudice, as untimely if not filed within the 30th day following the second publication of the notice authorized in this section.
- (e) Any appeal or action filed within the 30-day period referred to in subsection (d) shall be taken to court of common pleas and shall be conducted in accordance with and subject to the procedures set forth in 42 Pa.C.S. § 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.) in the case of challenges to ordinances or section 1002.1-A in the case of challenges to decisions.
- (f) Where no appeal or action contesting the procedural validity of an ordinance or the procedural or substantive validity of a decision is filed within the period set forth in subsection (d), the ordinance or decision shall be deemed to be reaffirmed and reissued on the date of the second publication of the optional notice permitted under this section.
- (g) An appeal shall be exempt from the time limitation in subsection (d) only if the party bringing the appeal establishes that the application of the time limitation in subsection (d) would result in an unconstitutional deprivation of due process.
- (h) Nothing in this section shall be construed to abrogate, repeal, extend or otherwise modify the time for appeal as set forth in section 1002-A, where the appellant was a party to proceedings prior to the entry of a decision or otherwise had an adequate opportunity to bring a timely action in accordance with section 1002-A to contest the procedural validity of an ordinance or the procedural or substantive validity of a decision. (108 added July 4, 2008, P.L.319, No.39)

Compiler's Note: Section 6 of Act 39 of 2008, which added section 108, provided that section 108 shall apply beginning on the effective date of an amendment of 42 Pa.C.S. that provides for appeals from ordinances, resolutions, maps and similar actions of a political subdivision. Section 5571.1 of Title 42 (relating to appeals from ordinances, resolutions, maps, etc.) was added July 4, 2008, P.L.325, No.40, effective immediately.

Section 109. Notice. In any case in which mailed notice or electronic notice is required by this act, the following shall apply:

- (1) An owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within a municipality may request that the municipality provide written or electronic notice of a public hearing which may affect such tract or parcel of land.
- (2) Mailed notice shall be required only if an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality 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.
- (3) Electronic notice shall be required only if an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality has made a written request that notice be sent electronically and has supplied the municipality with an electronic address prior to a public hearing and only if that municipality maintains the capability of generating an electronic notice. An owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality making the request and supplying an electronic address may at any time notify the municipality that the owner of the tract or parcel of land located within the municipality or the owner of the mineral rights in the tract or parcel of land within the municipality no longer will accept electronic notice, and, in that event, the municipality may no longer provide electronic notice.
- (4) An owner of a tract or 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 requested a mailed notice shall be solely responsible for the number, accuracy and sufficiency of the envelopes supplied. The municipality shall not be responsible or liable if the owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality does not provide to the municipality notice of any changes in the owner's mailing address.
- (5) An owner of a tract or 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 requested electronic notice shall be solely responsible for the accuracy and functioning of the electronic address provided to the municipality. The municipality shall not be responsible or liable if the owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality does not provide to the municipality notice of any changes to the owner's electronic address.
- (6) A municipality shall deposit a mailed notice in the United States mail or provide electronic notice not more than 30 and not less than seven days prior to the scheduled date of the hearing as shown on the notice.
- (7) 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 list shall constitute a presumption that the notice was given.
- (8) The mailed notice shall be deemed received by an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality on the date deposited in the United States mail.
- (9) The electronic notice shall be deemed received by an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality on the date the municipality electronically notifies the owner.
- (10) Failure of an owner of a tract or parcel of land located within a municipality or an owner of the mineral rights in a tract or parcel of land within the municipality to receive a requested mailed notice or electronic notice shall not be deemed to invalidate any action or proceedings under this act.

Article II – Planning Agencies

Section 201. Creation of Planning Agencies. The governing body of any municipality shall have the power to create or abolish, by ordinance, a planning commission or planning department, or both. An ordinance which creates both a planning commission and a planning department shall specify which of the powers and duties conferred on planning agencies by this act; each shall exercise and may confer upon each additional powers, duties and advisory functions not inconsistent with this act. In lieu of a planning commission or planning department, the governing body may elect to assign the powers and duties conferred by this act upon a planning committee comprised of members appointed from the governing body. The engineer for the municipality, or an engineer appointed by the governing body, shall serve the planning agency as engineering advisor. The solicitor for the municipality, or an attorney appointed by the governing body, shall serve the planning agency as legal advisor.

Section 202. Planning Commission. If the governing body of any municipality shall elect to create a planning commission, such commission shall have not less than three nor more than nine members. Except for elected or appointed officers or employees of the municipality, members of the commission may receive compensation in an amount fixed by the governing body. Compensation shall not exceed the rate of compensation authorized to be paid to members of the governing body. Without exception, members of the planning commission may be reimbursed for necessary and reasonable expenses. However, elected or appointed officers or employees of the municipality shall not, by reason of membership thereon, forfeit the right to exercise the powers, perform the duties or receive the compensations of the municipal offices held by them during such membership.

Section 203. Appointment, Term and Vacancy.

(a) All members of the commission shall be appointed by the appointing authority of the municipality. All such appointments shall be approved by the governing body, except where the governing body is the appointing authority.

(b) The term of each of the members of the commission shall be for four years, or until his successor is appointed and qualified, except that the terms of the members first appointed pursuant to this act shall be so fixed that on commissions of eight members or less no more than two shall be reappointed or replaced during any future calendar year, and on commissions of nine members no more than three shall be so reappointed or replaced.

(c) The chairman of the planning commission shall promptly notify the appointing authority of the municipality concerning vacancies in the commission, and such vacancy shall be filled for the unexpired term. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term according to the terms of this article.

(d) Should the governing body of any municipality determine to increase the number of members of an already existing planning commission, the additional members shall be appointed as provided in this article. If the governing body of any municipality shall determine to reduce the number of members on any existing planning commission, such reduction shall be effectuated by allowing the terms to expire and by making no new appointments to fill the vacancy. Any reduction or increase shall be by ordinance.

(e) 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. The term of office of an alternate member shall be four years. When seated pursuant to the provisions of section 207, an alternate shall be entitled to participate in all proceedings and discussions of the commission to the same and full extent as provided by law for commission members, including, specifically, the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this act and as otherwise provided by law. Alternates shall not serve as a member of the zoning hearing board or as a zoning officer. Any alternate may participate in any proceeding or discussion of the commission but shall not be entitled to vote as a member of the commission nor be reimbursed pursuant to section 202 unless designated as a voting alternate member pursuant to section 207.

Section 204. Members of Existing Commissions. (204 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 205. Membership. All of the members of the planning commission shall be residents of the municipality. On all planning commissions appointed pursuant to this act, a certain number of the members, designated as citizen members shall not be officers or employees of the municipality. On a commission of three members at least two shall be citizen members. On a commission of four or five members at least three shall be citizen members. On a commission of either six or seven members at least five shall be citizen members, and on commissions of either eight or nine members at least six shall be citizen members.

Section 206. Removal. Any member of a planning commission once qualified and appointed may be removed from office for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body taken after the member has received 15 days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing. Any appointment to fill a vacancy created by removal shall be only for the unexpired term.

Section 207. Conduct of Business.

(a) The commission shall elect its own chairman and vice-chairman and create and fill such other offices as it may determine. Officers shall serve annual terms and may succeed themselves. The commission may make and alter by laws and rules and regulations to govern its procedures consistent with the ordinances of the municipality and the laws of the Commonwealth. The commission shall keep a full record of its business and shall annually make a written report by March 1 of each year of its activities to the governing body. Interim reports may be made as often as may be necessary, or as requested by the governing body.

(b) The chairman of the planning commission may designate alternate members of the commission to substitute for any absent member or member who has recused himself or has been disqualified by the governing body, and, if, by reason of absence, recusal or disqualification of a member, a quorum is not reached, the chairman of the commission shall designate as many alternate members of the commission to sit on the commission as may be needed to reach a quorum. Any alternate member of the commission shall continue to serve on the commission in all proceedings involving the matter or case for which the alternate was initially appointed until the commission has made a final decision on the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

Section 208. Planning Department Director. For the administration of each planning department, the appointing authority may appoint a director of planning who shall be, in the opinion of the appointing authority, qualified for the duties of his position. Each such appointment shall be with the approval of the governing body, except where the governing body is the appointing authority. The director of planning shall be in charge of the administration of the department, and shall exercise the powers and be subject to the duties that are granted or imposed on a planning agency by this act, except that where a municipality creates both a planning commission and a planning department, the director of planning shall exercise only those powers and be subject to only those duties which are specifically conferred upon him by ordinance enacted pursuant to this article.

Section 209.1. Powers and Duties of Planning Agency.

(a) The planning agency shall at the request of the governing body have the power and shall be required to:

- (1) Prepare the comprehensive plan for the development of the municipality as set forth in this act, and present it for the consideration of the governing body.
- (2) Maintain and keep on file records of its action. All records and files of the planning agency shall be in the possession of the governing body.

(b) The planning agency at the request of the governing body may:

- (1) Make recommendations to the governing body concerning the adoption or amendment of an official map.
- (2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it as set forth in this act.

- (3) Prepare, recommend and administer subdivision and land development and planned residential development regulations, as set forth in this act.
- (4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto.
- (5) Do such other acts or make such studies as may be necessary to fulfill the duties and obligations imposed by this act.
- (6) Prepare and present to the governing body of the municipality an environmental study.
- (7) Submit to the governing body of a municipality a recommended capital improvements program.
- (7.1) Prepare and present to the governing body of the municipality a water survey, which shall consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.
- (8) Promote public interest in, and understanding of, the comprehensive plan and planning.
- (9) Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
- (10) Hold public hearings and meetings. (10.1) Present testimony before any board.
- (11) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
- (12) In the performance of its functions, enter upon any land to make examinations and surveys with the consent of the owner.
- (13) Prepare and present to the governing body of the municipality a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.
- (14) Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

Section 210. Administrative and Technical Assistance. The appointing authority may employ administrative and technical services to aid in carrying out the provisions of this act either as consultants on particular matters or as regular employees of the municipality. A county planning agency, with the consent of its governing body may perform planning services for any municipality whose governing body requests such assistance and may enter into agreements or contracts for such work.

Section 211. Assistance. The planning agency may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the Commonwealth or the Federal government or any of their agencies, or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

Section 212. Intergovernmental Cooperation. For the purposes of this act, the governing body may utilize the authority granted under 53 PA.C.S. §§ 2303(a) (relating to intergovernmental cooperation authorized) and 2315 (Relating to effect of joint cooperation agreements).

Article III – Comprehensive Plan

Section 301. Preparation of Comprehensive Plan.

(a) The municipal, multimunicipal or county comprehensive plan, consisting of maps, charts and textual matter, shall include, but need not be limited to, the following related basic elements:

- (1) A statement of objectives of the municipality concerning its future development, including, but not limited to, the location, character and timing of future development, that may also serve as a statement of community development objectives as provided in section 606.
- (2) A plan for land use, which may include provisions for the amount, intensity, character and timing of land use proposed for residence, industry, business, agriculture, major traffic and transit facilities, utilities, community facilities, public grounds, parks and recreation, preservation of prime agricultural lands, flood plains and other areas of special hazards and other similar uses.
- (2.1) A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels.
- (3) A plan for movement of people and goods, which may include expressways, highways, local street systems, parking facilities, pedestrian and bikeway systems, public transit routes, terminals, airfields, port facilities, railroad facilities and other similar facilities or uses.
- (4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, fire and police stations, libraries, hospitals, water supply and distribution, sewerage and waste treatment, solid waste management, storm drainage, and flood plain management, utility corridors and associated facilities, and other similar facilities or uses.
- (4.1) A statement of the interrelationships among the various plan components, which may include an estimate of the environmental, energy conservation, fiscal, economic development and social consequences on the municipality.
- (4.2) A discussion of short- and long-range plan implementation strategies, which may include implications for capital improvements programming, new or updated development regulations, and identification of public funds potentially available.
- (5) A statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities, or a statement indicating measures which have been taken to provide buffers or other transitional devices between disparate uses, and a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan.
- (6) A plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes, but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas and historic sites. The plan shall be consistent with and may not exceed those requirements imposed under the following:
 - (i) Act of June 22, 1937 (P.L.1987, No.394), known as “The Clean Streams Law”.
 - (ii) Act of May 31, 1945 (P.L.1198, No.418), known as the “Surface Mining Conservation and Reclamation Act”.
 - (iii) Act of April 27, 1966 (1st SP.SESS., P.L.31, No.1), known as “The Bituminous Mine Subsidence and Land Conservation Act”.
 - (iv) Act of September 24, 1968 (P.L.1040, No.318), known as the “Coal Refuse Disposal Control Act”.

- (v) Act of December 19, 1984 (P.L.1140, No.223), known as the “Oil and Gas Act”.
- (vi) Act of December 19, 1984 (P.L.1093, No.219), known as the “Noncoal Surface Mining Conservation and Reclamation Act”.
- (vii) Act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law”.
- (viii) Act of June 10, 1982 (P.L.454, No.133), entitled “An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances”.
- (ix) Act of May 20, 1993 (P.L.12, No.6), known as the “Nutrient Management Act,” regardless of whether any agricultural operation within the area to be affected by the plan is a concentrated animal operation as defined under the act.

(7) In addition to any other requirements of this act, a county comprehensive plan shall:

- (i) Identify land uses as they relate to important natural resources and appropriate utilization of existing minerals.
- (ii) Identify current and proposed land uses which have a regional impact and significance, such as large shopping centers, major industrial parks, mines and related activities, office parks, storage facilities, large residential developments, regional entertainment and recreational complexes, hospitals, airports and port facilities.
- (iii) Identify a plan for the preservation and enhancement of prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.
- (iv) Identify a plan for historic preservation.

(b) The comprehensive plan shall include a plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources. Any such plan shall be generally consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. It shall also contain a statement recognizing that:

- (1) Lawful activities such as extraction of minerals impact water supply sources and such activities are governed by statutes regulating mineral extraction that specify replacement and restoration of water supplies affected by such activities.
- (2) Commercial agriculture production impact water supply sources.

(c) The municipal or multimunicipal comprehensive plan shall be reviewed at least every ten years. The municipal or multimunicipal comprehensive plan shall be sent to the governing bodies of contiguous municipalities for review and comment and shall also be sent to the Center for Local Government Services for informational purposes. The municipal or multimunicipal comprehensive plan shall also be sent to the county planning commissions or, upon request of a county planning commission, a regional planning commission when the comprehensive plan is updated or at ten-year intervals, whichever comes first, for review and comment on whether the municipal or multimunicipal comprehensive plan remains generally consistent with the county comprehensive plan and to indicate where the local plan may deviate from the county comprehensive plan.

(d) The municipal, multimunicipal or county comprehensive plan may identify those areas where growth and development will occur so that a full range of public infrastructure services, including sewer, water, highways, police and fire protection, public schools, parks, open space and other services can be adequately planned and provided as needed to accommodate growth.

Section 301.1. Energy Conservation Plan Element. To promote energy conservation and the effective utilization of renewable energy sources, the comprehensive plan may include an energy conservation plan element which systematically analyzes the impact of each other component and element of the comprehensive plan on the present and future use of energy in the municipality, details specific measures contained in the other plan elements designed to reduce energy consumption and proposes other measures that the municipality may take to reduce energy consumption and to promote the effective utilization of renewable energy sources.

Section 301.2. Surveys by Planning Agency. In preparing the comprehensive plan, the planning agency shall make careful surveys, studies and analyses of housing, demographic, and economic characteristics and trends; amount, type and general location and interrelationships of different categories of land use; general location and extent of transportation and community facilities; natural features affecting development; natural, historic and cultural resources; and the prospects for future growth in the municipality.

Section 301.3. Submission of Plan to County Planning Agency. If a county planning agency has been created for the county in which the municipality is located, then at least 45 days prior to the public hearing required in section 302 on the comprehensive plan or amendment thereof, the municipality shall forward a copy of that plan or amendment to the county planning agency for its comments. At the same time, the municipality shall also forward copies of the proposed plan or amendment to all contiguous municipalities and to the local school district for their review and comments.

Section 301.4. Compliance by Counties.

(a) If a county does not have a comprehensive plan, then that county shall, within three years of the effective date of this act, and with the opportunity for the review, comment and participation of the municipalities and school districts within the respective county and contiguous counties school districts and municipalities, prepare and adopt a comprehensive plan in accordance with the requirements of section 301. Municipal comprehensive plans which are adopted shall be generally consistent with the adopted county comprehensive plan.

(b) County planning commissions shall publish advisory guidelines to promote general consistency with the adopted county comprehensive plan. These guidelines shall promote uniformity with respect to local planning and zoning terminology and common types of municipal land use regulations.

Section 301.5 Funding of Municipal Planning. Priority for state grants to develop or revise comprehensive plans shall be given to those municipalities which agree to adopt comprehensive plans generally consistent with the county comprehensive plan and which agree to enact a new zoning ordinance or amendment which would fully implement the municipal comprehensive plan. No more than 25% of the total funds available for these grants shall be disbursed under priority status pursuant to this provision. Municipalities and counties shall comply with these agreements within three years. Failure to comply with the agreements shall be taken into consideration for future state funding.

Section 302. Adoption of Municipal, Multimunicipal and County Comprehensive Plans and Plan Amendments.

(a) The governing body may adopt and amend the comprehensive plan as a whole or in part. Before adopting or amending a comprehensive plan, or any part thereof, the planning agency shall hold at least one public meeting before forwarding the proposed comprehensive plan or amendment thereof to the governing body. In reviewing the proposed comprehensive plan, the governing body shall consider the comments of the county, contiguous municipalities and the school district, as well as the public meeting comments and the recommendations of the municipal planning agency. The comments of the county, contiguous municipalities and the local school district shall be made to the governing body within 45 days of receipt by the governing body, and the proposed plan or amendment thereto shall not be acted upon until such comment is received. If, however, the contiguous municipalities and the local school district fail to respond within 45 days, the governing body may proceed without their comments.

(a.1) The governing body of the county may adopt and amend the county comprehensive plan in whole or in part. Before adopting or amending a comprehensive plan, or any part thereof, the county planning agency shall hold at least one public meeting before forwarding the proposed comprehensive plan or amendment thereof to the governing body. In reviewing the proposed comprehensive plan, the governing body shall consider the comments of municipalities and school districts within the county and contiguous school districts, municipalities and counties as well as the public meeting comments and the recommendations of the county planning agency. The comments of the counties, municipalities and school districts shall be made to the governing body within 45 days of receipt by the governing body, and the proposed comprehensive plan or amendment thereto shall not be acted upon until such comment is received. If, however, the counties, municipalities and school districts fail to respond within 45 days, the governing body may proceed without their comments.

(b) The governing body shall hold at least one public hearing pursuant to public notice. If, after the public hearing held upon the proposed plan or amendment to the plan, the proposed plan or proposed amendment thereto is substantially revised, the governing body shall hold another public hearing, pursuant to public notice, before proceeding to vote on the plan or amendment thereto.

(c) The adoption of the comprehensive plan, or any part thereof, or any amendment thereto, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the governing body. The resolution shall refer expressly to the maps, charts, textual matter, and other matters intended to form the whole or part of the plan, and the action shall be recorded on the adopted plan or part.

(d) Counties shall in accordance with subsection (a.1) consider amendments to their comprehensive plan proposed by municipalities which are considering adoption or revision of their municipal comprehensive plans so as to achieve general consistency between the respective plans. County comprehensive plans shall be updated at least every ten years. Where two or more contiguous municipalities request amendments to a county comprehensive plan for the purpose of achieving general consistency between the municipal plans or multimunicipal plan and the county comprehensive plan, the county must accept the amendments unless good cause for their refusal is established.

Section 303. Legal Status of Comprehensive Plan Within the Jurisdiction that Adopted the Plan.

(a) Whenever the governing body, pursuant to the procedures provided in section 302, has adopted a comprehensive plan or any part thereof, any subsequent proposed action of the governing body, its departments, agencies and appointed authorities shall be submitted to the planning agency for its recommendations when the proposed action relates to:

- (1) the location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or watercourse;
- (2) the location, erection, demolition, removal or sale of any public structure located within the municipality;
- (3) the adoption, amendment or repeal of an official map, subdivision and land development ordinance, zoning ordinance or provisions for planned residential development, or capital improvements program: or
- (4) the construction, extension or abandonment of any water line, sewer line or sewage treatment facility.

(b) The recommendations of the planning agency including a specific statement as to whether or not the proposed action is in accordance with the objectives of the formally adopted comprehensive plan shall be made in writing to the governing body within 45 days.

(c) Notwithstanding any other provision of this act, no action by the governing body of a municipality shall be invalid nor shall the same be subject to challenge or appeal on the basis that such action is inconsistent with, or fails to comply with, the provision of a comprehensive plan.

(d) Municipal zoning, subdivision and land development regulations and capital improvement programs shall generally implement the municipal and multimunicipal comprehensive plan or, where none exists, the municipal statement of community development objectives.

Section 304. Legal Status of County Comprehensive Plans Within Municipalities.

(a) Following the adoption of a comprehensive plan or any part thereof by a county, pursuant to the procedures in section 302, any proposed action of the governing body of a municipality, its departments, agencies and appointed authorities within the county shall be submitted to the county planning agency for its recommendations if the proposed action relates to:

- (1) the location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or watercourse;
- (2) the location, erection, demolition, removal or sale of any public structures located within the municipality;

- (3) the adoption, amendment or repeal of any comprehensive plan, official map, subdivision or land ordinance, zoning ordinance or provisions for planned residential development; or
- (4) the construction, extension or abandonment of any water line, sewer line or sewage treatment facility.

(b) The recommendation of the planning agency shall be made to the governing body of the municipality within 45 days and the proposed action shall not be taken until such recommendation is made. If, however, the planning agency fails to act within 45 days, the governing body shall proceed without its recommendation.

Section 305. The Legal Status of Comprehensive Plans Within School Districts. Following the adoption of a comprehensive plan or any part thereof by any municipality or county governing body, pursuant to the procedures in section 302, any proposed action of the governing body of any public school district located within the municipality or county relating to the location, demolition, removal, sale or lease of any school district structure or land shall be submitted to the municipal and county planning agencies for their recommendations at least 45 days prior to the execution of such proposed action by the governing body of the school district.

Section 306. Municipal and County Comprehensive Plans.

(a) When a municipality having a comprehensive plan is located in a county which has adopted a comprehensive plan, both the county and the municipality shall each give the plan of the other consideration in order that the objectives of each plan can be protected to the greatest extent possible.

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of the comprehensive plan, or part thereof or amendment thereto, to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

(c) Counties shall consult with municipalities and solicit comment from school districts, municipal authorities, the Center for Local Government Services, for information purposes, and public utilities during the process of preparing or upgrading a county comprehensive plan in order to determine future growth needs.

Section 307. State Land Use and Growth Management Report. The Center for Local Government Services shall issue a land use and growth management report by the year 2005 and shall review and update the report at five-year intervals.

Article IV – Official Map

Section 401. Grant of Power.

(a) The governing body of each municipality shall have the power to make or cause to be made an official map of all or a portion of the municipality which may show appropriate elements or portions of elements of the comprehensive plan adopted pursuant to section 302 with regard to public lands and facilities, and which may include, but need not be limited to:

- (1) Existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same.
- (2) Existing and proposed public parks, playgrounds and open space reservations.
- (3) Pedestrian ways and easements.
- (4) Railroad and transit rights-of-way and easements.
- (5) Flood control basins, floodways and flood plains, storm water management areas and drainage easements.
- (6) Support facilities, easements and other properties held by public bodies undertaking the elements described in section 301.

