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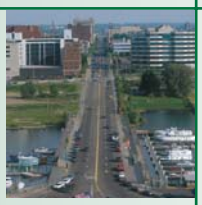


Subdivision and Land Development in Pennsylvania

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Subdivision and Land Development in Pennsylvania

Introduction

The subdivision and land development ordinance is the most commonly used development control mechanism in Pennsylvania. It is the most basic of land use regulations. Subdivision is the creation of new property lines while land development involves construction of public or private improvements. Land is one of our most valuable natural resources and its division or development creates a major portion of our physical surroundings. Also significant, the way we divide and develop land today will be a very permanent part of our daily lives in the future.

Any valuable resource must be used as reasonably and economically as possible. An important power of local government is to plan for and guide the way we use our land resources. 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. In an era of decreasing municipal revenues and increasing development pressures, municipalities can use the subdivision and land development process to ensure that initial costs of required site improvements be borne by the property owner and not placed on the municipal budget.

Subdivision and land development controls may be viewed as an “ounce of prevention.” They offer the municipality a degree of protection against unwise, poorly planned development. With the proper ordinance provisions, the community assures placement of public improvements such as road, water, sewer and drainage systems. Further, by requiring review and inspection reports from the municipal engineer, local officials guarantee that public improvements are properly designed and constructed.

A subdivision and land development ordinance does not control which uses are established within the municipality nor where a use or activity can or cannot locate. Rather, it controls how a use or activity relates to the land upon which it is located. This type of ordinance cannot dictate in which area of the municipality that a given residential, commercial or industrial development should be placed. Location, density and use are the province of zoning.

The administration of a subdivision and land development ordinance involves the local planning commission and/or governing body (depending upon the local ordinance), the developer, solicitor, municipal engineer, development designer and the county planning commission, as well as many others not mentioned. Working together, they all can help to assure a high quality subdivision or land development that will be acceptable to the municipality, to the developer and to the future occupants of the development.

What is Subdivision and Land Development?

The definitions of "subdivision" and "land development" are set forth in the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, as reenacted and amended. These definitions and meanings, in addition to other common and necessary terms, should be used in a local subdivision and land development ordinance. A "subdivision," as defined by the MPC in Section 107, 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 MPC Subsections 107 (1) (2) and (3) is 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).

Most community's are knowledgeable of the "subdivision" aspect; however, some municipal officials may be unaware of the "land development" features of the definition. As the definition implies, development of even one lot for two or more tenants or prospective occupants constitutes a land development. Act 170 of 1988 expanded the definition of land development to include a single nonresidential structure and added, at local option, specific exclusions discussed later under "Contents of a Subdivision and Land Development Ordinance." Thus, an individual desiring to construct 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. Various types of land development are discussed in detail beginning on page 8 of this publication.

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

Legal Framework

The MPC authorizes a municipality to adopt a subdivision and land development ordinance, thus enabling local review and approval of proposed plans for development. Before voting on the enactment of an ordinance, the governing body of the municipality must hold at least one public hearing on the ordinance. The hearing must be properly advertised according to public notice requirements including a brief summary of the principal provisions of the ordinance and a reference to a place within the municipality where the proposed ordinance can be secured or examined.

The municipality must also publish notice of its intent to enact the ordinance or an amendment. The notice of intent to enact must be in addition to public notice of the hearing unless the notice requirements of MPC Sections 504 and 505 meet both time and notice requirements of MPC Section 506. The ordinance or any amendments must also be reviewed by the municipal planning commission as well as the county prior to public hearing or hearings.

After the ordinance is enacted, it can be incorporated into the municipal ordinance book by reference. A municipality must send a copy of an enacted ordinance to the county planning commission within 30 days of its adoption. Procedures governing enactment of ordinances and amendments must be strictly followed. Improper enactment procedures may jeopardize the legality of an ordinance. (See Appendix II for Ordinance Enactment Procedures)

The governing body has flexibility in designating approval powers, but approval authority must be clearly stated in the ordinance at the time of enactment. An ordinance must designate either the elected officials or the planning agency as the body with the authority to approve or disapprove applications. Where a county enacts subdivision and land development regulations, and a borough, city, township, town or home rule municipality has not enacted an 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. For more information on county duties and responsibilities, see page 4, "The Role and Function of the County."

Contents of a Subdivision and Land Development Ordinance

Section 503 of the MPC states that a subdivision and land development ordinance may include at least the following:

- Plan submission and processing requirements, including payment schedule for charging of review fees.
- Certification as to the accuracy of plans.
- Layout standards.
- Uniform provisions for minimum setback lines and lot sizes based on availability of water and sewage facilities where there is no zoning.
- Design specifications.
- Standards for streets.
- Standards for other public improvements located on site.
- Provisions for phased developments.
- Provisions to encourage flexible and innovative layout and design.
- Administrative procedures for granting waivers of modifications where literal compliance with mandatory standards is not possible or reasonable, or alternatives are available.
- Provisions to encourage the use of renewable energy systems and energy conservation building design.
- Provisions for public dedication of land for recreation purposes.
- Provisions for exclusion of certain development from the definition of land development.

As the wording of the MPC suggests, each community adopting an ordinance has control of its content and of its structuring. The MPC provides basic guidelines for ordinance content and the municipality may use fewer or more requirements based upon local need. Now, the MPC provides for even more 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.