(b) For the purposes of taking action under this section, the governing body or its authorized designee may make or cause to be made surveys and maps to identify, for the regulatory purposes of this article, the location of property, trafficway alignment or utility easement by use of property records, aerial photography, photogrammetric mapping or other method sufficient for identification, description and publication of the map components. For acquisition of lands and easements, boundary descriptions by metes and bounds shall be made and sealed by a licensed surveyor.

Section 402. Adoption of the Official Map and Amendments Thereto.

(a) Prior to the adoption of the official map or part thereof, or any amendments to the official map, the governing body shall refer the proposed official map, or part thereof or amendment thereto, with an accompanying ordinance describing the proposed map, to the planning agency for review. The planning agency shall report its recommendations on said proposed official map and accompanying ordinance, part thereof, or amendment thereto within 45 days unless an extension of time shall be agreed to by the governing body. If, however, the planning agency fails to act within 45 days, the governing body may proceed without its recommendations.

(b) The county and adjacent municipalities may offer comments and recommendations during said 45-day review period in accordance with section 408. Local authorities, park boards, environmental boards and similar public bodies may also offer comments and recommendations to the governing body or planning agency if requested by same during said 45-day review period. Before voting on the enactment of the proposed ordinance and official map, or part thereof or amendment thereto, the governing body shall hold a public hearing pursuant to public notice.

(c) Following adoption of the ordinance and official map, or part thereof or amendment thereto, a copy of same, verified by the governing body, shall be submitted to the recorder of deeds of the county in which the municipality is located and shall be recorded within 60 days of the effective date. The fee for recording and indexing ordinances and amendments shall be paid by the municipality enacting the ordinance or amendment and shall be in the amount prescribed by law for the recording of ordinances by the recorder of deeds.

Section 403. Effect of Approved Plats on Official Map. After adoption of the official map, or part thereof, all streets, watercourses and public grounds and the elements listed in section 401 on final, recorded plats which have been approved as provided by this act shall be deemed amendments to the official map. Notwithstanding any of the other terms of this article, no public hearing need be held or notice given if the amendment of the official map is the result of the addition of a plat which has been approved as provided by this act.

Section 404. Effect of Official Map on Mapped Streets, Watercourses and Public Grounds. The adoption of any street, street lines or other public lands pursuant to this article as part of the official map shall not, in and of itself, constitute or be deemed to constitute the opening or establishment of any street nor the taking or acceptance of any land, nor shall it obligate the municipality to improve or maintain any such street or land. The adoption of proposed watercourses or public grounds as part of the official map shall not, in and of itself, constitute or be deemed to constitute a taking or acceptance of any land by the municipality.

Section 405. Buildings in Mapped Streets, Watercourses or Other Public Grounds. For the purpose of preserving the integrity of the official map of the municipality, no permit shall be issued for any building within the lines of any street, watercourse or public ground shown or laid out on the official map. No person shall recover any damages for the taking for public use of any building or improvements constructed within the lines of any street, watercourse or public ground after the same shall have been included in the official map, and any such building or improvement shall be removed at the expense of the owner. However, when the property of which the reserved location forms a part, cannot yield a reasonable return to the owner unless a permit shall be granted, the owner may apply to the governing body for the grant of a special encroachment permit to build. Before granting any special encroachment permit authorized in this section, the governing body may submit the application for a special encroachment permit to the local planning agency and allow the planning agency 30 days for review and comment and shall give public notice and hold a public hearing at which all parties in interest shall have an opportunity to be heard. A refusal by the governing body to grant the special encroachment permit applied for may be appealed by the applicant to the zoning hearing board in the same manner, and within the same time limitation, as is provided in Article IX.

Section 406. Time Limitations on Reservations for Future Taking. The governing body may fix the time for which streets, watercourses and public grounds on the official map shall be deemed reserved for future taking or acquisition for public use. However, the reservation for public grounds shall lapse and become void one year after an owner of such property has submitted a written notice to the governing body announcing his intentions to build, subdivide or otherwise develop the land covered by the reservation, or has made formal application for an official permit to build a structure for private use, unless the governing body shall have acquired the property or begun condemnation proceedings to acquire such property before the end of the year.

Section 407. Release of Damage Claims or Compensation. The governing body may designate any of its agencies to negotiate with the owner of land under the following circumstances:

- (1) whereon reservations are made;
- (2) whereon releases of claims for damages or compensation for such reservations are required; or
- (3) whereon agreements indemnifying the governing body from claims by others may be required.

Any releases or agreements, when properly executed by the governing body and the owner and recorded, shall be binding upon any successor in title.

Section 408. Notice to Other Municipalities.

(a) When any county has adopted an official map in accordance with the terms of this article, a certified copy of the map and the ordinances adopting it shall be sent to every municipality within said county. All amendments shall be sent to the aforementioned municipalities. The powers of the governing bodies of counties to adopt, amend and repeal official maps shall be limited to land and watercourses in those municipalities wholly or partly within the county which have no official map in effect at the time an official map is introduced before the governing body of the county, and until the municipal official map is in effect. The adoption of an official map by any municipality, other than a county, whose land or watercourses are subject to county official mapping, shall act as a repeal pro tanto of the county official map within the municipality adopting such ordinance. Notwithstanding any of the other terms or conditions of this section the county official map shall govern as to county streets and public grounds, facilities and improvements, even though such streets or public grounds, facilities and improvements are located in a municipality which has adopted an official map.

(b) When a municipality proposes to adopt an official map, or any amendment thereto, a copy of the map and the proposed ordinance adopting it, or any amendment thereto, shall be forwarded for review to the county planning

agency, or if no such agency exists to the governing body of the county at the same time it is submitted for review to the municipal planning agency. The comments of the county planning agency shall be made to the governing body of the municipality within 45 days, and the proposed action shall not be taken until such comments are received. If, however, the planning agency fails to act within 45 days, the governing body may proceed without its comments.

(c) Additionally, if any municipality proposes to adopt an official map, or amendment thereto, that shows any street or public lands intended to lead into any adjacent municipality a copy of said official map or amendment shall be forwarded to such adjacent municipality for review and comment by the governing body and planning agency of the adjacent municipality. The comments of the adjacent municipality shall be made to the governing body of the municipality proposing the adoption within 45 days, and the proposed action shall not be taken until such comments are received. If, however, the adjacent municipality fails to act within 45 days, the governing body of the proposing municipality may proceed without its comments. When a municipality adopts an official map, a certified copy of the map, the ordinance adopting it and any later amendments shall be forwarded, within 30 days after adoption, to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located. Additionally, if any municipality adopts an official map, or amendment thereto, that shows any street or public lands intended to lead into any adjacent municipality, a certified copy of said official map or amendment shall be forwarded to such adjacent municipality.

Article V – Subdivision and Land Development

Section 501. Grant of Power. The governing body of each municipality may regulate subdivisions and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance shall require that all subdivision and land development plats of land situated within the municipality shall be submitted for approval to the governing body or, in lieu thereof, to a planning agency designated in the ordinance for this purpose, in which case any planning agency action shall be considered as action of the governing body. All powers granted herein to the governing body or the planning agency shall be exercised in accordance with the provisions of the subdivision and land development ordinance. In the case of any development governed by planned residential development provisions adopted pursuant to Article VII, however, the applicable provisions of the subdivision and land development ordinance shall be as modified by such provisions and the procedures which shall be followed in the approval of any plat, and the rights and duties of the parties thereto shall be governed by Article VII and the provisions adopted thereunder. Provisions regulating mobilehome parks shall be set forth in separate and distinct articles of any subdivision and land development ordinance adopted pursuant to Article V or any planned residential development provisions adopted pursuant to Article VII.

Section 502. Jurisdiction of County Planning Agencies; Adoption by Reference of County Subdivision and Land Development Ordinances.

(a) When any county has adopted a subdivision and land development ordinance in accordance with the terms of this article, a certified copy of the ordinance shall be sent to every municipality within the county. All amendments shall also be sent to the aforementioned municipalities. The powers of governing bodies of counties to enact, amend and repeal subdivision and land development ordinances shall be limited to land in those municipalities wholly or partly within the county which have no subdivision and land development ordinance in effect at the time a subdivision and land development ordinance is introduced before the governing body of the county, and until the municipal subdivision and land development ordinance is in effect and a certified copy of such ordinance is filed with the county planning agency, if one exists.

(b) The enactment of a subdivision and land development ordinance by any municipality, other than a county, whose land is subject to a county subdivision and land development ordinance shall act as a repeal protanto of the county subdivision and land development ordinance within the municipality adopting such ordinance. However, applications for subdivision and land development located within a municipality having adopted a subdivision and land development ordinance as set forth in this article shall be forwarded upon receipt by the municipality to the county planning agency for review and report together with a fee sufficient to cover the costs of the review and report which fee shall be paid by the applicant: Provided, That such municipalities shall not approve such applications until the county report is received or until the expiration of 30 days from the date the application was forwarded to the county.

(c) Further, any municipality other than a county may adopt by reference the subdivision and land development ordinance of the county, and may by separate ordinance designate the county planning agency, with the county planning agency's concurrence, as its official administrative agency for review and approval of plats.

Section 502.1. Contiguous Municipalities.

(a) The county planning commission shall offer a mediation option to any municipality which believes that its citizens will experience harm as the result of an applicant's proposed subdivision or development of land in a contiguous municipality, if the municipalities agree. In exercising such an option, the municipalities shall comply with the procedures set forth in Article IX. The cost of the mediation shall be shared equally by the municipalities unless otherwise agreed. The applicant shall have the right to participate in the mediation.

(b) The governing body of the municipality may appear and comment before the governing body of a contiguous municipality and the various boards and commissions of the contiguous municipality considering a proposed subdivision, change of land use or land development.

Section 503. Contents of Subdivision and Land Development Ordinance. The subdivision and land development ordinance may include, but need not be limited to:

- (1) Provisions for the submittal and processing of plats, including the charging of review fees, and specifications for such plats, including certification as to the accuracy of plats and provisions for preliminary and final approval and for processing of final approval by stages or sections of development. Such plats and surveys shall be prepared in accordance with the act of May 23, 1945 (P.L.913, No.367), known as the "Engineer, Land Surveyor and Geologist Registration Law," except that this requirement shall not preclude the preparation of a plat in accordance with the act of January 24, 1966 (1965 P.L.1527, No.535), known as the "Landscape Architects' Registration Law," when it is appropriate to prepare the plat using professional services as set forth in the definition of the "practice of landscape architecture" under section 2 of that act. Review fees may include reasonable and necessary charges by the municipality's professional consultants for review and report thereon to the municipality. Such review fees shall be based upon a schedule established by ordinance or resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant for comparable services to the municipality for services which are not reimbursed or otherwise imposed on applicants. Fees charged to the municipality relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.
 - (i) The governing body shall submit to the applicant an itemized bill showing work performed, identifying the person performing the services and the time and date spent for each task. Nothing in this subparagraph shall prohibit interim itemized billing or municipal escrow or other security requirements. In the event the applicant disputes the amount of any such review fees, the applicant shall, no later than 100 days after the date of transmittal of the bill to the applicant, notify the municipality and the municipality's professional consultant that such fees are disputed, and shall explain the basis of their objections to the fees charged, in which case the municipality shall not delay or disapprove a subdivision or land development application due to the applicant's dispute over fees. Failure of the applicant to dispute a bill within 100 days shall be a waiver of the applicant's right to arbitration of that bill under section 510 (g).
 - (ii) In the event that the municipality's professional consultant and the applicant cannot agree on the amount of review fees which are reasonable and necessary, then the applicant and the municipality shall follow the procedure for dispute resolution set forth in section 510(g), provided that the arbitrator resolving such dispute shall be of the same profession or discipline as the professional consultant whose fees are being disputed.
 - (iii) Subsequent to a decision on an application, the governing body shall submit to the applicant an itemized bill for review fees, specifically designated as a final bill. The final bill shall include all review fees incurred at least through the date of the decision on the application. If for any reason additional review is required subsequent to the decision, including inspections and other work to satisfy the conditions of the approval, the review fees shall be charged to the applicant as a supplement to the final bill.
- (1.1) Provisions for the exclusion of certain land development from the definition of land development contained in section 107 only when such land development involves:
 - (i) the conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
 - (ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
 - (iii) the addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this subclause, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by proper authorities.

- (2) Provisions for insuring that:
 - (i) the layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof;
 - (ii) streets in and bordering a subdivision or land development shall be coordinated, and be of such widths and grades and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection;
 - (iii) adequate easements or rights-of-way shall be provided for drainage and utilities;
 - (iv) reservations if any by the developer of any area designed for use as public grounds shall be suitable size and location for their designated uses; and
 - (v) land which is subject to flooding, subsidence or underground fires either shall be made safe for the purpose for which such land is proposed to be used, or that such land shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.
- (3) Provisions governing the standards by which streets shall be designed, graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plats in accordance with the requirements of section 509. The standards shall insure that the streets be improved to such a condition that the streets are passable for vehicles which are intended to use that street: Provided, however, That no municipality shall be required to accept such streets for public dedication until the streets meet such additional standards and specifications as the municipality may require for public dedication.
- (4) Provisions which take into account phased land development not intended for the immediate erection of buildings where streets, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements may not be possible to install as a condition precedent to final approval of plats, but will be a condition precedent to the erection of buildings on lands included in the approved plat.
- (4.1) Provisions which apply uniformly throughout the municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and sewage, in the event the municipality has not enacted a zoning ordinance.
- (5) Provisions for encouraging and promoting flexibility, economy and ingenuity in the layout and design of subdivisions and land developments, including provisions authorizing alterations in site requirements and for encouraging other practices which are in accordance with modern and evolving principles of site planning and development.
- (6) Provisions for encouraging the use of renewable energy systems and energy-conserving building design.
- (7) Provisions for soliciting reviews and reports from adjacent municipalities and other governmental agencies affected by the plans.
- (8) Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with section 512.1, when the literal compliance with mandatory provisions is shown to the satisfaction of the governing body or planning agency, where applicable, to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.
- (9) Provisions for the approval of a plat, whether preliminary or final, subject to conditions acceptable to the applicant and a procedure for the applicant's acceptance or rejection of any conditions which may be imposed, including a provision that approval of a plat shall be rescinded automatically upon the applicant's failure to accept or reject such conditions within such time limit as may be established by the governing ordinance.
- (10) Provisions and standards for insuring that new developments incorporate adequate provisions for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources.

- (11) Provisions requiring the public dedication of land suitable for the use intended; and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees in lieu thereof, the private reservation of the land, or a combination, for park or recreation purposes as a condition precedent to final plan approval, provided that:
- (i) The provisions of this paragraph shall not apply to any plan application, whether preliminary or final, pending at the time of enactment of such provisions.
 - (ii) The ordinance includes definite standards for determining the proportion of a development to be dedicated and the amount of any fee to be paid in lieu thereof.
 - (iii) The land or fees, or combination thereof, are to be used only for the purpose of providing, acquiring, operating or maintaining park or recreational facilities reasonably accessible to the development.
 - (iv) The governing body has a formally adopted recreation plan, and the park and recreational facilities are in accordance with definite principles and standards contained in the subdivision and land development ordinance.
 - (v) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision.
 - (vi) A fee authorized under this subsection shall, upon its receipt by a municipality, be deposited in an interest-bearing account, clearly identified as reserved for providing, acquiring, operating or maintaining park or recreational facilities. Interest earned on such accounts shall become funds of that account.
 - (vii) Upon request of any person who paid any fee under this subsection, the municipality shall refund such fee, plus interest accumulated thereon from the date of payment, if the municipality had used the fee paid for a purpose other than the purposes set forth in this section.
 - (viii) No municipality shall have the power to require the construction of recreational facilities or the dedication of land, or fees in lieu thereof, or private reservation except as may be provided by statute.

Section 503.1. Water Supply. Every ordinance adopted pursuant to this article shall include a provision that, if water is to be provided by means other than by private wells owned and maintained by the individual owners of lots within the subdivision or development, applicants shall present evidence to the governing body or planning agency, as the case may be, that the subdivision or development is to be supplied by a certificated public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement or a commitment or agreement to serve the area in question, whichever is appropriate, shall be acceptable evidence.

Section 504. Enactment of Subdivision and Land Development Ordinance.

(a) Before voting on the enactment of a proposed subdivision and land development ordinance, the governing body shall hold a public hearing thereon pursuant to public notice. A brief summary setting forth the principal provisions of the proposed ordinance and a reference to the place within the municipality where copies of the proposed ordinance may be secured or examined shall be incorporated in the public notice. Unless the proposed subdivision and land development ordinance shall have been prepared by the planning agency, the governing body shall submit the ordinance to the planning agency at least 45 days prior to the hearing on such ordinance to provide the planning agency an opportunity to submit recommendations. If a county planning agency shall have been created for the county in which the municipality adopting the ordinance is located, then, at least 45 days prior to the public hearing on the ordinance, the municipality shall submit the proposed ordinance to said county planning agency for recommendations.

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of the subdivision and land development ordinance to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 505. Enactment of Subdivision and Land Development Ordinance Amendment.

(a) Amendments to the subdivision and land development ordinance shall become effective only after a public hearing held pursuant to public notice in the manner prescribed for enactment of a proposed ordinance by this article. In addition, in case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency for recommendations at least 30 days prior to the date fixed for the public hearing on such proposed amendment. If a county planning agency shall have been created for the county in which the municipality proposing the amendment is located, then, at least 30 days prior to the hearing on the amendment, the municipality shall submit the proposed amendment to said county planning agency for recommendations.

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of any amendment to the subdivision and land development ordinance to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 506. Publication, Advertisement and Availability of Ordinance.

(a) Proposed subdivision and land development ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than seven days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

- (1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.
- (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

(b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(c) Subdivision and land development ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 507. Effect of Subdivision and Land Development Ordinance. Where a subdivision and land development ordinance has been enacted by a municipality under the authority of this article no subdivision or land development of any lot, tract or parcel of land shall be made, no street, sanitary sewer, storm sewer, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with the provisions of such ordinance.

Section 508. Approval of Plats. All applications for approval of a plat (other than those governed by Article VII), whether preliminary or final, shall be acted upon by the governing body or the planning agency within such time limits as may be fixed in the subdivision and land development ordinance but the governing body or the planning agency shall render its decision and communicate it to the applicant not later than 90 days following the date of the regular meeting of the governing body or the planning agency (whichever first reviews the application) next following the date the application is filed, or after a final order of the court remanding an application, provided that should the said next regular meeting occur more than 30 days following the filing of the application, or the final order of the court, the said 90-day period shall be measured from the 30th day following the day the application has been filed.

- (1) The decision of the governing body or the planning agency shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision.
- (2) When the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon.
- (3) Failure of the governing body or agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect.
- (4) Changes in the ordinance shall affect plats as follows:
 - (i) From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in the subdivision and land development ordinance, and while such application is pending approval or disapproval, no change or amendment of the zoning, subdivision or other governing ordinance or plan shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. In addition, when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided. However, if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in governing regulations.
 - (ii) When an application for approval of a plat, whether preliminary or final, has been approved without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval. The five-year period shall be extended for the duration of any litigation, including appeals, which prevent the commencement or completion of the development, and for the duration of any sewer or utility moratorium or prohibition which was imposed subsequent to the filing of an application for preliminary approval of a plat. In the event of an appeal filed by any party from the approval or disapproval of a plat, the five-year period shall be extended by the total time from the date the appeal was filed until a final order in such matter has been entered and all appeals have been concluded and any period for filing appeals or requests for reconsideration have expired. Provided, however, no extension shall be based upon any water or sewer moratorium which was in effect as of the date of the filing of a preliminary application.
 - (iii) Where final approval is preceded by preliminary approval, the aforesaid five-year period shall be counted from the date of the preliminary approval. In the case of any doubt as to the terms of a preliminary approval, the terms shall be construed in the light of the provisions of the governing ordinances or plans as they stood at the time when the application for such approval was duly filed.
 - (iv) Where the landowner has substantially completed the required improvements as depicted upon the final plat within the aforesaid five-year limit, or any extension thereof as may be granted by the governing body, no change of municipal ordinance or plan enacted subsequent to the date of filing of the preliminary plat shall modify or revoke any aspect of the approved final plat pertaining to zoning classification or density, lot, building, street or utility location.
 - (v) In the case of a preliminary plat calling for the installation of improvements beyond the five-year period, a schedule shall be filed by the landowner with the preliminary plat delineating all proposed sections as well as deadlines within which applications for final plat approval of each section are intended to be filed. Such schedule shall be updated annually by the applicant on or before the anniversary of the preliminary plat approval, until final plat approval of the final section has been granted and any modification in the aforesaid schedule shall be subject to approval of the governing body in its discretion.

- (vi) Each section in any residential subdivision or land development, except for the last section, shall contain a minimum of 25% of the total number of dwelling units as depicted on the preliminary plan, unless a lesser percentage is approved by the governing body in its discretion. Provided the landowner has not defaulted with regard to or violated any of the conditions of the preliminary plat approval, including compliance with landowner's aforesaid schedule of submission of final plats for the various sections, then the aforesaid protections afforded by substantially completing the improvements depicted upon the final plat within five years shall apply and for any section or sections, beyond the initial section, in which the required improvements have not been substantially completed within said five-year period the aforesaid protections shall apply for an additional term or terms of three years from the date of final plat approval for each section.
 - (vii) Failure of landowner to adhere to the aforesaid schedule of submission of final plats for the various sections shall subject any such section to any and all changes in zoning, subdivision and other governing ordinance enacted by the municipality subsequent to the date of the initial preliminary plan submission.
- (5) Before acting on any subdivision plat, the governing body or the planning agency, as the case may be, may hold a public hearing thereon after public notice.
- (6) No plat which will require access to a highway under the jurisdiction of the Department of Transportation shall be finally approved unless the plat contains a notice that a highway occupancy permit is required pursuant to section 420 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," before driveway access to a State highway is permitted. The department shall, within sixty days of the date of receipt of an application for a highway occupancy permit,
- (i) approve the permit, which shall be valid thereafter unless, prior to commencement of construction thereunder, the geographic, physical or other conditions under which the permit is approved change, requiring modification or denial of the permit, in which event the department shall give notice thereof in accordance with regulations,
 - (ii) deny the permit,
 - (iii) return the application for additional information or correction to conform with department regulations or,
 - (iv) determine that no permit is required in which case the department shall notify the municipality and the applicant in writing. If the department shall fail to take any action within the 60-day period, the permit will be deemed to be issued. The plat shall be marked to indicate that access to the State highway shall be only as authorized by a highway occupancy permit. Neither the department nor any municipality to which permit-issuing authority has been delegated under section 420 of the "State Highway Law" shall be liable in damages for any injury to persons or property arising out of the issuance or denial of a driveway permit, or for failure to regulate any driveway. Furthermore, the municipality from which the building permit approval has been requested shall not be held liable for damages to persons or property arising out of the issuance or denial of a driveway permit by the department.
- (7) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

Section 508.1. Notice to School District. Each month a municipality shall notify in writing the superintendent of a school district in which a plan for a residential development was finally approved by the municipality during the preceding month. The notice shall include, but not be limited to, the location of the development, the number and types of units to be included in the development and the expected construction schedule of the development.

Section 509. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plat Approval.

(a) No plat shall be finally approved unless the streets shown on such plat have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by the sub-division and land development ordinance and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers and other improvements as may be required by the subdivision and land development ordinance have

been installed in accordance with such ordinance. In lieu of the completion of any improvements required as a condition for the final approval of a plat, including improvements or fees required pursuant to section 509(l), the subdivision and land development ordinance shall provide for the deposit with the municipality of financial security in an amount sufficient to cover the costs of such improvements or common amenities including, but not limited to, roads, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required. The applicant shall not be required to provide financial security for the costs of any improvements for which financial security is required by and provided to the Department of Transportation in connection with the issuance of a highway occupancy permit pursuant to section 420 of the act of June 1, 1945 (P.L.1242, No.428) known as the "State Highway Law."

(b) When requested by the developer, in order to facilitate financing, the governing body or the planning agency, if designated, shall furnish the developer with a signed copy of a resolution indicating approval of the final plat contingent upon the developer obtaining a satisfactory financial security. The final plat or record plan shall not be signed nor recorded until the financial improvements agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within 90 days unless a written extension is granted by the governing body; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.

(c) Without limitation as to other types of financial security which the municipality may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.

(d) Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth.

(e) Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.

(f) The amount of financial security to be posted for the completion of the required improvements shall be equal to 110% of the cost of completion estimated as of 90 days following the date scheduled for completion by the developer. Annually, the municipality may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the municipality may require the developer to post additional security in order to assure that the financial security equals but does not exceed said 110%. Any additional security shall be posted by the developer in accordance with this subsection.

(g) The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The municipality, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the municipality and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the municipality and the applicant or developer.

(h) If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of financial security [or] to an amount not exceeding 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure.

(i) In the case where development is projected over a period of years, the governing body or the planning agency may authorize submission of final plats by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.

(j) As the work of installing the required improvements proceeds, the party posting the financial security may request the governing body to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the governing body, and the governing body shall have 45 days from receipt of such request within which to allow the municipal engineer to certify, in writing, to the governing body that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification the governing body shall authorize release by the bonding company or lending institution of an amount as estimated by the municipal engineer fairly representing the value of the improvements completed or, if the governing body fails to act within said 45-day period, the governing body shall be deemed to have approved the release of funds as requested. The governing body may, prior to [final] release at the time of completion and certification by its engineer, retain 10% of the [original amount of the posted financial security for the aforesaid] estimated cost of the remaining improvements.

(k) Where the governing body accepts dedication of all or some of the required improvements following completion, the governing body may require the posting of financial security to secure structural integrity of said dedicated improvements as well as the functioning of said dedicated improvements in accordance with the design and specifications as depicted on the final plat for a term not to exceed 18 months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this section with regard to installation of such improvements, and the amount of the financial security shall not exceed 15% of the actual cost of installation of said dedicated improvements.

(l) If water mains or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the municipality, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.

(m) If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plat as set forth in this section, the municipality shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plat upon actual completion of the improvements depicted upon the approved final plat. Moreover, if said financial security has been provided, occupancy permits for any building or buildings to be erected shall not be withheld following: the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition, as well as the completion of all other improvements as depicted upon the approved plat, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings. Any ordinance or statute inconsistent herewith is hereby expressly repealed.

Section 510. Release from Improvement Bond.

(a) When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the municipal governing body, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the municipal engineer. The municipal governing body shall, within ten days after receipt of such notice, direct and authorize the municipal engineer to inspect all of the aforesaid improvements. The municipal engineer shall, thereupon, file a report, in writing, with the municipal governing body, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within 30 days after receipt by the municipal engineer of the aforesaid authorization from the governing body; said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the municipal engineer, said report shall contain a statement of reasons for such nonapproval or rejection.

- (b) The municipal governing body shall notify the developer, within 15 days of receipt of the engineer's report, in writing by certified or registered mail of the action of said municipal governing body with relation thereto.
- (c) If the municipal governing body or the municipal engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.
- (d) If any portion of the said improvements shall not be approved or shall be rejected by the municipal governing body, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.
- (e) Nothing herein, however, shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise, any determination of the municipal governing body or the municipal engineer.
- (f) Where herein reference is made to the municipal engineer, he shall be a duly registered professional engineer employed by the municipality or engaged as a consultant thereto.
- (g) The municipality may prescribe that the applicant shall reimburse the municipality for the reasonable and necessary expense incurred in connection with the inspection of improvements. The applicant shall not be required to reimburse the governing body for any inspection which is duplicative of inspections conducted by other governmental agencies or public utilities. The burden of proving that any inspection is duplicative shall be upon the objecting applicant. Such reimbursement shall be based upon a schedule established by ordinance or resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the municipality's professional consultant for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant to the municipality for comparable services when fees are not reimbursed or otherwise imposed on applicants.
- (1) The governing body shall submit to the applicant an itemized bill showing the work performed in connection with the inspection of improvements performed, identifying the person performing the services and the time and date spent for each task. In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, no later than 100 days after the date of transmittal of a bill for inspection services, notify the municipality and the municipality's professional consultant that such inspection expenses are disputed as unreasonable or unnecessary and shall explain the basis of their objections to the fees charged, in which case the municipality shall not delay or disapprove a request for release of financial security, a subdivision or land development application or any approval or permit related to development due to the applicant's dispute of inspection expenses. Failure of the applicant to dispute a bill within 100 days shall be a waiver of the applicant's right to arbitration of that bill under this section.
 - (1.1) Subsequent to the final release of financial security for completion of improvements for a subdivision or land development or any phase thereof, the professional consultant shall submit to the governing body a bill for inspection services, specifically designated as a final bill, which the governing body shall submit to the applicant. The final bill shall include inspection fees incurred through the release of financial security.
 - (2) If, the professional consultant and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant shall have the right, within 100 days of the transmittal of the final bill or supplement to the final bill to the applicant, to request the appointment of another professional consultant to serve as an arbitrator. The applicant and professional consultant whose fees are being challenged shall by mutual agreement, appoint another professional consultant to review any bills the applicant has disputed and which remain unresolved and make a determination as to the amount thereof which is reasonable and necessary. The arbitrator shall be of the same profession as the professional consultant whose fees are being challenged.
 - (3) The arbitrator so appointed shall hear such evidence and review such documentation as the arbitrator in his or her sole opinion deems necessary and shall render a decision no later than 50 days after the date of appointment. Based on the decision of the arbitrator, the applicant or the professional consultant whose

fees were challenged shall be required to pay any amounts necessary to implement the decision within 60 days. In the event the municipality has paid the professional consultant an amount in excess of the amount determined to be reasonable and necessary, the professional consultant shall within 60 days reimburse the excess payment

- (4) In the event that the municipality's professional consultant and applicant cannot agree upon the arbitrator to be appointed within 20 days of the request for appointment of an arbitrator, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the municipality is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such arbitrator, who, in that case, shall be neither the municipality's professional consultant nor any professional consultant who has been retained by, or performed services for, the municipality or the applicant within the preceding five years.
- (5) The fee of the arbitrator shall be paid by the applicant if the disputed fee is upheld by the arbitrator. The fee of the arbitrator shall be paid by the charging party if the disputed fee is \$2,500 or greater than the payment decided by the arbitrator. The fee of the arbitrator shall be paid in an equal amount by the applicant and the charging party if the disputed fee is less than \$2,500 of the payment decided by the arbitrator.
- (6) In the event that the disputed fees have been paid and the arbitrator finds that the disputed fees are unreasonable or excessive by more than \$10,000, the arbitrator shall:
 - (i) award the amount of the fees found to be unreasonable or excessive to the party that paid the disputed fee; and
 - (ii) impose a surcharge of 4% of the amount found as unreasonable or excessive to be paid to the party that paid the disputed fee.
- (7) A municipality or an applicant shall have 100 days after paying a fee to dispute any fee charged as being unreasonable or excessive.

Section 511. Remedies to Effect Completion of Improvements. In the event that any improvements which may be required have not been installed as provided in the subdivision and land development ordinance or in accord with the approved final plat the governing body of the municipality is hereby granted the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond, or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the governing body of the municipality may, at its option, install part of such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

Section 512.1. Modifications.

- (a) The governing body or the planning agency, if authorized to approve applications within the subdivision and land development ordinance, may grant a modification of the requirements of one or more provisions if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.
- (b) All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the ordinance involved and the minimum modification necessary.
- (c) If approval power is reserved by the governing body, the request for modification may be referred to the planning agency for advisory comments.
- (d) The governing body or the planning agency, as the case may be, shall keep a written record of all action on all requests for modifications.

Section 513. Recording Plats and Deeds.

(a) Upon the approval of a final plat, the developer shall within 90 days of such final approval or 90 days after the date of delivery of an approved plat signed by the governing body, following completion of conditions imposed for such approval, whichever is later, record such plat in the office of the recorder of deeds of the county in which the municipality is located. Whenever such plat approval is required by a municipality, the recorder of deeds of the county shall not accept any plat for recording, unless such plat officially notes the approval of the governing body and review by the county planning agency, if one exists.

(b) The recording of the plat shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.

Section 514. Effect of Plat Approval on Official Map. After a plat has been approved and recorded as provided in this article, all streets and public grounds on such plat shall be, and become a part of the official map of the municipality without public hearing.

Section 515. Penalties. (515 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 515.1. Preventive Remedies.

(a) In addition to other remedies, the municipality may institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

(b) A municipality may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of any ordinance adopted pursuant to this article. This authority to deny such a permit or approval shall apply to any of the following applicants:

- (1) The owner of record at the time of such violation.
- (2) The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
- (3) The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
- (4) The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation. As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the municipality may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

Section 515.2. Jurisdiction. District justices shall have initial jurisdiction in proceedings brought under section 515.3.

Section 515.3. Enforcement Remedies.

(a) Any person, partnership or corporation who or which has violated the provisions of any subdivision or land development ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the

person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

(b) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

(c) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

Article V-A – Municipal Capital Improvement

** Compiler's Note: (a)(9) of Act 1996-58, which created the Department of Community and Economic Development and abolished the Department of Community Affairs, provided that housing, community assistance and other functions under Article V-A are transferred from the Department of Community Affairs to the Department of Community and Economic Development.*

(Art. added Dec. 19, 1990, P.L.1343, No.209)

Section 501-A. Purposes. To further the purposes of this act in an era of increasing development and of a corresponding demand for municipal capital improvements, to insure that the cost of needed capital improvements be applied to new developments in a manner that will allocate equitably the cost of those improvements among property owners and to respond to the increasing difficulty which municipalities are experiencing in developing revenue sources to fund new capital infrastructure from the public sector, the following powers are granted to all municipalities, other than counties, which municipalities have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance and zoning ordinance.

Section 502-A. Definitions. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adjusted for family size," adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, than the base income eligibility level determined as provided in the definition of low- to moderate-income persons based upon a formula as established by the rule of the agency.

"Adjusted gross income," all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by rule of the department, adjusted for family size, less deductions under section 62 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. 62 et seq.).

"Affordable," with respect to the housing unit to be occupied by low- to moderate-income persons, monthly rents or monthly mortgage payments, including property taxes and insurance, that do not exceed 30% of that amount which represents 100% of the adjusted gross annual income for households within the metropolitan statistical area (MSA) or, if not within the MSA, within the county in which the housing unit is located, divided by 12.

"Agency," the Pennsylvania Housing Finance Agency as created pursuant to the act of December 3, 1959 (P.L.1688, No.621), known as the "Housing Finance Agency Law."

* "Department," the Department of Community and Economic Development of the Commonwealth.

"Existing deficiencies," existing highways, roads or streets operating at a level of service below the preferred level of service designated by the municipality, as adopted in the transportation capital improvement plan.

"Highways, roads or streets," any highways, roads or streets identified on the legally adopted municipal street or highway plan or the official map which carry vehicular traffic, together with all necessary appurtenances, including bridges, rights-of-way and traffic control improvements. The term shall not include the interstate highway system.

"Impact fee," a charge or fee imposed by a municipality against new development in order to generate revenue for funding the costs of transportation capital improvements necessitated by and attributable to new development.

"Low- to moderate-income persons," one or more natural persons or a family, the total annual adjusted gross household income of which is less than 100% of the median annual adjusted gross income for households in this Commonwealth or is less than 100% of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within the MSA, within the county in which the household is located, whichever is greater.

“New development,” any commercial, industrial or residential or other project which involves new construction, enlargement, reconstruction, redevelopment, relocation or structural alteration and which is expected to generate additional vehicular traffic within the transportation service area of the municipality.

“Offsite improvements,” those public capital improvements which are not onsite improvements and that serve the needs of more than one development.

“Onsite improvements,” all improvements constructed on the applicant's property, or the improvements constructed on the property abutting the applicant's property necessary for the ingress or egress to the applicant's property, and required to be constructed by the applicant pursuant to any municipal ordinance, including, but not limited to, the municipal building code, subdivision and land development ordinance, PRD regulations and zoning ordinance.

“Pass-through trip,” a trip which has both an origin and a destination outside the service area.

“Road improvement,” the construction, enlargement, expansion or improvement of public highways, roads or streets. It shall not include bicycle lanes, bus lanes, busways, pedestrian ways, rail lines or tollways.

“Traffic or transportation engineer or planner,” any person who is a registered professional engineer in this Commonwealth or is otherwise qualified by education and experience to perform traffic or transportation planning analyses of the type required in this act and who deals with the planning, geometric design and traffic operations of highways, roads and streets, their networks, terminals and abutting lands and relationships with other modes of transportation for the achievement of convenient, efficient and safe movement of goods and persons.

“Transportation capital improvements,” those offsite road improvements that have a life expectancy of three or more years, not including costs for maintenance, operation or repair.

“Transportation service area,” a geographically defined portion of the municipality not to exceed seven square miles of area which, pursuant to the comprehensive plan and applicable district zoning regulations, has an aggregation of sites with development potential creating the need for transportation improvements within such area to be funded by impact fees. No area may be included in more than one transportation service area.

Section 503-A. Grant of Power.

(a) The governing body of each municipality other than a county, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal impact fee ordinances and, thereafter, may establish, at the time of municipal approval of any new development or subdivision, the amount of an impact fee for any of the offsite public transportation capital improvements authorized by this act as a condition precedent to final plat approval under the municipality's subdivision and land development ordinance. Every ordinance adopted pursuant to this act shall include, but not be limited to, provisions for the following:

- (1) The conditions and standards for the determination and imposition of impact fees consistent with the provisions of this act.
- (2) The agency, body or office within the municipality which shall administer the collection, disbursement and accounting of impact fees.
- (3) The time, method and procedure for the payment of impact fees.
- (4) The procedure for issuance of any credit against or reimbursement of impact fees which an applicant may be entitled to receive consistent with the provisions of this act.
- (5) Exemptions or credits which the municipality may choose to adopt. In this regard the municipality shall have the power to:
 - (i) Provide a credit of up to 100% of the applicable impact fees for all new development and growth which constitutes affordable housing to low- and moderate-income persons.
 - (ii) Provide a credit of up to 100% of the applicable impact fees for growth which are determined by the municipality to serve an overriding public interest.

- (iii) Exempt de minimus applications from impact fee requirements. If such a policy is adopted, the definition of de minimus shall be contained in the ordinance.

(b) No municipality shall have the power to require as a condition for approval of a land development or subdivision application the construction, dedication or payment of any offsite improvements or capital expenditures of any nature whatsoever or impose any contribution in lieu thereof, exaction fee, or any connection, tapping or similar fee except as may be specifically authorized under this act.

(c) No municipality may levy an impact fee prior to the enactment of a municipal impact fee ordinance adopted in accordance with the procedures set forth in this act, except as may be specifically authorized by the provisions of this act. A transportation impact fee shall be imposed by a municipality within a service area or areas only where such fees have been determined and imposed pursuant to the standards, provisions and procedures set forth herein.

(d) Impact fees may be used for those costs incurred for improvements designated in the transportation capital improvement program which are attributable to new development, including the acquisition of land and rights-of-way; engineering, legal and planning costs; and all other costs which are directly related to road improvements within the service area or areas, including debt service. Impact fees shall not be imposed or used for costs associated with any of the following:

- (1) Construction, acquisition or expansion of municipal facilities other than capital improvements identified in the transportation capital improvements plan required by this act.
- (2) Repair, operation or maintenance of existing or new capital improvements.
- (3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing developments in order to meet stricter safety, efficiency, environmental or regulatory standards not attributable to new development.
- (4) Upgrading, updating, expanding or replacing existing capital improvements to remedy deficiencies in service to existing development or fund deficiencies in existing municipal capital improvements resulting from a lack of adequate municipal funding over the years for maintenance or capital construction costs.
- (5) Preparing and developing the land use assumptions, roadway sufficiency analysis and transportation capital improvement plan, except that impact fees may be used for no more than a proportionate amount of the cost of professional consultants incurred in preparing a roadway sufficiency analysis of infrastructure within a specified transportation service area, such allowable proportion to be calculated by dividing the total costs of all road improvements in the adopted transportation capital improvement program within the transportation service area attributable to projected future development within the service area, as defined in section 504-A(e)(1)(iii), by the total costs of all road improvements in the adopted transportation capital improvement program within the specific transportation service area, as defined in section 504-A.

(e) Nothing in this act shall be deemed to alter or affect a municipality's existing power to require an applicant for municipal approval of any new development or subdivision from paying for the installation of onsite improvements as provided for in a municipality's subdivision and land development ordinance as authorized by this act.

(f) No municipality may delay or deny any application for building permit, certificate-of-occupancy, development or any other approval or permit required for construction, land development, subdivision or occupancy for the reason that any project of an approved capital improvement program has not been completed.

(g) A municipality which has enacted an impact fee ordinance on or before June 1, 1990, may for a period not to exceed one year from the effective date of this article, adopt an impact fee ordinance to conform with the standards and procedures set forth in this article. Where a fee previously imposed pursuant to an ordinance in effect on June 1, 1990, for transportation improvements authorized by this article is greater than the recalculated fee due under the newly adopted ordinance, the individual who paid the fee is entitled to a refund of the difference. If the recalculated fee is greater than the previously paid fee, there shall be no additional charge.

(h) The powers provided by this section may be exercised by two or more municipalities, other than counties, which have adopted a joint municipal comprehensive plan pursuant to Article XI through a joint authority, subject to the conditions and procedures set forth in this article.

Section 504-A. Transportation Capital Improvements Plan.

(a) A transportation capital improvements plan shall be prepared and adopted by the governing body of the municipality prior to the enactment of any impact fee ordinance. The municipality shall provide qualified professionals to assist the transportation impact fee advisory committee or the planning commission in the preparation of the transportation capital improvements plan and calculation of the impact fees to be imposed to implement the plan in accordance with the procedures, provisions and standards set forth in this act.

(b)(1) An impact fee advisory committee shall be created by resolution of a municipality intending to adopt a transportation impact fee ordinance. The resolution shall describe the geographical area or areas of the municipality for which the advisory committee shall develop the land use assumptions and conduct the roadway sufficiency analysis studies.

- (2) The advisory committee shall consist of no fewer than 7 nor more than 15 members, all of whom shall serve without compensation. The governing body of the municipality shall appoint as members of the advisory committee persons who are either residents of the municipality or conduct business within the municipality and are not employees or officials of the municipality. Not less than 40% of the members of the advisory committee shall be representatives of the real estate, commercial and residential development, and building industries. The municipality may also appoint traffic or transportation engineers or planners to serve on the advisory committee provided the appointment is made after consultation with the advisory committee members. The traffic or transportation engineers or planners appointed to the advisory committee may not be employed by the municipality for the development of or consultation on the roadways sufficiency analysis which may lead to the adoption of the transportation capital improvements plan.
- (3) (The governing body of the municipality may elect to designate the municipal planning commission appointed pursuant to Article II as the impact fee advisory committee. If the existing planning commission does not include members representative of the real estate, commercial and residential development, and building industries at no less than 40% of the membership, the governing body of the municipality shall appoint the sufficient number of representatives of the aforementioned industries who reside in the municipality or conduct business within the municipality to serve as ad hoc voting members of the planning commission whenever such commission functions as the impact fee advisory committee.
- (4) No impact fee ordinance may be invalidated as a result of any legal action challenging the composition of the advisory committee which is not brought within 90 days following the first public meeting of said advisory committee.
- (5) The advisory committee shall serve in an advisory capacity and shall have the following duties:
 - (i) To make recommendations with respect to land use assumptions, the development of comprehensive road improvements and impact fees.
 - (ii) To make recommendations to approve, disapprove or modify a capital improvement program by preparing a written report containing these recommendations to the municipality.
 - (iii) To monitor and evaluate the implementation of a capital improvement program and the assessment of impact fees, and report annually to the municipality with respect to the same.
 - (iv) To advise the municipality of the need to revise or update the land use assumptions, capital improvement program or impact fees.

(c)(1) As a prerequisite to the development of the transportation capital improvements plan, the advisory committee shall develop land use assumptions for the determination of future growth and development within the designated area or areas as described by the municipal resolution and recommend its findings to the governing body. Prior to the issuance and presentation of a written report to the municipality on the recommendations for proposed land use assumptions upon which to base the development of the transportation capital improvements plan, the advisory committee shall conduct a public hearing, following the providing of proper notice in accordance with section 107, for the consideration of the land use assumption proposals.

Following receipt of the advisory committee report, which shall include the findings of the public hearing, the governing body of the municipality shall by resolution approve, disapprove or modify the land use assumptions recommended by the advisory committee.

(2) The land use assumptions report shall:

- (i) Describe the existing land uses within the designated area or areas and the highways, roads or streets incorporated therein.
 - (ii) To the extent possible, reflect projected changes in land uses, densities of residential development, intensities of nonresidential development and population growth rates which may affect the level of traffic within the designated area or areas over a period of at least the next five years. These projections shall be based on an analysis of population growth rates during the prior five-year period, current zoning regulations, approved subdivision and land developments, and the future land use plan contained in the adopted municipal comprehensive plan. It may also refer to all professionally produced studies and reports pertaining to the municipality regarding such items as demographics, parks and recreation, economic development and any other study deemed appropriate by the municipality.
- (3) If the municipality is located in a county which has created a county planning agency, the advisory committee shall forward a copy of their proposed land use assumptions to the county planning agency for its comments at least 30 days prior to the public hearing. At the same time, the advisory committee shall also forward copies of the proposed assumptions to all contiguous municipalities and to the local school district for their review and comments.

(d)(1) Upon adoption of the land use assumptions by the municipality, the advisory committee shall prepare, or cause to be prepared, a roadway sufficiency analysis which shall establish the existing level of infrastructure sufficiency and preferred levels of service within any designated area or areas of the municipality as described by the resolution adopted pursuant to the creation of the advisory committee. The roadway sufficiency analysis shall be prepared for any highway, road or street within the designated area or areas on which the need for road improvements attributable to projected future new development is anticipated. The municipality shall commission a traffic or transportation engineer or planner to assist the advisory committee in the preparation of the roadway sufficiency analysis. Municipalities may jointly commission such engineer or planner to assist in the preparation of multiple municipality roadway sufficiency analyses. In preparing the roadway sufficiency analysis report, the engineer may consider and refer to previously produced professional studies and reports relevant to the production of the roadway sufficiency analysis as required by the section. It shall be deemed that the roads, streets and highways not on the roadway sufficiency analysis report are not impacted by future development. The roadway sufficiency analysis shall include the following components:

- (i) The establishment of existing volumes of traffic and existing levels of service.
- (ii) The identification of a preferred level of service established pursuant to the following:
 - (A) The level of service shall be one of the categories of road service as defined by the Transportation Research Board of the National Academy of Sciences or the Institute of Transportation Engineers. The municipality may choose to select a level of service on a transportation service area basis as the preferred level of service. The preferred levels of service shall be designated by the governing body of the municipality following determination of the existing level of service as established by the roadway sufficiency analysis. If the preferred level of service is designated as greater than the existing level of service, the municipality shall be required to identify road improvements needed to correct the existing deficiencies.
 - (B) Following adoption of the preferred level of service, such level of service may be waived for a particular road segment or intersection if the municipality finds that one or more of the following effectively precludes provision of road improvements necessary to meet the level of service: geometric design limitations, topographic limitations or the unavailability of necessary right-of-way.
- (iii) The identification of existing deficiencies which need to be remedied to accommodate existing traffic at the preferred level of service.