For example, MPC Section 503(1.1) allows 3 exclusions or exceptions to the definition of land development. These exceptions include: 1) small residential conversions, 2) addition of an accessory building and 3) the addition or conversion of buildings or rides within an existing amusement park. The first exception allows an existing single family detached or semi?detached dwelling to be converted into not more than 3 residential units unless the units are intended to be a condominium. The second exception includes accessory or subordinate farm buildings. The third exclusion does not apply to newly acquired acreage in an amusement park. This means that newly acquired land for an amusement park must file a land development plan. Applications for these types of land development must be processed if these exceptions are not included as provisions in the ordinance. It is important to emphasize that exceptions must be specifically included in the ordinance depending on local community development objectives.

Administration of Subdivision and Land Development Regulations

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 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.

Administration of a subdivision and land development ordinance must be done in a coordinated and timely manner. This is of particular significance since there are a number of important players participating in the process. 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 Environmental Protection, public utility companies, and the developer/applicant may all be consulted prior to plan submission, prior to plan approval, during construction or after construction has been completed. The task of the local municipality is to coordinate and facilitate most of these activities. It is recommended that one particular municipal official, whether the manager, zoning officer, the municipal or planning commission secretary, be designated as the responsible official for tracking applications through the process.

As mentioned above, the MPC has specific procedures for the review and approval of plans that must be followed. Time periods required by the MPC must be observed. Development must also comply with state and federal wetlands regulations as well as any zoning, housing, building and other such codes and ordinances in effect in the community. Likewise, erosion control, storm water management and floodplain management regulations are sometimes found in separate ordinances. These ordinances are to be applied to subdivision and land development too, when applications are processed.

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 their own ordinance.

Second, when a municipality enacts its own regulations it must file a certified copy with the county planning agency that effectively repeals the county regulations and standards in their municipality. However, 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. When a land development plan was not submitted to the county planning agency for review, the municipal approval of the plan was held invalid. In re: *Appeal of Newtown Racquetball Associates*, 76 Pa. Commonwealth Ct. 238, 464 A.2d 576 (1983).

Third, a municipality may elect to adopt the county ordinance by reference but use municipal staff to perform the administrative duties. Finally, a municipality may also, by separate ordinance, designate the county planning agency as the body responsible for the review and approval of plans. Of course, before this approach is used, the county agency must first be consulted for concurrence.

A fourth role that a county planning agency has is to offer mediation to contiguous municipalities, if requested. Act 68 of 2000 (MPC Section 502.1) 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."

Role of Local Government and Public Improvements

It is a basic responsibility of government to provide and guide growth of municipal services and public improvements so that development occurs in an orderly, rational and reasonable manner. Conversely, it is impermissible for government to withhold municipal services or facilities as a means to gain land use or development objectives that place unreasonable restrictions on growth. 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.

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 can not be held valid." *National Land and Investment Company v. Easttown Township Board of Adjustment,* 419 Pa. 504, 215 A. 2d 597 (1965).

Later, after enactment of the MPC, the same court, involving a similar zoning provision, directed that: ". . . suburban municipalities within an area of urban outpour must meet the problems of population expansion into its borders by increasing municipal services and not by the practice of exclusionary zoning." *Township of Williston v. Chesterdale Farms, Inc.,* 462 Pa. 445, 341 A. 2d 466 (1975).

Thus in Pennsylvania, the judicial perspective is that governments have some responsibility to provide certain public facilities. It is not clear exactly how much a municipality can expect the private sector developer to contribute to public services and facilities as a condition of approval. This is particularly important in light of the recent U.S. Supreme Court decision concerning a state government's attempt to exact real property from a landowner without compensation. Consideration of this decision requires all governments to plan carefully for public facilities in order to insure that contributions made by private developers bear a "substantial" relationship between the regulation imposed and a "legitimate" governmental interest. The U.S. Supreme Court said: "We are inclined to be particularly careful about the adjective [substantial] where the actual conveyance of property is made a condition to the lifting of a land use restriction, since in that context there is a heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated police power objective." *Nollan v. California Coastal Commission* 107 S. Ct. 3141, 97 L. Ed. 2d 677, 55 U.S.L.W. 5145 (1987).

More than ever before, municipalities need to inventory thoroughly, plan carefully and implement equitably to avoid the time consuming, as well as potentially costly, procedures involved with litigation.

Land Development in Absence of Zoning

The subdivision and land development process applies to more than just single-family residential developments. The definition of "land development" was expanded to provide more control, which is important for the many community's without zoning. A community can regulate other types of land development. It is obvious that such improvements to the land include mobile home parks and mobile home subdivisions as well

as multifamily residential construction such as apartments or townhouses. It is somewhat less apparent that land development standards can and do apply to small and large scale commercial retail centers and professional office complexes. In the absence of zoning, the subdivision and land development ordinance provides the greatest measure of local control and is now specifically authorized by the MPC to regulate even a single nonresidential structure.

Sometimes rural community's without zoning overlook impacts that nonresidential development will have on the future landscape of the municipality. Examples might include construction of a family health care facility, a village square type shopping center or professional office center. These all result in changing development and traffic patterns. They also represent changes that are permanent and community officials need to participate in the process. To influence these physical improvements, municipal officials must include appropriate standards in their subdivision and land development regulations, especially if a zoning ordinance is not in place.