- (iv) The specification of the required road improvements needed to bring the existing level of service to the preferred level of service.
 - (v) A projection of anticipated traffic volumes, with a separate determination of pass-through trips, for a period of not less than five years from the date of the preparation of the roadway sufficiency analysis based upon the land use assumptions adopted under this section.
 - (vi) The identification of forecasted deficiencies which will be created by “pass-through” trips.
- (2) The advisory committee shall provide the governing body with the findings of the roadway sufficiency analysis. Following receipt of the advisory committee report, the governing body shall by resolution approve, disapprove or modify the roadway sufficiency analysis recommended by the advisory committee.

(e)(1) Utilizing the information provided by the land use assumption and the roadway sufficiency analysis as the basis for determination of the need for road improvements to remedy existing deficiencies and accommodate future projected traffic volumes, the advisory committee shall identify those capital projects which the municipality should consider for adoption in its transportation capital improvements plan and shall recommend the delineation of the transportation service area or areas. The capital improvement plan shall be developed in accordance with generally accepted engineering and planning practices. The capital improvement program shall include projections of all designated road improvements in the capital improvement program. The total cost of the road improvements shall be based upon estimated costs, using standard traffic engineering standards, with a 10% maximum contingency which may be added to said estimate. These costs shall include improvements to correct existing deficiencies with identified anticipated sources of funding and timetables for implementation. The transportation capital improvements plan shall include the following components:

- (i) A description of the existing highways, roads and streets within the transportation service area and the road improvements required to update, improve, expand or replace such highways, roads and streets in order to meet the preferred level of service and usage and stricter safety, efficiency, environmental or regulatory standards not attributable to new development.
- (ii) A plan specifying the road improvements within the transportation service area attributable to forecasted pass-through traffic so as to maintain the preferred level of service after existing deficiencies identified by the roadway sufficiency analysis have been remedied.
- (iii) A plan specifying the road improvements or portions thereof within the transportation service area attributable to the projected future development, consistent with the adopted land use assumptions, in order to maintain the preferred level of service after accommodation for pass-through traffic and after existing deficiencies identified in the roadway sufficiency analysis have been remedied.
- (iv) The projected costs of the road improvements to be included in the transportation capital improvements plan, calculating separately for each project by the following categories:
 - (A) The costs or portion thereof associated with correcting existing deficiencies as specified in subparagraph (i).
 - (B) The costs or portions thereof attributable to providing road improvements to accommodate forecasted pass-through trips as specified in subparagraph (ii).
 - (C) The costs of providing necessary road improvements or portions thereof attributable to projected future development as specified in subparagraph (iii); provided that no more than 50% of the cost of the improvements to any highway, road or street which qualifies as a State Highway or portion of the rural State Highway System as provided in section 102 of the act of June 1, 1945 (P.L.1242, No. 428), known as the “State Highway Law” may be included.
- (v) A projected timetable and proposed budget for constructing each road improvement contained in the plan.
- (vi) The proposed source of funding for each capital improvement included in the road plan. This shall include anticipated revenue from the Federal Government, State government, municipality, impact fees and any other source. The estimated revenue for each capital improvement in the plan which is to be provided by impact fees shall be identified separately for each project.

- (2) The source of funding required for projects to remedy existing deficiencies as set forth in paragraph (1)(i) and the road improvements attributable to forecasted pass-through traffic as set forth in paragraph (1)(ii) shall be exclusive of funds generated from the assessment of impact fees.
- (3) Upon the completion of the transportation capital improvements plan and prior to its adoption by the governing body of the municipality and the enactment of a municipal impact fee ordinance, the advisory committee shall hold at least one public hearing for consideration of the plan. Notification of the public hearing shall comply with the requirement of section 107. The plan shall be available for public inspection at least ten working days prior to the date of the public hearing. After presentation of the recommendation by the advisory committee or its representatives at a public meeting of the governing body, the governing body may make such changes to the plan prior to its adoption as the governing body deems appropriate following review of the public comments made at the public hearing.
- (4) The governing body may periodically, but no more frequently than annually, request the impact fee advisory committee to review the capital improvements plan and impact fee charges and make recommendations for revisions for subsequent consideration and adoption by the governing body based only on the following:
 - (i) New subsequent development which has occurred in the municipality.
 - (ii) Capital improvements contained in the capital improvements plan, the construction of which has been completed.
 - (iii) Unavoidable delays beyond the responsibility or control of the municipality in the construction of capital improvements contained in the plan.
 - (iv) Significant changes in the land use assumptions.
 - (v) Changes in the estimated costs of the proposed transportation capital improvements, which may be recalculated by applying the construction cost index as published in the American City/County Magazine or the Engineering News Record.
 - (vi) Significant changes in the projected revenue from all sources listed needed for the construction of the transportation capital improvements.
- (f) Any improvements to Federal-aid or State highways to be funded in part by impact fees shall require the approval of the Department of Transportation and, if necessary, the United States Department of Transportation. Nothing in this act shall be deemed to alter or diminish the powers, duties or jurisdiction of the Department of Transportation with respect to State highways or the rural State highway system.
- (g) Two or more municipalities may, upon agreement, appoint a joint impact fee advisory committee which may develop roadway sufficiency analyses and transportation capital improvements plans for the participating municipalities. The members of the advisory committee must be either residents of or conduct business within one of the participating municipalities.

Section 505-A. Establishment and Administration of Impact Fees.

- (a) (1) The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted capital improvement plan within a given transportation service area attributable to and necessitated by new development within the service area as calculated pursuant to section 504-A(e)(1)(iv)(c), divided by the number of anticipated peak hour trips generated by all new development consistent with the adopted land use assumptions and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, fourth or subsequent edition as adopted by the municipality by ordinance or resolution to equal a per trip cost for transportation improvements within the service area.

- (2) The specific impact fee for a specific new development or subdivision within the service area for road improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per trip cost established for the service area as determined in section 503-A(a) by the estimated number of peak-hour trips to be generated by the new development or subdivision using generally accepted traffic engineering standards.
- (3) A municipality may authorize or require the preparation of a special transportation study in order to determine traffic generation or circulation for a new nonresidential development to assist in the determination of the amount of the transportation fee for such development or subdivision. The municipality shall set forth by ordinance the circumstances in which such a study should be authorized or required, provided however, that no special transportation study shall be required when there is no deviation from the land use assumptions resulting in increased density, intensity or trip generation by a particular development. A developer or municipality may, however, at any time, voluntarily prepare and submit a traffic study for a proposed development or may have such a study prepared at its expense after the development is completed to include actual trips generated by the development for use in any appeal as provided for under this act. The special transportation study shall be prepared by a qualified traffic or transportation engineer using procedures and methods established by the municipality based on generally accepted transportation planning and engineering standards. The study, where required by the municipality, shall be submitted prior to the imposition of an impact fee and shall be taken into consideration by the municipality in increasing or reducing the amount of the impact fee for the new development for the amount shown on the impact fee schedule adopted by the municipality.

(b) The governing body shall enact an impact ordinance setting forth a description of the boundaries and a fee schedule for each transportation service area. At least ten working days prior to the adoption of the ordinance at a public meeting, the ordinance shall be available for public inspection. The impact fee ordinance shall include, but not be limited to, those provisions set forth in section 503-A(a) and conform with the standards, provisions and procedures set forth in this act.

(c)(1) A municipality may give notice of its intention to adopt an impact fee ordinance by publishing a statement of such intention twice in one newspaper of general circulation in the municipality. The first publication shall not occur before the adoption of the resolution by which the municipality establishes its impact fee advisory committee. The second publication shall occur not less than one nor more than three weeks thereafter.

- (2) A municipal impact fee ordinance adopted under and pursuant to this act may provide that the provisions of the ordinance may have retroactive application, for a period not to exceed 18 months after the adoption of the resolution creating an impact fee advisory committee pursuant to section 504-A (b)(1), to preliminary or tentative applications for land development, subdivision or PRD. with the municipality on or after the first publication of the municipality's intention to adopt an impact fee ordinance; provided, however, that the impact fee imposed on building permits for construction of new development approved pursuant to such applications filed during the period of pendency shall not exceed \$1,000 per anticipated peak hour trip as calculated in accordance with the generally accepted traffic engineering standards as set forth under the provisions of subsection (a)(1) or the subsequently adopted fee established by the ordinance, whichever is less.
- (3) No action upon an application for land development, subdivision or PRD. shall be postponed, delayed or extended by the municipality because adoption of a municipal impact fee ordinance is being considered. Furthermore, the adoption of an impact fee ordinance more than 18 months after adoption of a resolution creating the impact fee advisory committee shall not be retroactive or applicable to plats submitted for preliminary or tentative approval prior to the legal publication of the proposed impact fee ordinance and any fees collected pursuant to this subsection shall be refunded to the payor of such fees; provided the adoption of the impact fee ordinance was not delayed due to the initiation of any litigation challenging the adoption of such ordinance.

(d) Any impact fees collected by a municipality pursuant to a municipal ordinance shall be deposited by the municipality into an interest-bearing fund account designated solely for impact fees, clearly identifying the transportation service area from which the fee was received. Funds collected in one transportation service area must

be accounted for and expended within that transportation service area, and such funds shall only be expended for that portion of the transportation capital improvements identified as being funded by impact fees under the transportation capital improvements plan. Notwithstanding any other provisions of this act, municipalities may expend impact fees paid by an applicant on projects not contained in the adopted transportation capital improvement plan, or may provide credit against impact fees for the value of any construction projects not contained in the transportation capital improvement plan which are performed at the applicant's expense, if all of the following criteria are met:

- (1) The applicant has provided written consent to use of its collected impact fees, or the provision of such credit against the applicant's impact fees, for specific transportation projects which are not included in the transportation capital improvement plan.
- (2) The alternative transportation projects, whether highway or multimodal, have as their purpose the reduction of traffic congestion or the removal of vehicle trips from the roadway network.
- (3) The municipality amends its transportation capital improvement plan components required by section 504-A(e)(1)(vi) to provide replacement of the collected impact fees transferred to transportation projects outside the approved transportation capital improvement plan from sources other than impact fees or developer contributions within three years of completion of the alternative projects to which the transferred fees were applied or for which credit was provided. All interest earned on such funds shall become funds of that account. The municipality shall provide that an accounting be made annually for any fund account containing impact fee proceeds and earned interest. Such accounting shall include, but not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds and the amount of funds expended on specific transportation improvements. Notice of the availability of the results of the accounting shall be included and published as part of the annual audit required of municipalities. A copy of the report shall also be provided to the advisory committee.

(e) All transportation impact fees imposed under the terms of this act shall be payable at the time of the issuance of building permits for the applicable new development or subdivision. The municipality may not require the applicant to provide a guarantee of financial security for the payment of any transportation impact fees, except the municipality may provide for the deposit with the municipality of financial security in an amount sufficient to cover the cost of the construction of any road improvement contained in the transportation capital improvement plan which is performed by the applicant.

(f) An applicant shall be entitled to a credit against the impact fee in the amount of the fair market value of any land dedicated by the applicant to the municipality for future right-of-way, realignment or widening of any existing roadways or for the value of any construction of road improvements contained in the transportation capital improvement program which is performed at the applicant's expense. The amount of such credit for any capital improvement constructed shall be the amount allocated in the capital improvement program, including contingency factors, for such work. The fair market value of any and dedicated by the applicant shall be determined as of the date of the submission of the land development or subdivision application to the municipality.

(g) Impact fees previously collected by a municipality shall be refunded, together with earned accrued interest thereon, to the payor of such fees from the date of payment under any of the following circumstances:

- (1) In the event that a municipality terminates or completes an adopted capital improvements plan for a transportation service area and there remains at the time of termination or completion undispersed funds in the accounts established for that purpose, the municipality shall provide written notice by certified mail to those persons who previously paid the fees which remain undispersed of the availability of said funds for refund of the person's proportionate share of the fund balance. The allocation of the refund shall be determined by generally accepted accounting practices. In the event that any of the funds remain unclaimed following one year after the notice, which notice shall be provided to the last known address provided by the payor of the fees to the municipality, the municipality shall be authorized to transfer any funds so remaining to any other fund in the municipality without any further obligation to refund said funds.
- (2) If the municipality fails to commence construction of any transportation service area road improvements within three years of the scheduled construction date set forth in the transportation capital improvements plan, any person who paid any impact fees pursuant to that transportation capital improvements plan shall,

upon written request to the municipality, receive a refund of that portion of the fee attributable to the contribution for the uncommenced road improvement, plus the interest accumulated thereon from the date of payment.

- (3) If, upon completion of any road improvements project, the actual expenditures of the capital project are less than 95% of the costs properly allocable to the fee paid within the transportation service area in which the completed road improvement was adopted, the municipality shall refund the pro rata difference between the budgeted costs and the actual expenditures, including interest accumulated thereon from the date of payment, to the person or persons who paid the impact fees for such improvements.
- (4) If the new development for which transportation impact fees were paid is not commenced prior to the expiration of building permits issued for the new development within the time limits established by applicable building codes within the municipality or if the building permit as issued for the new development is altered and the alteration results in a decrease in the amount of the impact fee due in accordance with the calculations set forth in subsection (a)(1).

(h) Where an impact fee ordinance has been adopted pursuant to the other provisions of this act, the ordinance may impose an additional impact fee upon new developments which generate 1,000 or more new peak-hour trips, net of pass-by trips as defined by the current edition of the institute of transportation engineers trip generation manual, during the peak-hour period designated in the ordinance. In such case, the impact fee ordinance adopted under this act may require the applicant for such a development to perform a traffic analysis of development traffic impact on highways, roads or streets outside the transportation service area in which the development site is located but within the boundaries of the municipality or municipalities adopting a joint municipal impact fee ordinance or municipalities which are participating in a joint municipal authority authorized to impose impact fees by this article. Any such highways, roads or streets or parts thereof outside the transportation service area which will accommodate 10% or more of development traffic and 100 or more new peak-hour trips may be required to be studied, and the ordinance may require the applicant to mitigate the traffic impacts of the development on such highways, roads and streets to maintain the predevelopment conditions after completion of the development.

Section 506-A. Appeals.

(a) Any person required to pay an impact fee shall have the right to contest the land use assumptions, the development and implementation of the transportation capital improvement program, the imposition of impact fees, the periodic updating of the transportation capital improvement program, the refund of impact fees and all other matters relating to impact fees, including the constitutionality or validity of the impact fee ordinance by filing an appeal with the court of common pleas.

(b) A master may be appointed by the court to hear testimony on the issues and return the record and a transcript of the testimony, together with a report and recommendations, or the court may appoint a master to hold a nonrecord hearing and to make recommendations and return the same to the court, in which case either party may demand a hearing de novo before the court.

(c) Any cost incurred by parties in such an appeal shall be the separate responsibility of the parties.

Section 507-A. Prerequisites for Assessing Sewer and Water Tap-in Fees.

(a) No municipality may charge any tap-in connection or other similar fee as a condition of connection to a municipally owned sewer or water system unless such fee is calculated as provided in the applicable provisions of the act of May 2, 1945, (P.L.382, No.164), known as the "Municipality Authorities Act of 1945."

(b) Where a municipally owned water or sewer system is to be extended at the expense of the owner or owners of properties or where the municipality otherwise would construct the connection end or customer facilities services (other than water meter installation), the property owner or owners shall have the right to construct such extension or make such connection and install such customer facilities himself or themselves or through a subcontractor in accordance with the "Municipality Authorities Act of 1945."

(c) Where a property owner or owners construct or cause to be constructed any addition, expansion or extension to or of a sewer or water system of a municipality whereby such addition, expansion or extension provides future excess capacity to accommodate future development upon the lands of others, the municipality shall provide for the reimbursement to the property owner or owners in accordance with the provisions of the "Municipality Authorities Act of 1945."

Section 508-A. Joint Municipal Impact Fee Ordinance.

(a) For the purpose of permitting municipalities which cooperatively plan for their future to also provide for transportation capital improvements in a cooperative manner, the governing bodies of each municipality which has adopted a joint municipal comprehensive plan pursuant to Article XI, in accordance with the conditions and procedures set forth in this article, may cooperate with one or more municipalities to enact, amend and repeal joint transportation impact fee ordinances to accomplish the purposes of this act in accordance with this article.

(b) The procedures set forth in this article shall be applicable to the enactment of a joint municipal impact fee ordinance.

(c) Each municipality party to a joint municipal impact fee ordinance shall approve the advisory committee and shall adopt the land use assumptions, roadway sufficiency analysis, capital improvement plan, and ordinances and amendments thereto in accordance with the procedures in this article, and no such ordinance shall become effective until it has been properly adopted by all the participating municipalities.

Article VI – Zoning

Section 601. General Powers. The governing body of each municipality, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal zoning ordinances to implement comprehensive plans and to accomplish any of the purposes of this act.

Section 602. County Powers. The powers of the governing bodies of counties to enact, amend and repeal zoning ordinances shall be limited to land in those municipalities, wholly or partly within the county, which have no zoning ordinance in effect at the time a zoning ordinance is introduced before the governing body of the county and until the municipality's zoning ordinance is in effect. The enactment of a zoning ordinance by any municipality, other than the county, whose land is subject to county zoning shall act as a repeal protanto of the county zoning ordinance within the municipality adopting such ordinance.

Section 602.1. County Review; Dispute Resolution. The county planning commission shall offer a mediation option to any municipality which believes that its citizens will experience harm as the result of the adoption of a zoning ordinance or an amendment to an existing zoning ordinance in contiguous municipalities, if the contiguous municipalities agree. In exercising such an option, the municipalities shall comply with the procedures set forth in Article IX. The cost of the mediation shall be shared equally by the parties, unless otherwise agreed.

Section 603. Ordinance Provisions.

(a) Zoning ordinances should reflect the policy goals of the statement of community development objectives required in section 606, and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.

(b) Zoning ordinances, except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superseded and preempted by the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of December 19, 1984 (P.L.1093, No.219), known as the "Noncoal Surface Mining Conservation and Reclamation Act," and the act of December 19, 1984 (P.L.1140, No.223), known as the "Oil and Gas Act," and to the extent that the subsidence impacts of coal extraction are regulated by the act of April 27, 1966 (1ST Sp.Sess., P.L.31, No.1), known as "The Bituminous Mine Subsidence and Land Conservation Act," and that regulation of activities related to commercial agricultural production would exceed the requirements imposed under the act of May 20, 1993 (P.L.12, No.6), known as the "Nutrient Management Act," regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the "Nutrient Management Act," the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law," or the act of June 10, 1982 (P.L.454, No.133), entitled "An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances," or that regulation of other activities are preempted by other federal or state laws may permit, prohibit, regulate, restrict and determine:

- (1) Uses of land, watercourses and other bodies of water.
- (2) Size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures.
- (3) Areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures.
- (4) Density of population and intensity of use.
- (5) Protection and preservation of natural and historic resources and prime agricultural land and activities.

(c) Zoning ordinances may contain:

- (1) provisions for special exceptions and variances administered by the zoning hearing board, which provisions shall be in accordance with this act;
- (2) provisions for conditional uses to be allowed or denied by the governing body after recommendations by the planning agency and hearing, pursuant to express standards and criteria set forth in the zoning

ordinance. Notice of hearings on conditional uses shall be provided in accordance with section 908(1), and notice of the decision shall be provided in accordance with section 908(10). In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance;

(2.1) ((2.1) deleted by amendment June 22, 2000, P.L.495, No. 68)

(2.2) provisions for regulating transferable development rights, on a voluntary basis, including provisions for the protection of persons acquiring the same, in accordance with express standards and criteria set forth in the ordinance and section 619.1;

(3) provisions for the administration and enforcement of such ordinances;

(4) such other provisions as may be necessary to implement the purposes of this act;

(5) provisions to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act;

(6) provisions authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance; and

(7) provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance.

(c) amended July 4, 2008, P.L.319, No.39)

(d) Zoning ordinances may include provisions regulating the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources.

(e) Zoning ordinances may not unduly restrict the display of religious symbols on property being used for religious purposes.

(f) Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.

(g)(1) zoning ordinances shall protect prime agricultural land and may promote the establishment of agricultural security areas.

(2) zoning ordinances shall provide for protection of natural and historic features and resources.

(h) Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L.12, No.6), known as the "Nutrient Management Act," the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law," or the act of June 10, 1982 (P.L.454, No.133), entitled "An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances."

(i) Zoning ordinances shall provide for the reasonable development of minerals in each municipality.

(j) Zoning ordinances adopted by municipalities shall be generally consistent with the municipal or multimunicipal comprehensive plan or, where none exists, with the municipal statement of community development objectives and

the county comprehensive plan. If a municipality amends its zoning ordinance in a manner not generally consistent with its comprehensive plan, it shall concurrently amend its comprehensive plan in accordance with Article III.

(k) A municipality may amend its comprehensive plan at any time, provided that the comprehensive plan remains generally consistent with the county comprehensive plan and compatible with the comprehensive plans of abutting municipalities.

(l) Zoning ordinances shall permit no-impact home-based businesses in all residential zones of the municipality as a use permitted by right, except that such permission shall not supersede any deed restriction, covenant or agreement restricting the use of land, nor any master deed, bylaw or other document applicable to a common interest ownership community.

Section 603.1. Interpretation of Ordinance Provisions. In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

Section 604. Zoning Purposes. The provisions of zoning ordinances shall be designed:

- (1) To promote, protect and facilitate any or all of the following: the public health, safety, morals, and the general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations, airports, and national defense facilities, the provisions of adequate light and air; access to incident solar energy, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, recreational facilities, public grounds, the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, and other public requirements; as well as preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.
- (2) To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers.
- (3) To preserve prime agriculture and farmland considering topography, soil type and classification, and present use.
- (4) To provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks, provided, however, that no zoning ordinance shall be deemed invalid for the failure to provide for any other specific dwelling type.
- (5) To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses.

Section 605. Classifications. In any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned. The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such various districts of the municipality as shall be described by a map made part of the zoning ordinance. Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:

- (1) For the purpose of making transitional provisions at and near the boundaries of districts. (1.1) For the purpose of regulating nonconforming uses and structures.
- (2) For the regulation, restriction or prohibition of uses and structures at, along or near:
 - (i) major thoroughfares, their intersections and interchanges, transportation arteries and rail or transit terminals;
 - (ii) natural or artificial bodies of water, boat docks and related facilities;
 - (iii) places of relatively steep slope or grade, or other areas of hazardous geological or topographic features;

- (iv) public buildings and public grounds;
- (v) aircraft, helicopter, rocket, and spacecraft facilities;
- (vi) places having unique historical, architectural or patriotic interest or value; or
- (vii) flood plain areas, agricultural areas, sanitary landfills, and other places having a special character or use affecting and affected by their surroundings.

As among several classes of zoning districts, the provisions for permitted uses may be mutually exclusive, in whole or in part.

- (3) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act, and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.
- (4) For the purpose of regulating transferable development rights on a voluntary basis.

Section 606. Statement of Community Development Objectives. Zoning ordinances enacted after the effective date of this act should reflect the policy goals of the municipality as listed in a statement of community development objectives, recognizing that circumstances can necessitate the adoption and timely pursuit of new goals and the enactment of new zoning ordinances which may neither require nor allow for the completion of a new comprehensive plan and approval of new community development objectives. This statement may be supplied by reference to the community comprehensive plan or such portions of the community comprehensive plan as may exist and be applicable or may be the statement of community development objectives provided in a statement of legislative findings of the governing body of the municipality with respect to land use; density of population; the need for housing, commerce and industry; the location and function of streets and other community facilities and utilities; the need for preserving agricultural land and protecting natural resources; and any other factors that the municipality believes relevant in describing the purposes and intent of the zoning ordinance.

Section 607. Preparation of Proposed Zoning Ordinance.

- (a) The text and map of the proposed zoning ordinance, as well as all necessary studies and surveys preliminary thereto, shall be prepared by the planning agency of each municipality upon request by the governing body.
- (b) In preparing a proposed zoning ordinance, the planning agency shall hold at least one public meeting pursuant to public notice and may hold additional public meetings upon such notice as it shall determine to be advisable.
- (c) Upon the completion of its work, the planning agency shall present to the governing body the proposed zoning ordinance, together with recommendations and explanatory materials.
- (d) The procedure set forth in this section shall be a condition precedent to the validity of a zoning ordinance adopted pursuant to this act.
- (e) If a county planning agency shall have been created for the county in which the municipality adopting the ordinance is located, then at least 45 days prior to the public hearing by the local governing body as provided in section 608, the municipality shall submit the proposed ordinance to said county planning agency for recommendations.

Section 608. Enactment of Zoning Ordinance. Before voting on the enactment of a zoning ordinance, the governing body shall hold a public hearing thereon, pursuant to public notice, and pursuant to mailed notice and electronic notice to any owner of a tract or 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. The vote on the enactment by the governing body shall be within 90 days after the last public hearing. Within 30 days after enactment, a copy of the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 608.1. Municipal Authorities and Water Companies.

- (a) A municipal authority, water company or any other municipality that plans to expand water, sanitary sewer or storm sewer service via a new main extension to a proposed development that has not received any municipal approvals within the municipality shall notify the municipality by certified mail, return receipt requested, of its intention and shall provide the municipality an opportunity to provide written comment on whether the proposed expansion of service within the municipality is generally consistent with the zoning ordinance.
- (b) The purpose of the requirement of this section is to provide the municipal authority, water company or any other municipality with information regarding how its decision to expand service may potentially enhance and support or conflict with or negatively impact on the land use planning of municipalities.
- (c) Nothing in this section shall be construed as limiting the right of a municipal authority, water company or any other municipality to expand service as otherwise permitted by law.
- (d) Except as provided in section 619.2, nothing in this act shall be construed as limiting the authority of the Pennsylvania Public Utility Commission over the implementation, location, construction and maintenance of public utility facilities. The requirement of this section shall not apply to an expansion of service by a municipal authority, water company or other municipality which is ordered by a court or a federal or state agency.
- (e) As used in this section:
- (1) A “decision to expand service within the municipality” shall mean a decision to expand the number of its individual service connections for distribution or collection within a municipality as a result of a main extension; but, if the number of individual service connections are not being increased, locating or acquiring transmission lines or interceptors, or wells, reservoirs, aquifers, pump stations, water storage tanks or other facilities by a municipal authority or water company in a new area of a municipality shall not be deemed an expansion of service.
 - (2) A “water company” shall include any person or corporation, including a municipal corporation operating beyond its corporate limits, which furnishes water to or for the public for compensation.
- (f) Nothing in this section shall be construed to authorize a municipality to regulate the allocation or withdrawal of water resources by any person, municipal authority or water company that is otherwise regulated by the Pennsylvania Public Utility Commission or other Federal or state agencies or statutes.

Section 609. Enactment of Zoning Ordinance Amendments.

- (a) For the preparation of amendments to zoning ordinances, the procedure set forth in section 607 for the preparation of a proposed zoning ordinance shall be optional.
- (b)(1) Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice, and pursuant to mailed notice and electronic notice to an owner of a tract or 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. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the municipality at points deemed sufficient by the municipality along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing.
- (2)(i) In addition to the requirement that notice be posted under clause (1), where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least thirty days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the municipality. The notice shall include the location, date and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this subsection.
- (ii) This clause shall not apply when the rezoning constitutes a comprehensive rezoning.

(c) In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least 30 days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.

(d) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, mailed notice and electronic notice, before proceeding to vote on the amendment.

(e) If a county planning agency shall have been created for the county in which the municipality proposing the amendment is located, then at least 30 days prior to the public hearing on the amendment by the local governing body, the municipality shall submit the proposed amendment to the county planning agency for recommendations.

(f) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

(g) Within 30 days after enactment, a copy of the amendment to the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 609.1. Procedure for Landowner Curative Amendments.

(a) A landowner who desires to challenge on substantive grounds the validity of a zoning ordinance or map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the governing body with a written request that his challenge and proposed amendment be heard and decided as provided in section 916.1. The governing body shall commence a hearing thereon within 60 days of the request as provided in section 916.1. The curative amendment and challenge shall be referred to the planning agency or agencies as provided in section 609 and notice of the hearing thereon shall be given as provided in section 610 and in section 916.1.

(b) The hearing shall be conducted in accordance with section 908 and all references therein to the zoning hearing board shall, for purposes of this section be references to the governing body: provided, however, that the provisions of section 908 (1.2) and (9) shall not apply and the provisions of section 916.1 shall control. If a municipality does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for the entire zoning ordinance and map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.

(c) The governing body of a municipality which has determined that a validity challenge has merit may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The governing body shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

- (1) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
- (2) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;
- (3) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
- (4) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

- (5) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

Section 609.2. Procedure for Municipal Curative Amendments. If a municipality determines that its zoning ordinance or any portion thereof is substantially invalid, it shall take the following actions:

- (1) A municipality shall declare by formal action, its zoning ordinance or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within 30 days following such declaration and proposal the governing body of the municipality shall:
 - (i) By resolution make specific findings setting forth the declared invalidity of the zoning ordinance which may include:
 - (A) references to specific uses which are either not permitted or not permitted in sufficient quantity;
 - (B) reference to a class of use or uses which require revision; or
 - (C) reference to the entire ordinance which requires revisions.
 - (ii) Begin to prepare and consider a curative amendment to the zoning ordinance to correct the declared invalidity.
- (2) Within 180 days from the date of the declaration and proposal, the municipality shall enact a curative amendment to validate, or reaffirm the validity of, its zoning ordinance pursuant to the provisions required by section 609 in order to cure the declared invalidity of the zoning ordinance.
- (3) Upon the initiation of the procedures, as set forth in clause (1), the governing body shall not be required to entertain or consider any landowner's curative amendment filed under section 609.1 nor shall the zoning hearing board be required to give a report requested under section 909.1 or 916.1 subsequent to the declaration and proposal based upon the grounds identical to or substantially similar to those specified in the resolution required by clause (1)(a). Upon completion of the procedures as set forth in clauses (1) and (2), no rights to a cure pursuant to the provisions of sections 609.1 and 916.1 shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended zoning ordinance for which there has been a curative amendment pursuant to this section.
- (4) A municipality having utilized the procedures as set forth in clauses (1) and (2) may not again utilize said procedure for a 36-month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of its zoning ordinance, pursuant to clause (2); provided, however, if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the municipality by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the municipality may utilize the provisions of this section to prepare a curative amendment to its ordinance to fulfill said duty or obligation.

Section 610. Publication, Advertisement and Availability of Ordinances.

(a) Proposed zoning ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than 7 days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

- (1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.
- (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

(b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(c) Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 611. Publication After Enactment. (611 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 613. Registration of Nonconforming Uses, Structures and Lots. Zoning ordinances may contain provisions requiring the zoning officer to identify and register nonconforming uses, structures and lots, together with the reasons why the zoning officer identified them as nonconformities.

Section 614. Appointment and Powers of Zoning Officer. For the administration of a zoning ordinance, a zoning officer, who shall not hold any elective office in the municipality, shall be appointed. The zoning officer shall meet qualifications established by the municipality and shall be able to demonstrate to the satisfaction of the municipality a working knowledge of municipal zoning. The zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance. Zoning officers may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of their employment.

Section 615. Zoning Appeals. All appeals from decisions of the zoning officer shall be taken in the manner set forth in this act.

Section 616. Enforcement Penalties. (616 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 616.1. Enforcement Notice.

(a) If it appears to the municipality that a violation of any zoning ordinance enacted under this act or prior enabling laws has occurred, the municipality shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.

(b) The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.

(c) An enforcement notice shall state at least the following:

- (1) The name of the owner of record and any other person against whom the municipality intends to take action.
- (2) The location of the property in violation.
- (3) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.
- (4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
- (5) That the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of time in accordance with procedures set forth in the ordinance.
- (6) That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.

(d) In any appeal of an enforcement notice to the zoning hearing board the municipality shall have the responsibility of presenting its evidence first.

(e) Any filing fees paid by a party to appeal an enforcement notice to the zoning hearing board shall be returned to the appealing party by the municipality if the zoning hearing board, or any court in a subsequent appeal, rules in the appealing party's favor.

Section 617. Causes of Action. In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any ordinance enacted under this act or prior enabling laws, the governing body or, with the approval of the governing body, an officer of the municipality, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality. No such action may be maintained until such notice has been given.

Section 617.1. Jurisdiction. District justices shall have initial jurisdiction over proceedings brought under section 617.2.

Section 617.2. Enforcement Remedies.

(a) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the municipality whose ordinance has been violated.

(b) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

(c) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

Section 617.3. Finances and Expenditures.

(a) The governing body may appropriate funds to finance the preparation of zoning ordinances and shall appropriate funds for administration, for enforcement and for actions to support or oppose, upon appeal to the courts, decisions of the zoning hearing board.

(b) The governing body shall make provision in its budget and appropriate funds for the operation of the zoning hearing board.

(c) The zoning hearing board may employ or contract for and fix the compensation of legal counsel, as the need arises. The legal counsel shall be an attorney other than the municipal solicitor. The board may also employ or contract for and fix the compensation of experts and other staff and may contract for services as it shall deem necessary. The compensation of legal counsel, experts and staff and the sums expended for services shall not exceed the amount appropriated by the governing body for this use.

(d) For the same purposes, the governing body may accept gifts and grants of money and services from private sources and from the county, State and Federal Governments.

(e) The governing body may prescribe reasonable fees with respect to the administration of a zoning ordinance and with respect to hearings before the zoning hearing board. Fees for these hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

Section 618. Finances. (618 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 619. Exemptions. This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

Section 619.1. Transferable Development Rights.

(a) To and only to the extent a local ordinance enacted in accordance with this article and Article VII so provides, there is hereby created, as a separate estate in land, the development rights therein, and the same are declared to be severable and separately conveyable from the estate in fee simple to which they are applicable.

(b) The development rights shall be conveyed by a deed duly recorded in the office of the recorder of deeds in and for the county in which the municipality whose ordinance authorizes such conveyance is located.

(c) The recorder of deeds shall not accept for recording any such instrument of conveyance unless there is endorsed thereon the approval of the municipal governing body having zoning or planned residential development jurisdiction over the land within which the development rights are to be conveyed, dated not more than 60 days prior to the recording.

(d) No development rights shall be transferable beyond the boundaries of the municipality wherein the lands from which the development rights arise are situated except that, in the case of a joint municipal zoning ordinance, or a written agreement among two or more municipalities, development rights shall be transferable within the boundaries of the municipalities comprising the joint municipal zoning ordinance or where there is a written agreement, the boundaries of the municipalities who are parties to the agreement.

Section 619.2. Effect of Comprehensive Plans and Zoning Ordinances.

(a) When a county adopts a comprehensive plan in accordance with sections 301 and 302 and any municipalities therein have adopted comprehensive plans and zoning ordinances accordance with sections 301, 303(d) and 603(j), Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.

(b) The Center for Local Government Services shall work with municipalities to coordinate Commonwealth agency program resources with municipal planning and zoning activities. Upon request, the center for local government services shall assist municipalities in identifying and assessing the impact of Commonwealth agency decisions and their effect on municipal and multimunicipal planning and zoning. Upon the authorization of the governor, the center for local government services shall have access to information, services, functions and other resources in the possession of executive agencies under the governor's jurisdiction to fulfill its obligations under this section.

(c) When municipalities adopt a joint municipal zoning ordinance:

- (1) Commonwealth agencies shall consider, and may rely upon the joint municipal zoning ordinance for the funding or permitting of infrastructure or facilities.
- (2) The municipalities may, by agreement, share tax revenues and fees remitted to municipalities located within the joint municipal zone.

Section 621. Prohibiting the Location of Methadone Treatment Facilities in Certain Locations.

(a)(1) Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a methadone treatment facility shall not be established or operated within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(2) The provisions of this subsection shall apply whether or not an occupancy permit or certificate of use has been issued to the owner or operator of a methadone treatment facility for a location that is within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility.

(b) Notwithstanding subsection (a), a methadone treatment facility may be established and operated closer than 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility if, by majority vote, the governing body for the municipality in which the proposed methadone treatment facility is to be located votes in favor of the issuance of an occupancy permit or certificate of use for said facility at such a location. At least 14 days prior to the governing body of a municipality voting on whether to approve the issuance of an occupancy permit or certificate of use for a methadone treatment facility at a location that is closer than 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse or other actual place of regularly stated religious worship established prior to the proposed methadone treatment facility, one or more public hearings regarding the proposed methadone treatment facility location shall be held within the municipality following public notice. All owners of real property located within 500 feet of the proposed location shall be provided written notice of said public hearings at least 30 days prior to said public hearings occurring.

(c) This section shall not apply to a methadone treatment facility that is licensed by the Department of Health prior to May 15, 1999.

(d) As used in this section, the term “methadone treatment facility” shall mean a facility licensed by the Department of Health to use the drug methadone in the treatment, maintenance or detoxification of persons.

Article VII – Planned Residential Development

Section 701. Purposes. In order that the purposes of this act be furthered in an era of increasing urbanization and of growing demand for housing of all types and design; to insure that the provisions of Article VI which are concerned in part with the uniform treatment of dwelling type, bulk, density, intensity and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of that Article VI; to encourage innovations in residential and nonresidential development and renewal so that the growing demand for housing and other development may be met by greater variety in type, design and layout of dwellings and other buildings and structures and by the conservation and more efficient use of open space ancillary to said dwellings and uses; so that greater opportunities for better housing and recreation may extend to all citizens and residents of this Commonwealth; and in order to encourage a more efficient use of land and of public services and to reflect changes in the technology of land development so that economies secured may enure to the benefit of those who need homes and for other uses; and, in aid of these purposes, to provide a procedure which can relate the type, design and layout of residential and nonresidential development to the particular site and the particular demand for housing existing at the time of development in a manner consistent with the preservation of the property values within existing residential and nonresidential areas, and to insure that the increased flexibility of regulations over land development authorized herein is carried out under such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay, the following powers are granted to all municipalities.

Section 702. Grant of Power. The governing body of each municipality may enact, amend and repeal provisions within a zoning ordinance fixing standards and conditions for planned residential development. The enactment of such provisions shall be in accordance with the procedures required for the enactment of an amendment of a zoning ordinance as provided in Article VI of this act. Pursuant to such provisions the governing body may approve, modify or disapprove any development plan within the municipality adopting such provisions or designate the planning agency as its official agency for such purposes. Such provisions shall:

- (1) Specify whether the governing body, or the planning agency shall administer planned residential development provisions pursuant to the provisions of this article;
- (2) Set forth the standards, conditions and regulations for a planned residential development consistent with the provisions of this article; and
- (3) Set forth the procedures pertaining to the application for, hearing on and tentative and final approval of a planned residential development, which shall be consistent with the provisions of this article for such applications and hearings.

Section 702.1. Transferable Development Rights. Municipalities electing to enact planned residential development provisions may also incorporate therein provisions for transferable development rights, on a voluntary basis, in accordance with express standards and criteria set forth in the ordinance and with the requirements of Article VI.

Section 703. Applicability of Comprehensive Plan and Statement of Community Development Objectives. All provisions and all amendments thereto adopted pursuant to this article shall be based on and interpreted in relation to the statement of community development objectives of the zoning ordinance and may be related to either the comprehensive plan for the development of the municipality prepared under the provisions of this act or a statement of legislative findings in accordance with section 606. Every application for approval of a planned residential development either shall be based on and interpreted in relation to the statement of community development objectives, and may be related to the comprehensive plan, or shall be based on and interpreted in relation to the statement of legislative findings.

Section 704. Jurisdiction of County Planning Agencies.

(a) When any county has adopted planned residential development provisions in accordance with the terms of this article, a certified copy of such provisions shall be sent to every municipality within the county. All amendments shall also be sent to the aforementioned municipalities.

(b) The powers of governing bodies of counties to enact, amend and repeal planned residential development provisions shall not supersede any local planned residential development, zoning or subdivision and land development ordinance which is already in effect or subsequently becomes effective in any municipality within such county, provided that a certified copy of such provision is filed with the county planning agency, if one exists. However, all applications for tentative approval of planned residential development of land located within a municipality having adopted planned residential development provisions as set forth in this article shall nevertheless be referred to the county planning agency, if one exists, for study and recommendation and such county planning agency shall be required to report to such municipality within 30 days or forfeit the right to review.

Section 705. Standards and Conditions for Planned Residential Development.

(a) All provisions adopted pursuant to this article shall set forth all the standards, conditions and regulations by which a proposed planned residential development shall be evaluated, and said standards, conditions and regulations shall be consistent with the following subsections.

(b) The provisions adopted pursuant to this article shall set forth the uses permitted in a planned residential development, which uses may include but shall not be limited to:

- (1) Dwelling units of any dwelling type or configuration, or any combination thereof.
- (2) Those nonresidential uses deemed to be appropriate for incorporation in the design of the planned residential development.

(c) The provisions may establish regulations setting forth the timing of development among the various types of dwellings and may specify whether some or all nonresidential uses are to be built before, after or at the same time as the residential uses.

(d) The provisions adopted pursuant to this article shall establish standards governing the density, or intensity of land use, in a planned residential development. The standards may vary the density or intensity of land use, otherwise applicable to the land under the provisions of a zoning ordinance of the municipality within the planned residential development in consideration of all of the following:

- (1) The amount, location and proposed use of common open space.
- (2) The location and physical characteristics of the site of the proposed planned residential development.
- (3) The location, design, type and use of structures proposed.

(e) In the case of a planned residential development proposed to be developed over a period of years, standards established in provisions adopted pursuant to this article may, to encourage the flexibility of housing density, design and type intended by this article:

- (1) Permit a variation in each section to be developed from the density, or intensity of use, established for the entire planned residential development.
- (2) Allow for a greater concentration of density or intensity of land use, within some section or sections of development, whether it be earlier or later in the development than upon others.
- (3) Require that the approval of such greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the municipality, provided that such reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed, so that flexibility of development which is a prime objective of this article, can be maintained.

(f) The standards for a planned residential development established by provisions adopted pursuant to this article may require that the common open space resulting from the application of standards for density, or intensity of land use, shall be set aside for the use and benefit of the residents in such development and may include provisions which shall determine the amount and location of said common open space and secure its improvement and maintenance for common open space use, subject, however, to the following:

- (1) The municipality may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the municipality need not require, as a condition of the approval of a planned residential development, that land proposed to be set aside for common open space be dedicated or made available to public use. The provisions may require that the landowner provide for and establish an organization for the ownership and maintenance of the common open space, and that such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), without first offering to dedicate the same to the public.
 - (2) In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after establishment of the planned residential development fail to maintain the common open space in reasonable order and condition in accordance with the development plan, the municipality may serve written notice upon such organization or upon the residents of the planned residential development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be corrected within 30 days thereof, and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice. At such hearing the municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected.
 - (3) If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said 30 days or any extension thereof, the municipality, in order to preserve the taxable values of the properties within the planned residential development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said maintenance by the municipality shall not constitute a taking of said common open space, nor vest in the public any rights to use the same.
 - (4) Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the planned residential development, to be held by the governing body or its designated agency, at which hearing such organization or the residents of the planned residential development shall show cause why such maintenance by the municipality shall not, at the option of the municipality, continue for a succeeding year. If the governing body, or its designated agency, shall determine that such organization is ready and able to maintain said common open space in reasonable condition, the municipality shall cease to maintain said common open space at the end of said year. If the governing body or its designated agency shall determine that such organization is not ready and able to maintain said common open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.
 - (5) The decision of the governing body or its designated agency shall be subject to appeal to court in the same manner, and within the same time limitation, as is provided for zoning appeals by this act.
 - (6) The cost of such maintenance by the municipality shall be assessed ratably against the properties within the planned residential development that have a right of enjoyment of the common open space, and shall become a lien on said properties. The municipality at the time of entering upon said common open space for the purpose of maintenance shall file a notice of lien in the office of the prothonotary of the county, upon the properties affected by the lien within the planned residential development.
- (g) Provisions adopted pursuant to this article may require that a planned residential development contain a minimum number of dwelling units.
- (h) The authority granted a municipality by Article V to establish standards for the location, width, course and surfacing of streets, walkways, curbs, gutters, street lights, shade trees, water, sewage and drainage facilities, easements or rights-of-way for drainage and utilities, reservations of public grounds, other improvements, regulations for the height and setback as they relate to renewable energy systems and energy-conserving building design, regulations for the height and location of vegetation with respect to boundary lines, as they relate to renewable energy systems and energy-conserving building design, regulations for the type and location of

renewable energy systems or their components and regulations for the design and construction of structures to encourage the use of renewable energy systems, shall be vested in the governing body or the planning agency for the purposes of this article. The standards applicable to a particular planned residential development may be different than or modifications of, the standards and requirements otherwise required of subdivisions authorized under an ordinance adopted pursuant to Article V, provided, however, that provisions adopted pursuant to this article shall set forth the limits and extent of any modifications or changes in such standards and requirements in order that a landowner shall know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions.

(i) The provisions adopted pursuant to this article shall set forth the standards and criteria by which the design, bulk and location of buildings shall be evaluated, and all such standards and criteria for any feature of a planned residential development shall be set forth in such provisions with sufficient certainty to provide reasonable criteria by which specific proposals for a planned residential development can be evaluated. All standards in such provisions shall not unreasonably restrict the ability of the landowner to relate his development plan to the particular site and to the particular demand for housing existing at the time of development.

(j) Provisions adopted pursuant to this article shall include a requirement that, if water is to be provided by means other than by private wells owned and maintained by the individual owners of lots within the planned residential development, applicants shall present evidence to the governing body or planning agency, as the case may be, that the planned residential development is to be supplied by a certificated public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement, or a commitment or agreement to serve the area in question, whichever is appropriate, shall be acceptable evidence.