A municipality that has not enacted zoning but has amended their subdivision and land development ordinance to incorporate the expanded definition of land development can regulate any improvement of land involving two or more residential buildings or any nonresidential building even on an existing lot. (See page 2 for the MPC definition of land development.) Legal expert, Robert S. Ryan in *Pennsylvania Zoning Law and Practice* commented regarding the revised definition: "The definition of a "'land development' has been expanded to embrace every type of development, division or allocation of land or space except the construction for a single residential dwelling on an existing lot or the leasing of land for agricultural purposes [not involving any new street or easement or residential dwelling unit] in parcels of more than 10 acres."

Different types of development require different standards. Unfortunately, many ordinances do not include separate development standards for an office complex, shopping center or multifamily residential construction. Standards should be established for each type of land development. To be valid, standards must be reasonable, objective and whenever possible, quantifiable. Issues such as off-street parking design, ingress and egress, internal traffic circulation, lighting, curbing, water supply and storm drainage, unless covered in detail in zoning, can be appropriately addressed by any subdivision and land development ordinance.

By adopting standards for land development, community's can avert complaints about storm water runoff, hazardous traffic patterns, limited parking, egress and ingress locations as well as many other potential problems. It is less expensive and much easier to identify potential problems prior to construction rather than taking expensive corrective actions after construction is completed. To omit standards for land development in regulations adopted under Article V of the MPC is to miss an opportunity to influence development patterns that will last far into the future.

Failure to control development now creates problems that must be dealt with for decades. Municipal officials 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. Placement of one principal nonresidential building on a lot is subject to the local land development provisions if local definitions were amended to include the MPC definition of land development.

A municipality that wants to regulate matters relative to land development should use the definition set forth in the MPC and provide specific standards that the land development must satisfy. Careful consideration of the optional exclusions under MPC Section 503(1.1) is strongly encouraged when community's craft subdivision and land development regulations. It is only prudent that all planning control measures contain clearly defined terms to avoid confusion or arguments.

Sewage Facilities Planning and Subdivision or Land Development

A Sewage Facilities Planning Module is required every time a subdivision and/or a land development is proposed. The Department of Environmental Protection (DEP) sewage facilities regulations require planning agencies to review and sign all Sewage Facilities Planning Modules. As a result, planning agencies and/or planning commissions review both subdivision or land development plans and modules concurrently. When a subdivision or land development is proposed, the developer must assess all the various sewage facility alternatives available to serve the development through the use of the planning module. The module must document consistency between the chosen alternative and the objectives and policies of a wide range of planning and environmental protection programs including comprehensive land use plans developed under the MPC.

DEP is dependent upon the planning commission's review and comments concerning proposed sewage facilities. Their focus of concern is consistency of these facilities with the goals and objectives of the comprehensive land use plan and the implementing land use ordinances including subdivision and land development regulations. In fact, DEP has expanded the range of comments it seeks from planning commissions regarding sewage facilities proposed to serve subdivisions to include new matters of local concern. These matters include both natural resource and environmental protection issues such as wetlands, prime agricultural land, archaeological or historical features and water supply resources.

These issues can also be addressed in subdivision and land development requirements. Local ordinances can require natural and environmental resources to be identified and delineated on the preliminary plans early in the administrative review process. These matters and issues are important to the Sewage Facilities Planning Module request as well as to the subdivision or land development application process.

At the state level, given that general consistency exists among and between municipal, multimunicipal and county comprehensive plans and applicable zoning, agencies are required to consider and may rely upon these documents when reviewing applications for funding or permitting of infrastructure or facilities. In addition, where these generally consistent documents exist, state agencies may give priority consideration to applicants for financial assistance.ned terms to avoid confusion or arguments.

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:

- 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*.
- The decision must be in writing and must be delivered no later than 15 days following the decision (but within the 90-day maximum time limit). *MPC Section 508(1)*.
- The decision must specify the defects in writing, describe the requirements that have not been met, and cite sections of the ordinance and provisions relied upon for disapproving the application. *MPC Section 508(2)*.
- Failure to render and communicate a decision within the required time and in the manner prescribed constitutes a deemed approval of the application. *MPC Section 508(3)*.
- Any filed and pending application cannot be adversely affected by any new or intervening ordinance amendment and an approved preliminary plan must be given final approval in accordance with the terms of the approved preliminary plan application. *MPC Section 508(4)(i).*
- If a special exception or conditional use is a subdivision or land development, an applicant is entitled to submit a plan within 6 months of the zoning approval in accordance with the pre?existing subdivision and land development ordinance or zoning provisions as they stood when the zoning (special exception or conditional use) application was filed. This clarifies and extends a period of vested rights to land developments or subdivisions from intervening ordinance amendments that require prior zoning approvals. *MPC Section 603(c)(2.1)*.
- A public hearing may be held prior to acting on any subdivision or land development plan, but is not required. *MPC Section 508(5)*.
- Any final plan that requires access to a highway under the jurisdiction of the 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, No. 428 the "State Highway Law." *MPC Section 508(6)*.
- 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*.

Sketch Plan 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 have 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.

While these benefits show the value and importance of the sketch plan phase of design, sketch plans should not be made mandatory. A sketch plan submitted under a mandatory requirement must be processed as a preliminary plan and acquires preliminary plan approval status. Stated another way, Commonwealth Court has determined that if a sketch plan stage is mandatory then the processing requirements of MPC Section 508 are applied. The 90-day time limitation for a decision on the plan must be met. Any rejection or denial requires written communication to the applicant within 15 days of the decision. The written notice must specify the defects found in the application, describe the requirements which have not been met, and cite the specific standards in the ordinance which are not satisfied or else a sketch plan of a subdivision could result in a deemed approval of a 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. Much like a suggested sketch plan submission, the procedure must also be voluntary or otherwise the 90-day review time line starts.