Section 706. Enforcement and Modification of Provisions of the Plan. To further the mutual interest of the residents of the planned residential development and of the public in the preservation of the integrity of the development plan, as finally approved, and to insure that modifications, if any, in the development plan shall not impair the reasonable reliance of the said residents upon the provisions of the development plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the development plan as finally approved, whether those are recorded by plat, covenant, easement or otherwise shall be subject to the following provisions:

- (1) The provisions of the development plan relating to:
 - (i) the use, bulk and location of buildings and structures;
 - (ii) the quantity and location of common open space, except as otherwise provided in this article; and
 - (iii) the intensity of use or the density of residential units; shall run in favor of the municipality and shall be enforceable in law or in equity by the municipality, without limitation on any powers of regulation otherwise granted the municipality by law.
- (2) All provisions of the development plan shall run in favor of the residents of the planned residential development but only to the extent expressly provided in the development plan and in accordance with the terms of the development plan, and to that extent said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or equity by said residents acting individually, jointly, or through an organization designated in the development plan to act on their behalf; provided, however, that no provisions of the development plan shall be implied to exist in favor of residents of the planned residential development except as to those portions of the development plan which have been finally approved and have been recorded.
- (3) All those provisions of the development plan authorized to be enforced by the municipality under this section may be modified, removed, or released by the municipality, except grants or easements relating to the service or equipment of a public utility, subject to the following conditions:
 - (i) No such modification, removal or release of the provisions of the development plan by the municipality shall affect the rights of the residents of the planned residential development to maintain and enforce those provisions, at law or equity, as provided in this section.

- (ii) No modification, removal or release of the provisions of the development plan by the municipality shall be permitted except upon a finding by the governing body or the planning agency, following a public hearing thereon pursuant to public notice called and held in accordance with the provisions of this article, that the same is consistent with the efficient development and preservation of the entire planned residential development, does not adversely affect either the enjoyment of land abutting upon or across the street from the planned residential development or the public interest, and is not granted solely to confer a special benefit upon any person.
- (4) Residents of the planned residential development may, to the extent and in the manner expressly authorized by the provisions of the development plan, modify, remove or release their rights to enforce the provisions of the development plan but no such action shall affect the right of the municipality to enforce the provisions of the development plan in accordance with the provisions of this section.

Section 707. Application for Tentative Approval of Planned Residential Development. In order to provide an expeditious method for processing a development plan for a planned residential development under the provisions adopted pursuant to the powers granted herein, and to avoid the delay and uncertainty which would arise if it were necessary to secure approval, by a multiplicity of local procedures, of a plat of subdivision as well as approval of a change in the zoning regulations otherwise applicable to the property, it is hereby declared to be in the public interest that all procedures with respect to the approval or disapproval of a development plan for a planned residential development and the continuing administration thereof shall be consistent with the following provisions:

- (1) An application for tentative approval of the development plan for a planned residential development shall be filed by or on behalf of the landowner.
- (2) The application for tentative approval shall be filed by the landowner in such form, upon the payment of such a reasonable fee and with such officials of the municipality as shall be designated in the provisions adopted pursuant to this article.
- (3) All planning, zoning and subdivision matters relating to the platting, use and development of the planned residential development and subsequent modifications of the regulations relating thereto, to the extent such modification is vested in the municipality, shall be determined and established by the governing body or the planning agency.
- (4) The provisions shall require only such information in the application as is reasonably necessary to disclose to the governing body or the planning agency:
 - (i) the location, size and topography of the site and the nature of the landowner's interest in the land proposed to be developed;
 - (ii) the density of land use to be allocated to parts of the site to be developed;
 - (iii) the location and size of the common open space and the form of organization proposed to own and maintain the common open space;
 - (iv) the use and the approximate height, bulk and location of buildings and other structures;
 - (v) the feasibility of proposals for water supply and the disposition of sanitary waste and storm water;
 - (vi) the substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities;
 - (vii) the provisions for parking of vehicles and the location and width of proposed streets and public ways;
 - (viii) the required modifications in the municipal land use regulations otherwise applicable to the subject property;
 - (viii.1) the feasibility of proposals for energy conservation and the effective utilization of renewable energy sources; and
 - (ix) in the case of development plans which call for development over a period of years, a schedule showing the proposed times within which applications for final approval of all sections of the planned

residential development are intended to be filed and this schedule must be updated annually, on the anniversary of its approval, until the development is completed and accepted.

- (5) The application for tentative approval of a planned residential development shall include a written statement by the landowner setting forth the reasons why, in his opinion, a planned residential development would be in the public interest and would be consistent with the comprehensive plan for the development of the municipality.
- (6) The application for and tentative and final approval of a development plan for a planned residential development prescribed in this article shall be in lieu of all other procedures or approvals, otherwise required pursuant to Articles V and VI of this act.

Section 708. Public Hearings.

(a) Within 60 days after the filing of an application for tentative approval of a planned residential development pursuant to this article, a public hearing pursuant to public notice on said application shall be held by the governing body or the planning agency, if designated, in the manner prescribed in Article IX.

(b) The governing body or the planning agency may continue the hearing from time to time, and where applicable, may refer the matter back to the planning agency for a report, provided, however, that in any event, the public hearing or hearings shall be concluded within 60 days after the date of the first public hearing.

(c) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section and by subsequent sections in this article prior to final approval by the governing body. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

Section 709. The Findings.

(a) The governing body, or the planning agency, within 60 days following the conclusion of the public hearing provided for in this article or within 180 days after the date of filing of the application, whichever occurs first, shall, by official written communication, to the landowner, either:

- (1) grant tentative approval of the development plan as submitted;
- (2) grant tentative approval subject to specified conditions not included in the development plan as submitted; or
- (3) deny tentative approval to the development plan.

Failure to so act within said period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that tentative approval is granted subject to conditions, the landowner may, within 30 days after receiving a copy of the official written communication of the governing body notify such governing body of his refusal to accept all said conditions, in which case, the governing body shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not, within said period, notify the governing body of his refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

(b) The grant or denial of tentative approval by official written communication shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or for the denial, and said communication shall set forth with particularity in what respects the development plan would or would not be in the public interest, including, but not limited to, findings of fact and conclusions on the following:

- (1) in those respects in which the development plan is or is not consistent with the comprehensive plan for the development of the municipality;
- (2) the extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;

- (3) the purpose, location and amount of the common open space in the planned residential development, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development;
- (4) the physical design of the development plan and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment;
- (5) the relationship, beneficial or adverse, of the proposed planned residential development to the neighborhood in which it is proposed to be established; and
- (6) in the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the planned residential development in the integrity of the development plan.

(c) In the event a development plan is granted tentative approval, with or without conditions, the governing body may set forth in the official written communication the time within which an application for final approval of the development plan shall be filed or, in the case of a development plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and an application for final approval shall not be less than three months and, in the case of developments over a period of years, the time between applications for final approval of each part of a plan shall be not less than 12 months.

Section 710. Status of Plan After Tentative Approval.

(a) The official written communication provided for in this article shall be certified by the municipal secretary or clerk of the governing body and shall be filed in his office, and a certified copy shall be mailed to the landowner. Where tentative approval has been granted, it shall be deemed an amendment to the zoning map, effective upon final approval, and shall be noted on the zoning map.

(b) Tentative approval of a development plan shall not qualify a plat of the planned residential development for recording nor authorize development or the issuance of any building permits. A development plan which has been given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of the municipality pending an application or applications for final approval, without the consent of the landowner, provided an application or applications for final approval is filed or, in the case of development over a period of years, provided applications are filed, within the periods of time specified in the official written communication granting tentative approval.

(c) In the event that a development plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said development plan and shall so notify the governing body in writing, or in the event the landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the development plan for which final approval has not been given shall be subject to those local ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the zoning map and in the records of the municipal secretary or clerk of the municipality.

Section 711. Application for Final Approval.

(a) An application for final approval may be for all the land included in a development plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the official of the municipality designated by the ordinance and within the time or times specified by the official written communication granting tentative approval. The application shall include any drawings, specifications, covenants, easements, performance bond and such other requirements as may be specified by ordinance, as well as any conditions set forth in the official written communication at the time of tentative approval. A public hearing on an application for final approval of the development plan, or part thereof, shall not be required provided the development plan, or the part thereof,

submitted for final approval, is in compliance with the development plan theretofore given tentative approval and with any specified conditions attached thereto.

(b) In the event the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the ordinance and the official written communication of tentative approval, the municipality shall, within 45 days from the date of the regular meeting of the governing body or the planning agency, whichever first reviews the application, next following the date the application is filed, grant such development plan final approval. Provided, however, that should the next regular meeting occur more than 30 days following the filing of the application, the 45-day period shall be measured from the 30th day following the day the application has been filed.

(c) In the event the development plan as submitted contains variations from the development plan given tentative approval, the approving body may refuse to grant final approval and shall, within 45 days from the date of the regular meeting of the governing body or the planning agency, whichever first reviews the application, next following the date the application is filed, so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the public interest.

Provided, however, that should the next regular meeting occur more than 30 days following the filing of the application, the 45-day period shall be measured from the 30th day following the day the application has been filed. In the event of such refusal, the landowner may either:

- (1) refile his application for final approval without the variations objected; or
- (2) file a written request with the approving body that it hold a public hearing on his application for final approval.

If the landowner wishes to take either such alternate action he may do so at any time within which he shall be entitled to apply for final approval, or within 30 additional days if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the development plan. Any such public hearing shall be held pursuant to public notice within 30 days after request for the hearing is made by the landowner, and the hearing shall be conducted in the manner described in this article for public hearings on applications for tentative approval. Within 30 days after the conclusion of the hearing, the approving body shall by official written communication either grant final approval to the development plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this section, be in the form and contain the findings required for an application for tentative approval set forth in this article. Failure of the governing body or agency to render a decision on an application for final approval and communicate it to the applicant within the time and in the manner required by this section shall be deemed an approval of the application for final approval, as presented, unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner or presentation of communication shall have like effect.

(d) A development plan, or any part thereof, which has been given final approval shall be so certified without delay by the approving body and shall be filed of record forthwith in the office of the recorder of deeds before any development shall take place in accordance therewith. Upon the filing of record of the development plan the zoning and subdivision regulations otherwise applicable to the land included in such plan shall cease to apply thereto. Pending completion, in accordance with the time provisions stated in section 508, of said planned residential development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said development plan, or part thereof, as finally approved, shall be made except with the consent of the landowner. Upon approval of a final plat, the developer shall record the plat in accordance with the provisions of section 513(a) and post financial security in accordance with section 509.

(e) In the event that a development plan, or a section thereof, is given final approval and thereafter the landowner shall abandon such plan or the section thereof that has been finally approved, and shall so notify the approving body in writing; or, in the event the landowner shall fail to commence and carry out the planned residential development in accordance with the time provisions stated in section 508 after final approval has been granted, no development or further development shall take place on the property included in the development plan until after the said property is reclassified by enactment of an amendment to the municipal zoning ordinance in the manner prescribed for such amendments in Article VI.

(f) Each month a municipality shall notify in writing the superintendent of a school district in which development plans for a planned residential development were finally approved by the municipality during the preceding month. The notice shall include, but not be limited to, the location of the development, the number and types of units to be included in the development and the expected construction schedule of the development.

Section 712.1. Jurisdiction. District justices shall have initial jurisdiction over proceedings brought under section 712.2.

Section 712.2. Enforcement Remedies.

(a) Any person, partnership or corporation, who or which has violated the planned residential development provisions of any ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the appropriate rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of planned residential development provisions shall be paid over to the municipality whose ordinance has been violated.

(b) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

(c) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

Section 713. Compliance by Municipalities. Municipalities with planned residential development ordinances shall have five years from the effective date of this amendatory act to comply with the provisions of this article.

Article VII-A – Traditional Neighborhood Development

Section 701-A. Purposes and Objectives.

(a) This article grants powers to municipalities for the following purposes:

- (1) to insure that the provisions of Article VI which are concerned in part with the uniform treatment of dwelling type, bulk, density, intensity and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of Article VI;
- (2) to encourage innovations in residential and nonresidential development and renewal which makes use of a mixed use form of development so that the growing demand for housing and other development may be met by greater variety in type, design and layout of dwellings and other buildings and structures and by the conservation and more efficient use of open space ancillary to said dwellings and uses;
- (3) to extend greater opportunities for better housing, recreation and access to goods, services and employment opportunities to all citizens and residents of this Commonwealth;
- (4) to encourage a more efficient use of land and of public services to reflect changes in the technology of land development so that economies secured may benefit those who need homes and for other uses;
- (5) to allow for the development of fully integrated, mixed-use pedestrian-oriented neighborhoods;
- (6) to minimize traffic congestion, infrastructure costs and environmental degradation;
- (7) to promote the implementation of the objectives of the municipal or multimunicipal comprehensive plan for guiding the location for growth;
- (8) to provide a procedure, in aid of these purposes, which can relate the type, design and layout of residential and nonresidential development to the particular site and the particular demand for housing existing at the time of development in a manner consistent with the preservation of the property values within existing residential and nonresidential areas; and
- (9) to insure that the increased flexibility of regulations over land development authorized herein is carried out under such administrative standards and procedure as shall encourage the disposition of proposals for land development without undue delay.

(b) The objectives of a traditional neighborhood development are:

- (1) to establish a community which is pedestrian-oriented with a number of parks, a centrally located public commons, square, plaza, park or prominent intersection of two or more major streets, commercial enterprises and civic and other public buildings and facilities for social activity, recreation and community functions;
- (2) to minimize traffic congestion and reduce the need for extensive road construction by reducing the number and length of automobile trips required to access everyday needs;
- (3) to make public transit a viable alternative to the automobile by organizing appropriate building densities;
- (4) to provide the elderly and the young with independence of movement by locating most daily activities within walking distance;
- (5) to foster the ability of citizens to come to know each other and to watch over their mutual security by providing public spaces such as streets, parks and squares and mixed use which maximizes the proximity to neighbors at almost all times of the day;
- (6) to foster a sense of place and community by providing a setting that encourages the natural intermingling of everyday uses and activities within a recognizable neighborhood;

- (7) to integrate age and income groups and foster the bonds of an authentic community by providing a range of housing types, shops and workplaces; and
- (8) to encourage community oriented initiatives and to support the balanced development of society by providing suitable civic and public buildings and facilities.

Section 702-A. Grant of Power. The governing body of each municipality may enact, amend and repeal provisions of a zoning ordinance in order to fix standards and conditions for traditional neighborhood development. The provisions for standards and conditions for traditional neighborhood development shall be, except as otherwise provided in this article, consistent with Article VI and shall be included within the zoning ordinance and the enactment of the traditional neighborhood development provisions shall be in accordance with the procedures required for the enactment of an amendment of a zoning ordinance as provided in Article VI. The provisions shall:

- (1) Set forth the standards, conditions and regulations for a traditional neighborhood development consistent with this article. A zoning ordinance or amendment may authorize and provide standards, conditions and regulations for traditional neighborhood development that:
 - (i) designate a part or parts of the municipality as a district or districts which are reserved exclusively for traditional neighborhood development; or
 - (ii) permit the creation of a traditional neighborhood development in any part of the municipality or in one or more specified zoning districts.
- (2) Set forth the procedures pertaining to the application for, hearing on and preliminary and final approval of a traditional neighborhood development, which shall be consistent with this article for those applications and hearings.

Section 703-A. Transfer Development Rights. Municipalities electing to enact traditional neighborhood development provisions may also incorporate provisions for transferable development rights, on a voluntary basis, in accordance with express standards and criteria set forth in the ordinance and with the requirements of Article VI.

Section 704-A. Applicability of Comprehensive Plan and Statement of Community Development Objectives. All provisions and all amendments to the provisions adopted pursuant to this article shall be based on and interpreted in relation to the statement of community development objectives of the zoning ordinance and shall be consistent with either the comprehensive plan of the municipality or the statement of community development objectives in accordance with section 606. Every application for the approval of a traditional neighborhood development shall be based on and interpreted in relation to the statement of community development objectives, and shall be consistent with the comprehensive plan.

Section 705-A. Forms of Traditional Neighborhood Development. A traditional neighborhood development may be developed and applied in any of the following forms.

- (1) As a new development.
- (2) As an outgrowth or extension of existing development.
- (3) As a form of urban infill where existing uses and structures may be incorporated into the development.
- (4) In any combination or variation of the above.

Section 706-A. Standards and Conditions for Traditional Neighborhood Development.

(a) All provisions adopted pursuant to this article shall set forth all the standards, conditions and regulations by which a proposed traditional neighborhood development shall be evaluated, and those standards, conditions and regulations shall be consistent with the following subsections.

(b) The provisions adopted pursuant to this article shall set forth the uses permitted in traditional neighborhood development, which uses may include, but shall not be limited to:

- (1) Dwelling units of any dwelling type or configuration, or any combination thereof.
- (2) Those nonresidential uses deemed to be appropriate for incorporation in the design of the traditional neighborhood development.

(c) The provisions may establish regulations setting forth the timing of development among the various types of dwellings and may specify whether some or all nonresidential uses are to be built before, after or at the same time as the residential uses.

(d) The provisions adopted pursuant to this article shall establish standards governing the density, or intensity of land use, in a traditional neighborhood development. The standards may vary the density or intensity of land use, otherwise applicable to the land under the provisions of a zoning ordinance of the municipality within the traditional neighborhood development. It is recommended that the provisions adopted by the municipality pursuant to this article include, but not be limited to, all of the following:

- (1) The amount, location and proposed use of common open space, providing for parks to be distributed throughout the neighborhood as well as the establishment of a centrally located public commons, square, park, plaza or prominent intersection of two or more major streets.
- (2) The location and physical characteristics of the site of the proposed traditional neighborhood development, providing for the retaining and enhancing, where practicable, of natural features such as wetlands, ponds, lakes, waterways, trees of high quality, significant tree stands and other significant natural features. These significant natural features should be at least partially fronted by public tracts whenever possible.
- (3) The location and physical characteristics of the site of the proposed traditional neighborhood development so that it will develop out of the location of squares, parks and other neighborhood centers and subcenters. Zoning changes in building type should generally occur at mid-block rather than mid-street and buildings should tend to be zoned by compatibility of building type rather than building use. The proposed traditional neighborhood development should be designed to work with the topography of the site to minimize the amount of grading necessary to achieve a street network, and some significant high points of the site should be set aside for public tracts for the location of public buildings or other public facilities.
- (4) The location, design, type and use of structures proposed, with most structures being placed close to the street at generally the equivalent of one-quarter the width of the lot or less. The distance between the sidewalk and residential dwellings should, as a general rule, be occupied by a semi-public attachment, such as a porch or, at a minimum, a covered entryway.
- (5) The location, design, type and use of streets, alleys, sidewalks and other public rights-of-way with a hierarchy of streets laid out with an interconnected network of streets and blocks that provide multiple routes from origins to destinations and are appropriately designed to serve the needs of pedestrians and vehicles equally. As such, most streets, except alleys, should have sidewalks.
- (6) The location for vehicular parking with the street plan providing for on street parking for most streets, with the exception of alleys. All parking lots, except where there is a compelling reason to the contrary, should be located either behind or to the side of buildings and, in most cases, should be located toward the center of blocks such that only their access is visible from adjacent streets. In most cases, structures located on lots smaller than 50 feet in width should be served by a rear alley with all garages fronting on alleys. Garages not served by an alley should be set back from the front of the house or rotated so that the garage doors do not face any adjacent streets.
- (7) The minimum and maximum areas and dimensions of the properties and common open space within the proposed traditional neighborhood development and the approximate distance from the center to the edge of the traditional neighborhood development. It is recommended that the distance from the center to the edge of the traditional neighborhood development be approximately one-quarter mile or less and not more than one-half mile. Traditional neighborhood developments in excess of one-half mile distance from center to edge should be divided into two or more developments.
- (8) The site plan to provide for either a natural or manmade corridor to serve as the edge of the neighborhood. When standing alone, the traditional neighborhood development should front on open space to serve as its

edge. Such open space may include, but is not limited to, parks, a golf course, cemetery, farmland or natural settings such as woodlands or waterways. When adjacent to existing development the traditional neighborhood development should either front on open space, a street or roadway, or any combination hereof.

- (9) The greatest density of housing and the preponderance of office and commercial uses should be located to anchor the traditional neighborhood development. If the neighborhood is adjacent to existing development or a major roadway then office, commercial and denser residential uses may be located at either the edge or the center, or both. Commercial uses located at the edge of the traditional neighborhood development may be located adjacent to similar commercial uses in order to form a greater commercial corridor.

(e) In the case of a traditional neighborhood development proposed to be developed over a period of years, standards established in provisions adopted pursuant to this article may, to encourage the flexibility of housing density, design and type intended by this article:

- (1) Permit a variation in each section to be developed from the density, or intensity of use, established for the entire traditional neighborhood development.
- (2) Allow for a greater concentration of density or intensity of land use, within some section or sections of development, whether it be earlier or later in the development than upon others.
- (3) Require that the approval of such greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the municipality, provided that the reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed so that flexibility of development which is a prime objective of this article can be maintained.

(f) Provisions adopted pursuant to this article may require that a traditional neighborhood development contain a minimum number of dwelling units and a minimum number of nonresidential units.

(g)(1) The authority granted a municipality by Article V to establish standards for the location, width, course and surfacing of streets, walkways, curbs, gutters, street lights, shade trees, water, sewage and drainage facilities, easements or rights-of-way for drainage and utilities, reservations of public grounds, other improvements, regulations for the height and setback as they relate to renewable energy systems and energy-conserving building design, regulations for the height and location of vegetation with respect to boundary lines, as they relate to renewable energy systems and energy-conserving building design, regulations for the type and location of renewable energy systems or their components and regulations for the design and construction of structures to encourage the use of renewable energy systems, shall be vested in the governing body or the planning agency for the purposes of this article.

- (2) The standards applicable to a particular traditional neighborhood development may be different than or modifications of the standards and requirements otherwise required of subdivisions or land development authorized under an ordinance adopted pursuant to Article V, provided, however, that provisions adopted pursuant to this article shall set forth the limits and extent of any modifications or changes in such standards and requirements in order that a landowner shall know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions or land development.

Section 707-A. Sketch Plan Presentation. The municipality may informally meet with a landowner to informally discuss the conceptual aspects of the landowner's development plan prior to the filing of the application for preliminary approval for the development plan. The landowner may present a sketch plan to the municipality for discussion purposes only, and during the discussion the municipality may make suggestions and recommendations on the design of the developmental plan which shall not be binding on the municipality.

Section 708-A. Manual of Written and Graphic Design Guidelines. Where it has adopted provisions for traditional neighborhood development, the governing body of a municipality may also provide, upon review and recommendation of the planning commission, where one exists, a manual of written and graphic design guidelines.

The manual may be included in or amended into the subdivision and land development, the zoning ordinance or both.

Section 708.1-A. Subdivision and Land Development Ordinance Provisions Applicable to Traditional

Neighborhood Development. The municipality may enact subdivision and land development ordinance provisions applicable to a traditional neighborhood development to address the design standards that are appropriate to a traditional neighborhood development, including, but not limited to, compactness, pedestrian orientation, street geometry or other related design features. The provisions may be included as part of any ordinance pertaining to traditional neighborhood development and may be subject to modification similar to section 512.1.

Section 709-A. Applicability of Article to Agriculture. Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this section shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law," the act of June 10, 1982 (P.L.454, No.133), entitled "An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances," and the act of May 20, 1993 (P.L.12, No.6), known as the "Nutrient Management Act."

Article VIII – Zoning Challenges; General Provisions

(Art. repealed June 1, 1972, P.L.333, No.93)

Article VIII-A – Joint Municipal Zoning

Section 801-A. General Powers.

(a) For the purpose of permitting municipalities which cooperatively plan for their future to also regulate future growth and change in a cooperative manner, the governing body of each municipality, in accordance with the conditions and procedures set forth in this act, may cooperate with one or more municipalities to enact, amend and repeal joint municipal zoning ordinances in order to implement joint municipal comprehensive plans and to accomplish any of the purposes of this act.

(b) A joint municipal zoning ordinance shall be based upon an adopted joint municipal comprehensive plan and shall be prepared by a joint municipal planning commission established under the provisions of this act.

Section 802-A. Relation to County and Municipal Zoning. The enactment by any municipality of a joint municipal zoning ordinance whose land is subject to county or municipal zoning shall constitute an immediate repeal of the county or municipal zoning ordinance within the municipality adopting such ordinance as of the effective date of the joint municipal zoning ordinance.

Section 803-A. Ordinance Provisions. Joint municipal zoning ordinances may permit, prohibit, regulate, restrict and determine and may contain the same elements as authorized for municipal zoning ordinances by section 603.

Section 804-A. Zoning Purposes. The provisions of joint municipal zoning ordinances shall be designed to serve the same purposes for the area of its jurisdiction as is required by section 604 for municipal zoning ordinances.

Section 805-A. Classifications. The authorizations and requirements of section 605 shall be applicable to joint municipal zoning ordinances. No area of a municipality party to a joint municipal zoning ordinance shall be left unzoned.

Section 806-A. Statement of Community Development Objectives.

(a) Every joint municipal zoning ordinance shall contain a statement of community development objectives as defined by section 606.

(b) The statement of community development objectives shall be based upon the joint municipal comprehensive plan and may be supplemented by a statement of legislative findings of the governing bodies party to the joint municipal zoning ordinance as defined by section 606.

(c) The community development objectives for a joint municipal zoning ordinance shall relate to the area within the jurisdiction of the ordinance, shall identify the community development objectives of each municipality party to the joint municipal zoning ordinance and the relationship of these objectives to those of the area and shall, in addition, include the basis for the geographic delineation of the area which the ordinance regulates.

Section 807-A. Preparation of Proposed Zoning Ordinance. The requirements of section 607 as applicable to municipal zoning ordinances shall equally apply to the preparation of a joint municipal zoning ordinance except that:

- (1) The joint municipal planning commission shall assume the preparation responsibilities of the planning agency and shall be directed by the governing bodies of the participating municipalities.

- (2) At least one public meeting shall be held by the joint municipal planning commission within the area of jurisdiction of the proposed joint municipal zoning ordinance.

Section 808-A. Enactment of Zoning Ordinance.

- (a) The procedural requirements of section 608 shall be applicable to the enactment of a joint municipal zoning ordinance.
- (b) Each municipality party to a joint municipal zoning ordinance shall enact the ordinance and it shall not become effective until it has been properly enacted by all the participating municipalities.
- (c) No municipality may withdraw from or repeal a joint municipal zoning ordinance during the first three years following the date of its enactment. If, at any time after the end of the second year following the enactment of a joint municipal zoning ordinance, a municipality wishes to repeal and withdraw from a joint municipal zoning ordinance, it shall enact an ordinance, which shall be effective no sooner than one year after its enactment, repealing the joint municipal zoning ordinance and shall provide immediately and concurrently one year's advanced written notice of its repeal and withdrawal to the governing bodies of all municipalities party to the joint municipal zoning ordinance. The repeal and withdrawal may become effective within less than one year with the unanimous approval, by ordinance, of the governing bodies of all municipalities party to the joint municipal zoning ordinance.

Section 809-A. Enactment of Zoning Ordinance Amendments.

- (a) The procedural requirements for amendments to a joint municipal zoning ordinance shall be as required by section 609, except that all proposed amendments shall also be submitted to the joint municipal planning commission for review at least 30 days prior to the hearing on such proposed amendments.
- (b) The governing bodies of the other participating municipalities shall submit their comments, including a specific recommendation to adopt or not to adopt the proposed amendment, to the governing body of the municipality within which the amendment is proposed no later than the date of the public hearing. Failure to provide comments shall be construed as a recommendation to adopt the proposed amendments.
- (c) No amendments to the joint municipal zoning ordinance shall be effective unless all of the participating municipalities approve the amendment.

Section 810-A. Procedure for Curative Amendments. Curative amendments shall be filed in accordance with the requirements of section 609.1 with the municipality within which the landowner's property is located: Provided, however, That the governing body before which the curative amendment is brought shall not have the power to adopt any amendment to the joint municipal zoning ordinance without the approval of the other municipalities participating in the joint municipal zoning ordinance. The challenge shall be directed to the validity of the joint municipal zoning ordinance as it applies to the entire area of its jurisdiction.

Section 811-A. Area of Jurisdiction for Challenges. In any challenge to the validity of the joint municipal zoning ordinance, the court shall consider the validity of the ordinance as it applies to the entire area of its jurisdiction as enacted and shall not limit consideration to any single constituent municipality.

Section 812-A. Procedure for Joint Municipal Curative Amendments.

- (a) The governing bodies of all the participating municipalities may declare the joint municipal zoning ordinance or portions thereof substantially invalid and prepare a municipal curative amendment pursuant to section 609.2.
- (b) The provisions of section 609.2(4) shall apply to all municipalities participating in the joint municipal zoning ordinance.
- (c) (1) In the case of a joint municipal curative amendment involving two or three municipalities, the municipalities shall have nine months from the date of declaration of partial or total invalidity to enact a curative amendment.
 - (2) Subject to the limitation contained in clause (3), where there are more than three municipal parties, the nine-month period shall be extended on additional month for each municipality in excess of three that is a party to the joint municipal zoning ordinance.

- (3) Notwithstanding the additional periods provided for in clause (2), a curative amendment shall be enacted by the parties to a joint municipal zoning ordinance not later than one year from the date of declaration of partial or total invalidity.

Section 813-A. Publication, Advertisement and Availability of Ordinances. The content of public notices and the procedures for the advertisement and enactment of joint municipal zoning ordinances and amendments shall be regulated by section 610.

Section 814-A. Registration of Nonconforming Uses. The registration of nonconforming uses shall be as specified by section 613.

Section 815-A. Administration.

(a) The governing bodies of the municipalities adopting the joint municipal zoning ordinance may establish a joint zoning hearing board pursuant to the authority of section 904, except that:

- (1) The joint municipal zoning ordinance shall either create a joint zoning hearing board to administer the entire joint municipal zoning ordinance or provide for the retention or creation of individual zoning hearing boards in each of the individual participating municipalities to administer the new joint municipal zoning ordinance as to properties located within each of the individual participating municipalities.
- (2) These same procedures shall be followed by a joint zoning hearing board as set forth in Article IX for individual municipal zoning hearing boards.

(b) The joint municipal zoning ordinance shall specify the number of zoning officers to be appointed to administer the ordinance pursuant to section 614. One zoning officer may be appointed by each municipality to administer the ordinance within the municipal boundaries or a single zoning officer may be appointed to administer the ordinance throughout the jurisdiction of the ordinance.

Section 816-A. Zoning Appeals. All rights and procedures provided in Articles IX and X-A shall pertain to joint municipal zoning.

Section 817-A. Enforcement Penalties. Penalties for violation of a joint municipal zoning ordinance shall be as specified in section 617.1.

Section 818-A. Enforcement Remedies.

(a) Enforcement remedies shall be as specified in section 617.

(b) In addition, the provisions of a joint municipal zoning ordinance shall be binding upon the municipalities and may be enforced by appropriate remedy by any one or more of the municipalities against any other municipality party thereto.

Section 819-A. Finances.

(a) The governing body of a municipality may appropriate and receive funds for a joint municipal zoning ordinance in the same manner as authorized for a municipal zoning ordinance by section 617.2.

(b) A joint municipal zoning ordinance shall specify the manner and extent of financing the costs for administration and enforcement, including the financial responsibilities for defending legal challenges to the ordinance.

Section 820-A. Exemptions. The exemptions for a joint municipal zoning ordinance shall be those identified by section 619.

Section 821-A. Existing Bodies. Municipalities which, on or before the effective date of this amendatory act, established joint bodies under former Article XI-A of this act, shall have five years from the effective date of this amendatory act to comply with the provisions of this article.

Article IX – Zoning Hearing Board and other Administrative Proceedings

Section 901. General Provisions. Every municipality which has enacted or enacts a zoning ordinance pursuant to this act or prior enabling laws, shall create a zoning hearing board. As used in this article, unless the context clearly indicates otherwise, the term “board” shall refer to such zoning hearing board.

Section 902. Existing Boards of Adjustment. (902 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 903. Membership of Board.

(a) The membership of the board shall, upon the determination of the governing body, consist of either three or five residents of the municipality appointed by resolution by the governing body. The terms of office of a three member board shall be three years and shall be so fixed that the term of office of one member shall expire each year. The terms of office of a five member board shall be five years and shall be so fixed that the term of office of one member of a five member board shall expire each year. If a three member board is changed to a five member board, the members of the existing three member board shall continue in office until their term of office would expire under prior law. The governing body shall appoint two additional members to the board with terms scheduled to expire in accordance with the provisions of this section. The board shall promptly notify the governing body of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the board shall hold no other elected or appointed office in the municipality nor shall any member be an employee of the municipality.

(b) 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 board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of section 906, an alternate shall be entitled to participate in all proceedings and discussions of the board to the same and full extent as provided by law for board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this act and as otherwise provided by law. Alternates shall hold no other elected or appointed office in the municipality, including service as a member of the planning commission or as a zoning officer, nor shall any alternate be an employee of the municipality. Any alternate may participate in any proceeding or discussion of the board but shall not be entitled to vote as a member of the board nor be compensated pursuant to section 907 unless designated as a voting alternate member pursuant to section 906.

Section 904. Joint Zoning Hearing Boards.

(a) Two or more municipalities may, by ordinances enacted in each, create a joint zoning hearing board in lieu of a separate board for each municipality. A joint board shall consist of two members appointed from among the residents of each municipality by its governing body.

(b) The term of office of members of joint boards shall be five years, except that of the two members first appointed from each municipality, the term of office of one member shall be three years. When any vacancies occur, the joint board shall promptly notify the governing body which appointed the member whose office has become vacant, and such governing body shall appoint a member for the unexpired portion of the term. Members of the joint board shall hold no other office in the participating municipality.

(c) Where legal counsel is desired, an attorney, other than the solicitors of the participating municipalities, may be appointed to serve as counsel to the joint zoning hearing board.

(d) In all other respects, including the appointment and seating of alternate members, joint zoning hearing boards shall be governed by provisions of this act not inconsistent with the provisions of this section.

Section 905. Removal of Members. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body which appointed the member,

taken after the member has received 15 days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 906. Organization of Board.

(a) The board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board, but the board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the board as provided in section 908.

(b) The chairman of the board may designate alternate members of the board to replace any absent or disqualified member and if, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the board shall designate as many alternate members of the board to sit on the board as may be needed to reach a quorum. Any alternate member of the board shall continue to serve on the board in all proceedings involving the matter or case for which the alternate was initially appointed until the board has made a final decision on the matter or case. Designation of an alternate pursuant to this section shall be made on a case by case basis in rotation according to declining seniority among all alternates.

(c) The board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws of the Commonwealth. The board shall keep full public records of its business, which records shall be the property of the municipality, and shall submit a report of its activities to the governing body as requested by the governing body.

Section 907. Expenditures for Services. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the board may receive compensation for the performance of their duties, as may be fixed by the governing body, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the governing body. Alternate members of the board may receive compensation, as may be fixed by the governing body, for the performance of their duties when designated as alternate members pursuant to section 906, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the governing body.

Section 908. Hearings. The board shall conduct hearings and make decisions in accordance with the following requirements:

- (1) Public notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.
- (1.1) The governing body may prescribe reasonable fees with respect to hearings before the zoning hearing board. Fees for said hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.
- (1.2) The first hearing before the board or hearing officer shall be commenced within 60 days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the board or hearing officer shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the

completion of the applicant's case-in-chief. And applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

- (2) The hearings shall be conducted by the board or the board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the board; however, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the board and accept the decision or findings of the hearing officer as final.
- (3) The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose.
- (4) The chairman or acting chairman of the board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
- (5) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
- (6) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (7) The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the board. The cost of the original transcript shall be paid by the board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.
- (8) The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.
- (9) The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings, and the board's decision shall be entered no later than 30 days after the report of the hearing officer. Except for challenges filed under section 916.1 where the board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in subsection (1.2), the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a

decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same manner as provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

- (10) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the board not later than the last day of the hearing, the board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

Section 908.1. Mediation Option.

(a) Parties to proceedings authorized in this article and Article X-A may utilize mediation as an aid in completing such proceedings. In proceedings before the zoning hearing board, in no case shall the zoning hearing board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this article and Article X-A once they have been formally initiated. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.

(b) Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. Any municipality offering the mediation option shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:

- (1) Funding mediation.
- (2) Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.
- (3) Completing mediation, including time limits for such completion.
- (4) Suspending time limits otherwise authorized in this act, provided there is written consent by the mediating parties, and by an applicant or municipal decision making body if either is not a party to the mediation.
- (5) Identifying all parties and affording them the opportunity to participate.
- (6) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.
- (7) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decision making body pursuant to the authorized procedures set forth in the other sections of this act.

(c) No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

Section 909. Board's Functions: Appeals from the Zoning Officer. (909 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 909.1. Jurisdiction.

(a) The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

- (1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1(a)(2).
- (2) Deleted by 2008, July 4, P.L. 319, No. 39, §3, imd. effective.

- (3) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
 - (4) Appeals from a determination by a municipal engineer or the zoning officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
 - (5) Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 910.2.
 - (6) Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1.
 - (7) Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.
 - (8) Appeals from the zoning officer's determination under section 916.2.
 - (9) Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Article V or VII applications.
- (b) The governing body or, except as to clauses (3), (4) and (5), the planning agency, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- (1) All applications for approvals of planned residential developments under Article VII pursuant to the provisions of section 702.
 - (2) All applications pursuant to section 508 for approval of subdivisions or land developments under Article V. Any provision in a subdivision and land development ordinance requiring that final action concerning subdivision and land development applications be taken by a planning agency rather than the governing body shall vest exclusive jurisdiction in the planning agency in lieu of the governing body for purposes of the provisions of this paragraph.
 - (3) Applications for conditional use under the express provisions of the zoning ordinance pursuant to section 603(c)(2).
 - (4) Applications for curative amendment to a zoning ordinance pursuant to sections 609.1 and 916.1(a)(2).
 - (5) All petitions for amendments to land use ordinances, pursuant to the procedures set forth in section 609. Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.
 - (6) Appeals from the determination of the zoning officer or the municipal engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for land development under Articles V and VII. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the zoning officer or the municipal engineer shall be to the zoning hearing board pursuant to subsection (a)(9). Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the planning agency, all appeals from determinations under this paragraph shall be to the planning agency and all appeals from the decision of the planning agency shall be to court.
 - (7) Applications for a special encroachment permit pursuant to section 405 and applications for a permit pursuant to section 406.

Section 910. Board Functions: Challenge to the Validity of any Ordinance or Map. (910 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 910.1. Applicability of Judicial Remedies. Nothing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091 (relating to action in mandamus).

Section 910.2. Zoning Hearing Board's Functions; Variances.

(a) The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

(b) In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Section 912. Board's Functions: Variances. (912 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 912.1. Zoning Hearing Board's Functions; Special Exception. Where the governing body, in the zoning ordinance, has stated special exceptions to be granted or denied by the board pursuant to express standards and criteria, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Section 913. Board's Functions: Special Exceptions. (913 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 913.1. Unified Appeals. (913.1 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 913.2. Governing Body's Functions; Conditional Uses.

(a) Where the governing body, in the zoning ordinances, has stated conditional uses to be granted or denied by the governing body pursuant to express standards and criteria, the governing body shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. The hearing shall be conducted by the board or the board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the board. However, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the board and accept the decision or findings of the hearing officer as final. In granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in the zoning ordinance.

(b)(1) The governing body shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before the governing body. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.

- (2) Where the governing body fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in section 908 (1.2), the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the governing body to meet or render a decision as hereinabove provided, the governing body shall give public notice of the decision within ten days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this act. If the governing body shall fail to provide such notice, the applicant may do so.
- (3) Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.

Section 913.3. Parties Appellant Before the Board. Appeals under section 909.1(a)(1), (2), (3), (4), (7), (8) and (9) may be filed with the board in writing by the landowner affected, any officer or agency of the municipality, or any person aggrieved. Requests for a variance under section 910.2 and for special exception under section 912.1 may be filed with the board by any landowner or any tenant with the permission of such landowner.

Section 914. Parties Appellant Before Board. (914 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 914.1. Time Limitations.

(a) No person shall be allowed to file any proceeding with the board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to section 709 or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map pursuant to section 916.2 shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

(b) All appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued.

Section 915. Time Limitations; Persons Aggrieved. (915 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 915.1. Stay of Proceedings.

(a) Upon filing of any proceeding referred to in section 913.3 and during its pendency before the board, all land development pursuant to any challenged ordinance, order or approval of the zoning officer or of any agency or body, and all official action thereunder, shall be stayed unless the zoning officer or any other appropriate agency or body certifies to the board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the board or by the court having jurisdiction of zoning appeals, on petition, after notice to the zoning officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the board.

(b) After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.

(c) The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

(d) If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

Section 916. Stay of Proceedings. (916 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 916.1. Validity of Ordinance; Substantive Questions.

(a) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:

- (1) to the zoning hearing board under section 909.1(a); or
- (2) to the governing body under section 909.1(b)(4), together with a request for a curative amendment under section 609.1.

(b) Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the zoning hearing board for a decision thereon under section 909.1(a)(1).

(c) The submissions referred to in subsections (a) and (b) shall be governed by the following:

- (1) In challenges before the zoning hearing board, the challenging party shall make a written request to the board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner desires to challenge the validity of such ordinance and elects to proceed by curative amendment under section 609.1, his application to the governing body shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light thereof. Nothing herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.
- (2) If the submission is made by the landowner to the governing body under subsection (a)(2), the request also shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.
- (3) If the submission is made to the governing body, the municipal solicitor shall represent and advise it at the hearing or hearings referred to in section 909.1(b)(4).
- (4) The governing body may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present their witnesses on its behalf.
- (5) Based upon the testimony presented at the hearing or hearings, the governing body or the zoning board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by a governing body is found to have merit, the governing body shall proceed as provide in section 609.1. If a challenge heard by a zoning hearing board is found to have merit, the decision of the zoning hearing board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the zoning hearing board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:

- (i) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
 - (ii) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;
 - (iii) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;
 - (iv) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and
 - (v) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- (6) The governing body or the zoning hearing board, as the case may be, shall render its decision within 45 days after the conclusion of the last hearing.
- (7) If the governing body or the zoning board, as the case may be, fails to act on the landowner's request within the time limits referred to in paragraph (6), a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

(d) The zoning hearing board or governing body, as the case may be, shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time.

(e) Public notice of the hearing shall include notice that the validity of the ordinance or map is in question and shall give the place where and the times when a copy of the request, including any plans, explanatory material or proposed amendments may be examined by the public.

(f) The challenge shall be deemed denied when:

- (1) the zoning hearing board or governing body, as the case may be, fails to commence the hearing within the time limits set forth in subsection (d);
- (2) the governing body notifies the landowner that it will not adopt the curative amendment;
- (3) the governing body adopts another curative amendment which is unacceptable to the landowner; or
- (4) the zoning hearing board or governing body, as the case may be, fails to act on the request 45 days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and municipality.

(g) Where, after the effective date of this act, a curative amendment proposal is approved by the grant of a curative amendment application by the governing body pursuant to section 909.1(b)(4) or a validity challenge is sustained by the zoning hearing board pursuant to section 909.1(a)(1) or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval to file an application for preliminary or tentative approval pursuant to Article V or VII. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of section 508(4) shall apply. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development ordinance, the developer shall have one year within which to file for a building permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

(h) Where municipalities have adopted a multimunicipal comprehensive plan pursuant to Article XI but have not adopted a joint municipal ordinance pursuant to Article VIII-A and all municipalities participating in the multimunicipal comprehensive plan have adopted and are administering zoning ordinances generally consistent with the provisions of the multimunicipal comprehensive plan, and a challenge is brought to the validity of a zoning ordinance of a participating municipality involving a proposed use, then the zoning hearing board or governing body, as the case may be, shall consider the availability of uses under zoning ordinances within the municipalities participating in the multimunicipal comprehensive plan within a reasonable geographic area and shall not limit its consideration to the application of the zoning ordinance on the municipality whose zoning ordinance is being challenged.

(i) A landowner who has challenged on substantive grounds the validity of a zoning ordinance or map either by submission of a curative amendment to the governing body under subsection (a) (2) or to the zoning hearing board under section 909.1 (a) (1) shall not submit any additional substantive challenges involving the same parcel, group of parcels or part thereof until such time as the status of the landowner's original challenge has been finally determined or withdrawn: Provided, however, that if after the date of the landowner's original challenge the municipality adopts a substantially new or different zoning ordinance or zoning map, the landowner may file a second substantive challenge to the new or different zoning ordinance or zoning map under subsection (a).

Section 916.2. Procedure to Obtain Preliminary Opinion. In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposed to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to the ordinance or map will run under section 914.1 by the following procedure:

- (1) The landowner may submit plans and other materials describing his proposed use or development to the zoning officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.
- (2) If the zoning officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval under section 914.1 and the time therein specified for commencing a proceeding with the board shall run from the time when the second notice thereof has been published.

Section 917. Applicability of Ordinance Amendments. When an application for either a special exception or a conditional use has been filed with either the zoning hearing board or governing body, as relevant, and the subject matter of such application would ultimately constitute either a land development as defined in section 107 or a subdivision as defined in section 107, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. Provided, further, should such an application be approved by either the zoning hearing board or governing body, as relevant, applicant shall be entitled to proceed with the submission of either land development or subdivision plans within a period of six months or longer as may be approved by either the zoning hearing board or the governing body following the date of such approval in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed before either the zoning hearing board or governing body, as relevant. If either a land development or subdivision plan is so filed within said period, such plan shall be subject to the provisions of section 508(1) through (4), and specifically to the time limitations of section 508(4) which shall commence as of the date of filing such land development or subdivision plan.

Section 918. Special Applicability Provisions. A municipal zoning ordinance enacted on or before August 21, 2000 shall not be invalidated, superseded or affected by any amendatory provision of the act of June 22, 2000 (P.L. 483 No.67), entitled "An act amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, 'An act to

empower cities of the second class a, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts,' adding definitions; providing for intergovernmental cooperative planning and implementation agreements; further providing for repeals; and making an editorial change," or the act of June 22, 2000 (P.L.495, No.68), entitled "An act amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, 'An act to empower cities of the second class a, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts,' further providing for the purpose of the act; adding certain definitions; further providing for various matters relating to the comprehensive plan and for compliance by counties; providing for funding for municipal planning and for neighboring municipalities; further providing for certain ordinances; adding provisions relating to projects of regional impact; providing for traditional neighborhood development; further providing for grant of power, for contents of subdivision and land development ordinance, for approval of plats and for recording of plats and deeds; and providing for municipal authorities and water companies and for transferable development rights," and such ordinance provisions shall continue in full force and effect until February 21, 2001; provided, however, any such ordinance shall be subject to such amendatory provisions on and after February 22, 2001.

Article X – Appeals

(Art. repealed Dec. 21, 1988, P.L.1329, No.170)

Article X-A – Appeals to Court

Section 1001-A. Land Use Appeals. The procedures set forth in this article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act.

Section 1002-A. Jurisdiction and Venue on Appeal; Time for Appeal.

(a) All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order) or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 908(9) of this act. It is the express intent of the General Assembly that, except in cases in which an unconstitutional deprivation of due process would result from its application, the 30-day limitation in this section should be applied in all appeals from decisions.

(b) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption shall be raised by appeal taken directly to the court of common pleas of the judicial district in which the municipality adopting the ordinance is located in accordance with 42 Pa.C.S. § 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.)