Preliminary and Final Plans

The approval of a plan is, in most cases, a 2-step process. Generally, the preliminary plan is intended to provide a more generalized and long-term plan of development. The final plan provides design details for a specific section to be offered for immediate development. This process requires that a preliminary plan be submitted and an approval obtained. A final plan is then prepared and submitted meeting any terms or conditions under which the preliminary plan was approved. Only upon securing final plan approval can the plan be recorded and lot sales and/or development commence.

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, which 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. Therefore, the preliminary plan should be examined closely for compliance with the 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 community's 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. The MPC authorizes provisions for phased developments in Section 509 to meet this need. Where the developer submits a preliminary plan calling for the installation of improvements over a period of more than 5 years, a schedule shall be submitted detailing deadlines within which applications for final plan approval of each 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.

Throughout any phased development project, provisions contained in MPC Sections 508 and 509 must be worked together. An important consideration in any development process is how much progress the developer has made on constructing the required improvements. In regard to progress toward completion and protection from intervening regulation changes, the phrase "substantially completed" is defined in Section 107 as:

> *[W]here, 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.*

When the developer has "substantially completed" installation of improvements for each section according to the schedule of deadlines for final plan submissions, then, the initial 5-year protection pertaining to changes in municipal regulation in effect at the time the preliminary plan was submitted remains in full force. Further, by substantially completing improvements depicted upon the initial final plan within 5 years, any subsequent section or sections beyond the initial section are afforded an additional term or terms of 3 years protection from the date of final plan approval for each section.

However, where a developer fails to adhere to the initial schedule or an approved modified schedule, the governing body has discretion to subject that section or phase to intervening changes in local regulations. This discretionary authority applies to amendments enacted after the date of initial preliminary submission, and includes zoning, subdivision, land development and other governing ordinances.

Municipal officials should refrain from accepting dedication of any public improvements before their engineer determines they are substantially completed. Accepting improvements prematurely can shift the responsibility for their completion from the developer to the municipality, particularly if the developer experiences financial difficulties.

Relief from Requirements

From time to time, a situation may arise where the standards of the subdivision and land development ordinance cause an undue hardship or prove unreasonable in application. Faced with this situation, a modification or alteration of requirements can be granted from the literal application of the standards. However, modifications cannot be contrary to the public interest and must observe the basic purpose and intent of the ordinance.

Requests for a waiver, alteration or modification of requirements must not be confused with relief granted by a variance under zoning restrictions. A zoning variance requires a difficult 5-point finding of facts by a zoning hearing board, whereas the subdivision and land development process requires approval be obtained to alter site requirements in accordance with MPC Sections 503(5), 503(8) and 512.1. Traditionally, governing bodies grant an alteration or modification, however, the MPC empowers planning commissions to approve relief requests if the local ordinance contains such a provision.

Care must be taken to assure that any modification is absolutely necessary and represents the minimum possible modification. Unusual physical circumstances may involve minor adjustments in curve radii, street grade or slope, cul-de-sac length, or problems over the width of an existing right-of-way. An unusual circumstance by conventional standards could be seen as an opportunity to implement conservation design suggestions found in the conservation subdivision section. Areas that have in the past, created difficulty during the design phase may now be seen as opportunities to create community's with character attractive to the potential homeowner. In most cases, these minor design modifications will not jeopardize public safety. A different layout or design may eliminate the need for an alteration. To solve an existing substandard right-of-way problem, additional land could be obtained, an easement agreement arranged which would meet the standard, or an alternate standard can be approved to provide equal or better results.

Any request must be submitted in writing, citing the specific provisions or standards from which relief is requested, and should be part of the preliminary or final plan submission. A request states in full the grounds and facts of unreasonableness or hardship upon which the request is based, the provisions of the ordinance involved, and the exact alteration or modification necessary. A record of the request should appear in the official minutes of the governing body as well as the planning commission. This record documents the reasons for the request, facts of unreasonableness and any action taken on the request. Any relief approved should represent the minimum or least possible modification of the standard. Granting modifications without following this type of procedure would surely invite a host of inappropriate and unwise alteration requests and, quite possibly, approval of such requests.

Conditional Approvals

The approving authority has 90 days (from the first meeting following plan submittal) to: 1) approve the plan, 2) approve the plan providing certain conditions are met, or 3) disapprove the plan. MPC Section 508(1) requires that written communication be sent to the applicant within 15 days of the decision. Sections 503(9) and 508(4)(ii) were amended to specify a procedure whereby a municipality can avoid unnecessary delay in processing an approvable plan and is summarized as follows.

To avoid delay in processing an application, a planning commission may recommend conditional approval, whereby if the applicant satisfies the deficiency prior to final action by the governing body the plan can be approved. If a governing body approves a subdivision or land development but stipulates conditions, they must be acceptable to the applicant. It is best to obtain written acceptance from the applicant of the conditions agreed to and state the statutory basis under which conditions are imposed. It is a good idea to stamp the preliminary plan as “conditional” or place some type of notice on the plan itself. The ordinance should provide a procedure by which an applicant can accept or reject conditions and stipulate that plan approval is rescinded automatically if the applicant fails to accept written conditions within a specific time limit.

Caution is advised for attaching conditions not based on written ordinance standards because if a developer fails to accept the conditions, it may result in an automatic disapproval. However, as with any municipal disapproval, the municipality must give complete written notice explaining the provisions of the statute or ordinance relied upon as a basis for any denial, even a deemed denial. Otherwise a deemed denial could be converted to a deemed approval.

Any final plan must comply with the preliminary plan as well as conditions under which the preliminary plan was approved. Conditional approval is not usually granted to a final plan. The exception is when state permits are required. To postpone action, until state permits are in hand, unnecessarily delays an applicant and presumes regulatory authority vested with state agencies. Conditional approval of a final plan based upon issuance of a permit from a state agency or compliance with state regulations is proper. To accomplish this, the municipality votes to approve the final plan but withholds signing the final plan until the stated permit is obtained. However, a municipality cannot stipulate or impose conditions according to which a state permit can be issued.

Once a final plan is approved and signed, it cannot be altered for any change in circumstances. A final plan must be recorded with the county recorder of deeds within 90 days. To be recorded, it must officially note approval by the municipal approving authority and review by the county planning agency. An approved plan is protected for a period of 5 years from any subsequent changes and amendments in the zoning, subdivision and land development, or other ordinances. This approval would also include conditions subject to special exceptions or conditional uses. See Planning Series No. 7: *Special Exceptions, Conditional Uses, Variances,* and MPC Sections 508(4) and 603(2.1) for more information regarding special exceptions, conditional uses, and vested rights.

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. This underscores the importance of tracking subdivision and land development applications. A municipality can monitor land sale activity to ensure compliance with their regulations. Usually, an agreement can be made with the county recorder not to record a deed, which is affecting an illegal subdivision unless the proper municipal approvals and county reviews are displayed on the plan of record.

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.

Most developers will seek to cooperate with recommendations of the planning commission as long as comments and suggestions are reasonable and do not prove to unduly affect the profit potential of the development. It is important to remember that Commonwealth Court frequently has held that a plan which satisfies all specific ordinance requirements must be approved even though the planning commission and/or governing body believes that the design could be improved by deleting lots or making other changes.

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.

Public Dedication of Land for Recreation Purposes

MPC Section 503 (11) provides special, direct authority for a municipality to require a developer to dedicate land to the public that is suitable for intended park and recreation purposes. Prior to this specific grant of statutory authority, municipalities relied upon an indirect mention of recreation facilities in Act No. 231 of 1980 at Section 509, which governs financial guarantees for public improvements in general. Under the current statute for park or recreation purposes, if the applicant and municipality agree, 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. Certain obligations are imposed on the municipality to use MPC Section 503(11) provisions.

An ordinance must contain definite standards for determining land to be dedicated or the amount of the fee in lieu, provided the requirements and standards are in accord with an adopted recreation plan and funds are utilized within three years or refunded with interest. Where fees in lieu are used to provide off-site park or recreational facilities, they must be "accessible" to the development. See Appendix III Mandatory Dedication of Land for Park and Recreation Purposes - MPC Section 503(11) for a more detailed discussion regarding use of these newly authorized provisions.

It is a good idea for the planning commission and recreation board to 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.

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 public improvements are completed or completion is assured by financial security provided by the developer. Municipalities that fail to obtain financial security for construction of public improvements are financially responsible for completing improvements not completed by the developer.

Completion of public improvements prior to final plan approval requires substantial front-end capital expenditure by the developer. In lieu of completion, prior to final approval a developer may opt to provide financial security to the municipality to guarantee that improvements are completed. On occasion a cautious lender will not provide financial guarantees until presented with a signed plan. In such a situation, the developer has an approvable final plan but cannot satisfy the security requirement for final approval. An impasse is reached. Section 509(b) of the MPC provides a procedure to facilitate financing improvement guarantees.

In this situation, the developer may request a signed copy of a 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. A final plan should not be signed nor recorded until a financial improvement agreement is executed.

How is the amount of the financial security determined? The applicant and/or developer submit a cost estimate. The estimate must be prepared by a registered professional engineer licensed in Pennsylvania and be certified to “be a fair and reasonable estimate” of the cost 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. The amount of security 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 to assure it equals 110 percent. 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 the cost estimate.

Where development is phased over a period of years and work of installing improvements proceeds, the developer may request the municipality to release a portion of the financial security necessary for payment to the contractor performing the work. Any such request must be in writing to the municipality. Upon receipt of the request, the municipality has 45 days to have their 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, prior to final release at the time of completion and certification of its engineer, require retention of 10 percent of the estimated cost of improvements. The municipality may continue to hold 10 percent retention 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 financial security to secure “structural integrity,” subject to the design and specifications depicted on the final plan. This structural integrity bond may be viewed as a limited duration maintenance bond for structures or facilities intended to be dedicated to the public. Such financial security can only be held for a period of 18 months and may not exceed 15 percent of the actual cost of making the improvements.

Regardless when the improvements are constructed, the municipality should establish an inspection procedure to carefully monitor progress of improvement 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 developer for the costs of inspection.indicate. The municipality is authorized to charge the subdivider for the costs of inspection.

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. That is, when a subdivision and/or land development plan complies with municipal standards and the plan is recorded, the developer or lot purchasers may then apply for building permits. A municipality may refuse to issue any permit to improve or further improve property.

Consistent with MPC procedures for plan processing, state law requires that a decision on any building permit application must be acted upon within 90 days (unless the local ordinance requires a lesser time) or the permit shall be deemed approved. If a permit is denied, the municipality must provide a brief explanation of the reason and set forth remedial actions that would lead to its approval. For example, submission of an application for a building permit prior to a subdivision or land development plan being approved and recorded is sufficient justification to deny the permit. Of course, you still must cite the reason and explain that the plan must be approved and recorded before a building permit can be issued.