(1002-A amended July 4, 2008, P.L.319, No.39)

Section 1002.1-A. Time for Appeal; Procedural Defects of Decisions.

(a) This section shall apply to all appeals challenging the validity of a land use decision on the basis of a defect in procedures prescribed by statute or ordinance.

(b) Except as otherwise provided in section 108, all appeals challenging the validity of a decision solely on the basis of a defect in procedure shall be filed within the time period provided in section 1002-A(a) unless a party establishes each of the following:

- (1) That the person filing the appeal had insufficient actual or constructive notice of the decision to permit filing an appeal within the time period provided in section 1002-A(a). Notice of a hearing prior to the entry of a decision in accordance with section 908(1), notice of a decision in accordance with section 908(10) or notice of a deemed decision provided in accordance with this act shall establish constructive notice as a matter of law in any appeal under this section.
- (2) That because of the insufficient actual or constructive notice of the decision, the application of the time limitation in section 1002-A(a) would result in an impermissible deprivation of constitutional rights.

(c) Appeals under this section shall only be permitted by an aggrieved person who can establish that reliance on the validity of the challenged decision resulted or could result in a use of property that directly affects such person's substantive property rights.

(d) No decision challenged in an appeal pursuant to this section shall be deemed void from inception except as follows:

- (1) In the case of an appeal brought within the time period provided in section 1002-A(a), the party alleging the defect must meet the burden of proving that there was a failure to strictly comply with procedure.
- (2) In the case of an appeal exempt from the time period provided in section 1002-A(a) or brought pursuant to section 108, the party alleging the defect must meet the burden of proving that because of the alleged defect in procedure alone:
 - (i) the public was denied notice sufficient to permit participation in the proceedings prior to the entry of the decision to the extent such participation was authorized by statute or ordinance; or
 - (ii) those whose substantive property rights were or could be directly affected by the entry of the decision were denied an opportunity to participate in proceedings prior to the entry of the decision.

(e) Substantial compliance with notice of a hearing required prior to the entry of a decision in accordance with section 908(1) shall establish notice adequate to permit public participation as a matter of law in any appeal under this section.

(f) An adjudication that a decision is void from inception shall not affect any previously acquired rights of property owners who have exercised good faith reliance on the validity of the decision prior to the determination.

(1002.1-A added July 4, 2008, P.L.319, No.39)

Compiler's Note: Section 6 of Act 39 of 2008, which added section 1002.1-A, provided that section 1002.1-A shall apply beginning on the effective date of an amendment to 42 Pa.C.S. that provided for appeals from ordinances, resolutions, maps and similar actions of a political subdivision. Section 5571.1 of Title 42 (relating to appeals from ordinances, resolutions, maps, etc.) was added July 4, 2008, P.L.325, No.40, effective immediately.

Section 1003-A. Appeals to Court; Commencement; Stay of Proceedings.

(a) Land use appeals shall be entered as of course by the prothonotary or clerk upon the filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(b) Upon filing of a land use appeal, the prothonotary or clerk shall forthwith, as of course, send to the governing body, board or agency whose decision or action has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said governing body, board or agency, within 20 days after receipt thereof, to certify to the court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency at the time it received the writ of certiorari.

(c) If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the land use appeal is filed, shall serve a true copy of the land use appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

(d) The filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowners to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question of the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order

directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the court dismissing a land use appeal for refusal to post a bond, such responding party, upon motion of petitioner and, after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

Section 1004-A. Intervention. Within the 30 days first following the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

Section 1005-A. Hearing and Argument of Land Use Appeal. If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeals brought before the court pursuant to section 916.1 shall not be remanded for further hearings before any body, agency or officer of the municipality. If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact or if additional evidence is taken by the court or by a referee, the court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

Section 1006-A. Judicial Relief.

(a) In a land use appeal, the court shall have power to declare any ordinance or map invalid and set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal.

(b) Where municipalities have adopted a joint municipal comprehensive plan and enacted a zoning ordinance or ordinances consistent with the joint municipal comprehensive plan within a region pursuant to Articles VIII-A and XI, the court, when determining the validity of a challenge to such a municipality's zoning ordinance, shall consider the zoning ordinance or ordinances as they apply to the entire region and shall not limit its consideration to the application of the zoning ordinance within the boundaries of the respective municipalities.

(b.1) Where municipalities have adopted a multimunicipal comprehensive plan pursuant to Article XI but have not adopted a joint municipal ordinance pursuant to Article VIII-A and all municipalities participating in the multimunicipal comprehensive plan have adopted and are administering zoning ordinances generally consistent with the provisions of the multimunicipal comprehensive plan, and a challenge is brought to the validity of a zoning ordinance of a participating municipality involving a proposed use, then the court shall consider the availability of uses under zoning ordinances within the municipalities participating in the multimunicipal comprehensive plan within a reasonable geographic area and shall not limit its consideration to the application of the zoning ordinance on the municipality whose zoning ordinance is being challenged.

(b.2) Notwithstanding any provisions of this section to the contrary, each municipality shall provide for reasonable coal mining activities in its zoning ordinance.

(c) If the court finds that an ordinance or map, or a decision or order thereunder, which has been brought up for review unlawfully prevents or restricts a development or use which has been described by the landowner through plans and other materials submitted to the governing body, agency or officer of the municipality whose action or failure to act is in question on the appeal, it may order the described development or use approved as to all elements or it may order it approved as to some elements and refer other elements to the governing body, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order.

(d) Upon motion by any of the parties or upon motion by the court, the judge of the court may hold a hearing or hearings to receive additional evidence or employ experts to aid the court to frame an appropriate order. If the court

employs an expert, the report or evidence of such expert shall be available to any party and he shall be subject to examination or cross-examination by any party. He shall be paid reasonable compensation for his services which may be assessed against any or all of the parties as determined by the court. The court shall retain jurisdiction of the appeal during the pendency of any such further proceedings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.

(e) The fact that the plans and other materials are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits shall not prevent the court from granting the definitive relief authorized. The court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.

Article XI – Intergovernmental Cooperative Planning and Implementation Agreements

Section 1101. Purposes. It is the purpose of this article:

- (1) To provide for development that is compatible with surrounding land uses and that will complement existing land development with a balance of commercial, industrial and residential uses.
- (2) To protect and maintain the separate identity of Pennsylvania's communities and to prevent the unnecessary conversion of valuable and limited agricultural land.
- (3) To encourage cooperation and coordinated planning among adjoining municipalities so that each municipality accommodates its share of the multimunicipal growth burden and does not induce unnecessary or premature development of rural lands.
- (4) To minimize disruption of the economy and environment of existing communities.
- (5) To complement the economic and transportation needs of the region and this Commonwealth.
- (6) To provide for the continuation of historic community patterns.
- (7) To provide for coordinated highways, public services and development.
- (8) To ensure that new public water and wastewater treatment systems are constructed in areas that will result in the efficient utilization of existing systems, prior to the development and construction of new systems.
- (9) To ensure that new or major extension of existing public water and wastewater treatment systems are constructed only in those areas within which anticipated growth and development can adequately be sustained within the financial and environmental resources of the area.
- (10) To identify those areas where growth and development will occur so that a full range of public infrastructure services including sewer, water, highways, police and fire protection, public schools, parks, open space and other services can be adequately planned and provided as needed to accommodate the growth that occurs.
- (11) To encourage innovations in residential, commercial and industrial development to meet growing population demands by an increased variety in type, design and layout of structures and by the conservation and more efficient use of open space ancillary to such structures.
- (12) To facilitate the development of affordable and other types of housing in numbers consistent with the need for such housing as shown by existing and projected population and employment data for the region.

Section 1102. Intergovernmental Cooperation Planning and Implementation Agreements. For the purpose of developing, adopting and implementing a comprehensive plan for the entire county or for any area within the county, the governing bodies of municipalities located within the county or counties may enter into intergovernmental cooperative agreements, as provided by 53 Pa C.S. Ch. 23 Such. A (relating to intergovernmental cooperation), except for any provisions permitting initiative and referendum. Such agreements may also be entered into between and among counties and municipalities for areas that include municipalities in more than one county, and between and among counties, municipalities, authorities and special districts providing water and sewer facilities, transportation planning or other services within the area of a plan and with the opportunity for the active participation of State agencies and school districts.

Implementation of the comprehensive plan and subdivision and zoning ordinances shall be accomplished in accordance with articles of this act.

Section 1103. Finances, Staff and Program. County or Multimunicipal Comprehensive Plans.

(a) The comprehensive plan that is the subject of an agreement may be developed by the municipalities or at the request of the municipalities, by the county planning agency, or agencies in the case of a plan covering municipalities in more than one county, in cooperation with municipalities within the area and shall include all the elements required or authorized in section 301 for the region of the plan, including a plan to meet the housing needs of present residents and those individuals and families anticipated to reside in the area of the plan, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodations of expected new housing in different dwelling types and of appropriate densities for households of all income levels. The plan may:

- (1) Designate growth areas where:
 - (i) Orderly and efficient development to accommodate the projected growth of the area within the next 20 years is planned for residential and mixed use densities of one unit or more per acre.
 - (ii) Commercial, industrial and institutional uses to provide for the economic and employment needs of the area and to insure that the area has an adequate tax base are planned for.
 - (iii) Services to serve such development are provided or planned for.
- (2) Designate potential future growth areas where future development is planned for densities to accompany the orderly extension and provision of services.
- (3) Designate rural resource areas, if applicable, where:
 - (i) Rural resource uses are planned for.
 - (ii) Development at densities that are compatible with rural resource uses are or may be permitted.
 - (iii) Infrastructure extensions or improvements are not intended to be publicly financed by municipalities except in villages, unless the participating or affected municipalities agree that such service should be provided to an area for health or safety reasons or to accomplish one or more of the purposes set forth in section 1101.
- (4) Plan for the accommodation of all categories of uses within the area of the plan, provided, however, that all uses need not be provided in every municipality, but shall be planned and provided for within a reasonable geographic area of the plan.
- (5) Plan for developments of area wide significance and impact, particularly those identified in section 301(3) and (4).
- (6) Plan for the conservation and enhancement of the natural, scenic, historic and aesthetic resources within the area of the plan,

(b) The county may facilitate a multimunicipal process and may enter into cooperative planning agreements with participating municipalities governing particular planning subjects and responsibilities. The planning process shall include a public participation process to assure that all governing bodies, municipal authorities, school districts and agencies, whether public or private, having jurisdiction or operating within the area of the plan and landowners and citizens affected by the plan have an opportunity to be heard prior to the public hearings required for the adoption of the plan under section 302(a).

(c) Adoption of the plan and plan amendments shall conform to the requirements of section 302, and may be reflected on the official map of each participating municipality pursuant to section 401. Where a county and municipality have developed and adopted a comprehensive county or multimunicipal plan that conforms to the requirements of this article within five years prior to the date of adoption of this article, the plan may be implemented by agreements as provided for in this article.

Section 1104. Implementation Agreements.

(a) In order to implement multimunicipal comprehensive plans, under section 1103 counties and municipalities shall have authority to enter into intergovernmental cooperative agreements.

(b) Cooperative implementation agreements shall:

- (1) Establish the process that the participating municipalities will use to achieve general consistency between the county or multimunicipal comprehensive plan and zoning ordinances, subdivision and land development and capital improvement plans within participating municipalities, including adoption of conforming ordinances by participating municipalities within two years and a mechanism for resolving disputes over the interpretation of the multimunicipal comprehensive plan and the consistency of implementing plans and ordinances.
- (2) Establish a process for review and approval of developments of regional significance and impact that are proposed within any participating municipality. Subdivision and land development approval powers under this act shall only be exercised by the municipality in which the property where the approval is sought. Under no circumstances shall a subdivision or land development applicant be required to undergo more than one approval process.
- (3) Establish the role and responsibilities of participating municipalities with respect to implementation of the plan, including the provision of public infrastructure services within participating municipalities as described in subsection (d), the provision of affordable housing, and purchase of real property, including rights-of-way and easements.
- (4) Require a yearly report by participating municipalities to the county planning agency and by the county planning agency to the participating municipalities concerning activities carried out pursuant to the agreement during the previous year. Such reports shall include summaries of public infrastructure needs in growth areas and progress toward meeting those needs through capital improvement plans and implementing actions, and reports on development applications and dispositions for residential, commercial, and industrial development in each participating municipality for the purpose of evaluating the extent of provision for all categories of use and housing for all income levels within the region of the plan.
- (5) Describe any other duties and responsibilities as may be agreed upon by the parties.

(c) Cooperative implementation agreements may designate growth areas, future growth areas and rural resource areas within the plan. The agreement shall also provide a process for amending the multimunicipal comprehensive plan and redefining the designated growth area, future growth area and rural resource area within the plan.

(d) The county may facilitate convening representatives of municipalities, municipal authorities, special districts, public utilities, whether public or private, or other agencies that provide or declare an interest in providing a public infrastructure service in a public infrastructure service area or a portion of a public infrastructure service area within a growth area, as established in a county or multimunicipal comprehensive plan, for the purpose of negotiating agreements for the provision of such services. The county may provide or contract with others to provide technical assistance, mediation or dispute resolution services in order to assist the parties in negotiating such agreements.

Section 1105. Legal Effect.

(a) Where municipalities have adopted a county plan or a multimunicipal plan is adopted under this article and the participating municipalities have conformed their local plans and ordinances to the county or multimunicipal plan by implementing cooperative agreements and adopting appropriate resolutions and ordinances, the following shall apply:

- (1) Sections 916.1 and 1006-A.
- (2) State agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.
- (3) State agencies shall consider and may give priority consideration to applications for financial or technical assistance for projects consistent with the county or multimunicipal plan.

(b) Participating municipalities that have entered into implementation agreements to carry out a county or multimunicipal plan as described in this article shall have the following additional powers:

- (1) To provide by cooperative agreement for the sharing of tax revenues and fees by municipalities within the region of the plan.
- (2) To adopt a transfer of development rights program by adoption of an ordinance applicable to the region of the plan so as to enable development rights to be transferred from rural resource areas in any municipality within the plan to designated growth areas in any municipality within the plan.

(c) Nothing in this article shall be construed to authorize a municipality to regulate the allocation or withdrawal of water resources by a municipal authority or water company that is otherwise regulated by the Pennsylvania Public Utility Commission or other Federal or State agencies or statutes.

(d) Except as provided in section 619.2, nothing in this article shall be construed as limiting the authority of the Pennsylvania Public Utility Commission over the implementation, location, construction and maintenance of public utility facilities and the rendering of public utility services to the public.

Section 1106. Specific Plans.

(a) Participating municipalities shall have authority to adopt a specific plan for the systematic implementation of a county or multimunicipal comprehensive plan for any nonresidential part of the area covered by the plan. Such specific plan shall include a text and a diagram or diagrams and implementing ordinances which specify all of the following in detail:

- (1) The distribution, location, extent of area and standards for land uses and facilities, including design of sewage, water, drainage and other essential facilities needed to support the land uses.
- (2) The location, classification and design of all transportation facilities, including, but not limited to, streets and roads needed to serve the land uses described in the specific plan.
- (3) Standards for population density, land coverage, building intensity and supporting services, including utilities.
- (4) Standards for the preservation, conservation, development and use of natural resources, including the protection of significant open spaces, resource lands and agricultural lands within or adjacent to the area covered by the specific plan.
- (5) A program of implementation including regulations, financing of the capital improvements and provisions for repealing or amending the specific plan. Regulations may include zoning, storm water, subdivision and land development, highway access and any other provisions for which municipalities are authorized by law to enact. The regulations may be amended into the county or municipal ordinances or adopted as separate ordinances. If enacted as separate ordinances for the area covered by the specific plan, the ordinances shall repeal and replace any county or municipal ordinances in effect within the area covered by the specific plan and ordinances shall conform to the provisions of the specific plan.

(b)(1) No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with an adopted county or multi-municipal comprehensive plan.

- (2) No capital project by any municipal authority or municipality shall be approved or undertaken, and no final plan, development plan or plat for any subdivision or development of land shall be approved unless such projects, plans or plats are consistent with the adopted specific plan.

(c) In adopting or amending a specific plan, a county and participating municipalities shall use the same procedures as provided in this article for adopting comprehensive plans and ordinances.

(d) Whenever a specific plan has been adopted, applicants for subdivision or land development approval shall be required to submit only a final plan as provided in Article V, provided that such final plan is consistent with and implements the adopted specific plan.

(e) A county or counties and participating municipalities are prohibited from assessing subdivision and land development applicants for the cost of the specific plan.

Section 1107. Saving Clause.

(a) The passage of this act and the repeal by it of any prior enabling laws relating to regional planning shall not invalidate any regional planning commission created under such other laws. This act, in such respect, shall be deemed a continuation and codification of such prior enabling laws.

(b) The amendment of this article shall not invalidate any joint municipal planning commission established under the former provisions of this article. A joint municipal planning commission shall continue to function under the amended provisions of this article.

Article XI-A – Wastewater Processing Cooperative Planning

Section 1101-A. Definitions. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Environmental Protection of the Commonwealth. "Wastewater system official." Either:

- (1) the manager of a wastewater system; or
- (2) if a manager is not employed to oversee a wastewater system, the system municipal officials of the municipality in which the wastewater system exists.

Section 1102-A. Notification requirement.

(a) Notice to wastewater systems official.

- (1) Except as provided in paragraph (2), notwithstanding any other provision of law, this section applies to a person who files an application for:
 - (i) development, plat approval, planned residential development or waiver of land development under this act; or
 - (ii) a construction permit under section 502 of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.
- (2) This article does not apply to:
 - (i) an application that involves new construction or alteration or renovation of a one-family or two-family dwelling;
 - (ii) an application that has an approved sewer module; or
 - (iii) an application for which the department has issued a determination that sewage planning is not required or has granted an exemption from sewage planning.
- (3) A person subject to this subsection shall provide written notification of filing the application to the wastewater system official serving the property identified in the application. A copy of the written notification shall be provided by the person to the municipality.

(b) Failure to notify. No application subject to subsection (a) may be deemed by the municipality to be administratively complete until the municipality receives a copy of the written notification required by subsection (a).

Section 1103-A. Review by wastewater system officials.

(a) Wastewater systems review.

- (2) Upon receipt of the notification required under section 1102-A(a), the wastewater system official shall review the notification to determine the impact of the application on the wastewater system. The wastewater system official may request additional information, including a copy of the application, from the applicant.
- (2)(i) Except as provided under subparagraph (ii), review by the wastewater system official shall be completed within 30 days of receipt of the notification required under section 1102-A. For good cause shown, the wastewater system official may request and the municipality shall grant an extension of up to 15 days for completion of the review.

(ii) If another statute establishes an application review period of 30 days or less, the review period and extension provided under subparagraph (i) shall not apply and the wastewater system official shall complete the review within the review period provided by that statute.

(3) If a municipality does not receive any notice from the wastewater system official within the time period provided under paragraph (2), the municipality shall proceed with the application as if the application is in compliance with the requirements of the wastewater system.

(b) Notification of results of review.

(1) Upon completion of the review required under subsection (a), the wastewater system official shall notify the applicant and the municipality in writing of its findings, which shall include a statement regarding the expected impact of the application on the current wastewater system.

(2) If the application will cause the wastewater system to exceed its permitted capacity or will result in necessary upgrades to the wastewater system's infrastructure, the written notice of the wastewater system official shall include the specific reasons that are causing the wastewater system to exceed its permitted capacity or the necessity for upgrades to the wastewater system's infrastructure.

(c) Approval of applications. Except for applications which are exempt from the provisions of this article as provided under section 1102-A(a)(2), a municipality may not:

(1) grant final approval of an application for development, plat approval or planned residential development under this act unless final approval is conditioned upon receipt of a waiver of or an approved exemption from sewage planning or written approval of the application is received from the wastewater system official; or

(2) approve an application for a construction permit under section 502 of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, unless the application has been reviewed under this section.

(d) Right of appeal. Any person aggrieved by a decision of a wastewater system official shall be entitled to seek the remedies provided under the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

Section 1104-A. Applicability. This article shall apply as follows:

(1) This article shall apply to applications for development, plat approval, planned residential development, waiver of land development or construction permits if the development or construction utilizes wastewater treatment service provided by a county wastewater treatment authority incorporated in a county of the second class A.

(2) This article shall apply to all municipalities served by the authority under paragraph (1).

Section 1105-A. Adoption of Regional Zoning Ordinances. (1105-A repealed Dec. 21, 1988, P.L.1329, No.170)

Section 1106-A. Amendments to Regional Zoning Ordinance. (1106-A repealed Dec. 21, 1988, P.L.1329, No.170)

Section 1107-A. Regional Hearing Board. (1107-A repealed Dec. 21, 1988, P.L.1329, No.170)

Section 1108-A. Intention to Withdraw. (1108-A repealed Dec. 21, 1988, P.L.1329, No.170)

Article XII – Repeals

Section 1201. Specific Repeals. The following acts and parts of acts and amendments thereof are repealed to the extent hereinafter specified:

- (1) Section 12, act of May 16, 1891 (P.L.75, No.59), entitled “An act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs and expenses thereof upon the property benefited, and the construction of sewers and payment of the damages, costs and expenses thereof, including damages to private property resulting therefrom,” as to cities of the second class A, incorporated towns and townships of the first and second class.
- (2) Sections 1151, 1152, 1153, 1154, 1155, 1156, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1711, 1721, 1722, 2706, 2707, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209 and 3210, act of February 1, 1966 (P.L.1656, No.581), known as “The Borough Code,” absolutely.
- (3) Sections 2001, 3015, 3016, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3107.1, 3107.2, 3108, 3109, 3110, 3111, 3201, 3202 and 3203, act of June 24, 1931 (P.L.1206, No.331), known as “The First Class Township Code,” reenacted and amended May 27, 1949 (P.L.1955, No.569), absolutely.
- (4) Sections 2901, 2902, 2903, 2904, 2905, 2906, 3701, 3702, 4001, 4002, 4003, 4004, 4005, 4006, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4110, 4111, 4112, 4113, 4114, 4120, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128 and 4129, act of June 23, 1931 (P.L.932, No.317), known as “The Third Class City Code,” reenacted and amended June 28, 1951 (P.L.662, No.164), absolutely.
- (5) Sections 1201-A, 1202-A, 1203-A, 1204-A, 1205-A, 1206-A, 1207-A, 1208-A, 1907.1, 1907.2, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2051, 2052, 2053, 2054, 2055, 2056 and 2057, act of May 1, 1933 (P.L.103, No.69), known as “The Second Class Township Code,” reenacted and amended July 10, 1947 (P.L.1481, No.567), absolutely.
- (6) The act of April 18, 1945 (P.L.258, No.117), entitled “An act requiring cities, boroughs, towns and townships to notify adjacent political subdivisions of proposed streets, roads and highways leading into them,” as to cities of the second class A and third class, boroughs, incorporated towns and townships of the first and second class.
- (7) Sections 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038 and 2039, act of August 9, 1955 (P.L.323, No.130), known as “The County Code,” absolutely.
- (8) Sections 2201 through 2211 and 2220 through 2239, act of July 28, 1953 (P.L.723, No.230), known as the “Second Class County Code,” in so far as they relate to counties of the second class A.

Section 1202. General Repeal. All other acts and parts of acts are repealed in so far as they are inconsistent herewith, but this act shall not repeal or modify any of the provisions of 66 Pa.C.S. Pt. I (relating to public utility code) 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums), or any laws administered by the Department of Transportation of the Commonwealth of Pennsylvania.

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