The statewide building code, entitled the Uniform Construction Code (Act 45 of 1999), will become an important factor for nearly every resident within the Commonwealth. The new comprehensive building code establishes minimum regulations for most new construction, which includes additions and renovations to existing structures. The new code will have a positive impact on safety and building standards throughout the state of Pennsylvania.

All approved plans and issued permits fronting on a state road must contain a notice that a highway occupancy permit is required before driveway access to a state highway is permitted. Both the plan and the permit should be marked to indicate that access to such highways shall be only as authorized by the highway occupancy permit. The applicant should also be informed that an appeal by an aggrieved party to a plan approval or an issued permit may be filed within 30 days and that any construction activity during the appeal period is at the risk of the applicant.

One word of caution: if a permit is inadvertently issued or prematurely issued, the municipality could conceivably become involved in costly legal proceedings to compel the developer to comply with the provisions of the subdivision and land development ordinance. To protect against an improperly issued permit, the building permit officer could require the applicant to submit proof that a subdivision and/or land development plan was properly approved and recorded.

Offsite Improvements

The basic questions concerning construction of off-site improvements are: 1) Who needs them? 2) Who benefits from them? and 3) Who pays for them? Parties or subjects of these questions include the developer, the residents (present and future), and the municipality. The following is a brief discussion of off-site improvement issues.

Section 503 of the MPC authorizes municipalities to require certain on-site public improvements on any property subject to subdivision or land development. It is common practice for the developer to install public improvements on private property being developed and later offer those improvements for dedication to the municipality. However, it is entirely another matter to require improvements on property not part of the land being developed.

Any offsite transportation improvement requirement must be established according to the specific provisions contained in Article V-A. The MPC also has implied provisions authorizing offsite improvements that pertain only to recreational facilities. *See Prohibitions (Section 503-A) in Appendix IV*.

Article V-A of the MPC allows municipalities to enact impact fee ordinances to collect a portion of the costs of offsite transportation improvements. Offsite improvements as defined in MPC Section 502-A are “public capital improvements that are not onsite and serve the needs of more than one development.” Onsite improvements are defined as “all improvements constructed on the applicant's property, or the improvements constructed on the property abutting the applicant's property necessary for ingress or egress to the applicant's property, and required to be constructed by the applicant pursuant to any municipal ordinance . . .”

To current or even prospective residents, these same off-site improvements might justifiably be seen as vital to the safety of the public. Examples include installation of traffic signals, upgrading road network capacities, connecting new walkways to existing sidewalks where short gaps might exist or upgrading existing drainage facilities not located on the site.

There must be a balancing of the interests between existing residents and future residents represented by an applicant who will, at some later time, pass on the costs to new residents. Subdividers and land developers contend that it is not their subdivision or development that will create congestion, but rather residential and commercial development already in place that causes the problem. Further, developers contend, where improvements are required; costs should be allocated to the entire community, i.e., from the general tax base.

No doubt the existing 24-hour convenience store, hardware store, and restaurant created their own share of problems associated with development. Another new mini?mall will make existing problems worse, but the same mini-mall would also benefit from any future improvements. The process of balancing issues and making decisions categorizes public improvements according to whether they will primarily benefit the general public or can be attributed to a specific development project.

However, MPC Section 503-A (b) explicitly prohibits a municipality from requiring, as a condition of plan approval ". . . 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."

Transportation Impact Fees

Article V-A of the MPC is the exclusive authority to enact and collect offsite transportation impact fees. Statutory provisions mandate very specific and complex procedures that a municipality must follow in order to enact an impact fee ordinance. Section 508-A permits municipalities that have adopted a joint comprehensive plan under Article XI to also enact a joint transportation fee 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, a roadway sufficiency analysis and a transportation capital improvements plan must be approved in order to enact an impact fee ordinance. Other prerequisites include a zoning ordinance, a subdivision and land development ordinance and an adopted comprehensive plan. However, it should be noted that counties are not permitted to enact an impact fee ordinance.

Don't be misled. Impact fees will only cover a percentage of total needs and costs. 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. *See Appendix IV on Analysis of the Impact Fee Legislation*.

Joint Public/Private Cooperation in Transportation Improvements

The Pennsylvania Transportation Partnership Act (Act No. 47 of 1985, as amended) made possible a special assessment for offsite transportation improvements. This innovative approach has become known as the Transportation Partnership Program and provides for public/private cooperation in funding transportation improvements. Under this legislated program, municipalities are authorized to work alone or together with the private sector and/or the Commonwealth to establish transportation districts and assess all benefitted property within those districts for the cost of transportation improvements.

In designated districts, municipal officials and private sector interests may plan, finance, acquire, develop and construct transportation improvements. A Transportation Partnership Program does not bypass normal channels; it must be reviewed and approved by appropriate municipal, county and regional planning agencies. Partnership projects that affect the state highway system must also be approved by the Pennsylvania Department of Transportation (PENNDOT) and must be placed on the Commonwealth's Twelve-Year Transportation Program.

Thus far, the typical application of this approach has involved assessment of major office complexes and large-scale industrial/commercial development. Current projects include rights-of-way acquisition, roadway widening, intersection improvements, interchange ramp improvements and interchange construction. It could also be applied in areas experiencing rapid residential growth and for public transportation improvements. Individuals interested in learning more about this program should contact the District Office of PENNDOT that services their municipality.

Mobile Home Park Regulations

The MPC clearly provides for mobile home parks under Article V. 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 mobile home parks should be included as a separate article. If the municipality has also enacted zoning regulations, mobile home park provisions should be cross-referenced in the ordinances. However, other considerations all but compel inclusion of mobile home park provisions as a distinct article in any subdivision and land development ordinance.

Mobile home parks differ significantly from traditional single-family subdivisions. A mobile 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 mobile 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 mobile home park developments.

Conservation Subdivision Planning

Introduction

As mentioned earlier, the subdivision and land development ordinance is the most commonly used development control mechanism in Pennsylvania. Conservation subdivision is a way to design a subdivision around the central principal of resource conservation. Why is conservation subdivision important? Conventional or traditional development patterns require more infrastructure that need long-term maintenance. As this traditional development continues, a number of resources, agricultural land for example, can be lost forever. To address this, agricultural protection programs, among other resource protection programs, have been initiated saving thousands of acres of agricultural land. However, building better community's cannot be accomplished through these and other similar tax-based programs alone. More innovative land use practices are a means that municipalities can use to make smart growth a part of their community's future.

The subdivision and land development ordinance is only one of the three planning documents necessary for implementing a conservation approach to development. The other necessary documents are the comprehensive plan and the zoning ordinance. The comprehensive plan should reflect the long-range conservation goals for the municipality while the zoning ordinance allows landowners and developers to minimize lot sizes and conserve open space. Provisions in each document should be consistent (e.g. floodplain management throughout the municipality). These documents, together with the subdivision and land development ordinance form the three necessary tools to successfully implement conservation design.

Application Procedures and Resource Identification

The application process for conservation subdivision differs slightly from the traditional subdivision application process. An environmental features map is recommended for submittal in the beginning of the application process. An environmental features map would include the potential developable property showing the surrounding municipal resources and on-site resources of significance. It is important to illustrate the resources not only on, but also near the property, this allows for logical conservation steps to be taken on a municipal wide level (e.g. stream buffer/riparian zone throughout a township or county). Some resources to delineate on the context map include streams, floodplains, ridgelines, trails, etc.

The environmental resource map identifies all features of environmental, historic and scenic value on the proposed development site. This map differs from those required for traditional subdivisions in that it identifies not only the constrained areas (wetlands, steep slopes, etc) but also the features that may give the property its character and appeal (forested areas, historic structures, etc). The objective of the conservation approach is saving those resources determined to be most valuable.

In the development of the environmental resource map, it is best to categorize the resources present. Primary conservation lands include regulated and environmentally sensitive land like wetlands while secondary conservation lands include lands which are not necessarily regulated land but should still be considered for conservation purposes such as primary agricultural land or forested land.

Primary conservation lands include areas like wetlands, floodplains, steep slopes, threatened and endangered species habitat, etc. All wetlands should be identified early in the process. This can be accomplished, preliminarily, through secondary sources like the National Wetland Inventory maps published by the U.S. Fish and Wildlife Service; however, detailed delineations are recommended. Floodplains, like wetlands, represent engineering and environmental issues. Floodplains can be identified through mapping provided by the Federal Emergency Management Agency, usually available in the municipality.

Secondary conservation lands refer to the remaining notable resources located on a property that should be given consideration during the planning stages of a conservation subdivision. These resources could include but are not limited to primary agricultural land, forested land, soils, cultural resources (historic structures and archaeological sites), wildlife habitat, aesthetic considerations and groundwater recharge areas.

In ranking conservation areas, resources included in the primary conservation area take first priority when designing the open space for a subdivision. Resources within the secondary conservation areas may vary in significance. When the decision must be made to sacrifice one resource for another it should be based on broad community-wide or county-wide considerations. Generally, it is suggested for natural resources to take precedence over man-made structures, except where the latter is clearly significant. Preservation of natural areas is strongly suggested due to the difficulty and extended effort involved with creating wetlands and mature forests.

Special Procedural and Design Steps

Although the procedures for creating a conservation sensitive design are very similar to those of a traditional subdivision, the best results are dependent on the working relationship between the invested parties. This system opens the lines of communication early in the process. A pre-application meeting is encouraged between the applicant, planning commission and site designer to discuss procedures and overall objectives. A site visit should be arranged once the environmental resource map is completed.

Applicants should be encouraged to submit a sketch plan; however, the MPC does not require a sketch plan in addition to the preliminary and final plan. This step should remain voluntary. It is helpful and relatively inexpensive to create a sketch, laying out the proposed development areas and conservation areas. The sketch plan phase allows ideas to be exchanged before large sums of money have been spent. Similar in concept is the conceptual preliminary plan. This, again, is a fairly inexpensive step that, in the absence of a sketch plan, can avoid conflict later in the process. Finally, the Detailed Final Plan is submitted in the 90-day period.

There are four main steps in designing a conservation subdivision. First, identify the primary conservation areas and determine how best to incorporate these areas into the plan. Secondly, once the lay of the land has been investigated, the house sites may be located. There are many creative ways to accomplish this, having the resources and character of the property in mind. The third step involves the creation of access roads and driveways throughout the development. And finally, the lot lines are drawn.

Conservation Land Design

As part of the comprehensive plan, a map of potential conservation lands should be created for the municipality. All conservation subdivisions should use this as a point of reference when deciding the importance and location of interconnected conservation lands. Within the property, conservation areas should include the most sensitive resources, avoid fragmentation of a resource, and the conservation areas should be designed as part of a larger resource area (e.g. a stream and buffer of forested land found throughout the county). As mentioned before, determining the conservation areas most important for that property and/or municipality differ in each part of Pennsylvania. It is generally suggested to protect a natural area over man-made features, however, that is at the discretion of the municipality. For more information on conservation subdivision, contact the Pennsylvania Department of Conservation and Natural Resources.

Fees, Reviews and Inspections

Fees

The municipality usually levies certain fees at various times, both during the subdivision/land development approval process and while projects are under construction. Fees are to be based on a schedule established by ordinance or resolution. Fees must be reasonable, defined in terms of an amount sufficient to cover the actual cost of making the necessary review or inspection. In no event should a schedule of fees 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. Fee schedules should be monitored and regularly reviewed to ensure that fees required do not exceed the actual cost. A fee schedule adopted by resolution can be easily updated without the legal and advertising expenses of an ordinance amendment.

Plan Review

A filing fee is generally charged at the time the preliminary plan (and frequently when the final plan) is submitted for approval. This fee is usually a specified initial amount plus an additional amount for each lot in the subdivision or an amount keyed to the type of land development. The initial filing fee and any additional per lot or per type of land development charge can only be used to recoup administrative costs. All fees must be reasonable and related to actual costs. A municipality cannot use its power to charge fees for the purpose of raising general revenue or to frustrate or discourage subdivision and land development activity

Engineering Review

Almost every municipality levies an engineering fee for subdivision review. This charge covers the costs of the municipal engineer for reviewing the plan and its conformance with local ordinances, for site inspections to determine conformance with any surveys and for the review of cost estimates as required for public improvements. Since such costs are usually not known at the time the preliminary plan is submitted, the municipality must notify the developer of the amount of the fee after the plan is submitted. Otherwise, the municipality could pay the bill submitted by the municipal engineer and then invoice the applicant according to actual review costs. Either way, the developer/applicant must pay the fee within the time established by the local subdivision and land development ordinance; the receipt of the fee can be made a prerequisite to granting appropriate municipal approvals.

Inspections

It may be advantageous to establish a separate fee for inspections when the subdivision and/or land development proposal requires substantial improvements. Of course any such fee must be incorporated in the local ordinance or established by resolution. This fee covers the cost of inspecting improvements both during and after construction. However, it is also permissible to include this expense as part of the basic municipal application review fee.

Fee Disputes

An applicant or developer must notify the municipality within 14 days of the applicant's receipt of the bill, if the fee is disputed. Once notified of the dispute, the municipality cannot delay or disapprove an application based on differences over fees. If, within 20 days from the date of billing, the applicant and municipality cannot agree on the amount of expenses that are reasonable and necessary, a procedure is to be followed whereby another engineer is mutually appointed to establish the cost. The applicant must immediately pay the entire amount determined by the mutually appointed engineer.

When the municipality and an applicant cannot agree upon appointment of an engineer, either party can apply to the court of common pleas, who will appoint one. The court-appointed engineer determines the amount of reasonable and necessary expenses. If that amount is equal to or greater than the original amount billed the fee of the court appointed the applicant pays engineer. Should the determined fee be less than the amount billed by $1,000 or more the municipality is to pay the fee of the court appointed engineer and differences less than $1,000 is to be shared equally by the municipality and applicant.

Taxes and Fees

It is important to note that municipal law distinguishes between a fee and a tax. A tax is imposed for revenue purposes and must be specifically authorized by the state legislature. In Pennsylvania the statutory authority to impose an impact tax does not exist. In the past, at least one school district levied a tax on residential construction or reconstruction under the authority of the Local Tax Enabling Act (Act 511). This form of impact tax was unprecedented in Pennsylvania and was set at a fixed rate. For instance, one ordinance required $875 per residential unit at the time a building permit was issued. However, Act No. 55 of 1981 amended Act 511 to prohibit this type of tax and since June 30, 1982, it has been illegal to levy or collect such a tax.

Fees are imposed for regulatory purposes under the general police powers of the municipality and must be related to the actual administrative cost of the regulation. Funds collected from fees must be earmarked for the specific regulatory purpose for which they are imposed. Generally, if a fee is greater than the cost of administering the regulation, it must be considered a tax and will most likely be invalidated by the courts if the municipality has not been given specific authorization for that type of tax. For more information on the subject of taxes, see the DCED publication entitled *Taxation Manual*.

Enforcement Procedures

Enforcement

Procedurally, provisions in the MPC now specifically allow for remedies by law or in equity. However, the emphasis is placed on gaining compliance rather than administering punishment. Regardless of the infraction, enforcement proceedings are most effective when initiated under provisions of the ordinance or regulation that the activity violates. For example, if the location of the structure is inconsistent with zoning setback requirements, enforcement should be initiated in accordance with the zoning ordinance.

Other local ordinances are an integral part of any regulated development process. Many municipalities enact other ordinances that impact and influence the way in which land is developed. These include floodplain, storm water management, zoning and erosion and sedimentation control ordinances that must also be considered. All can be used to follow through with administration and enforcement of subdivision and land development regulations. Serious infractions ought to be handled immediately and revised MPC provisions authorize direct access to common pleas court under Article V.

Court Actions

If a violation has an immediate and serious financial or physical impact on the public health, safety or welfare, a municipality can petition the court to issue 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. MPC Article V gives clear authority to the municipality to take action to enforce a subdivision and land development ordinance. The most appropriate action to initiate depends on the severity of the violation. If an imminent threat exists to the public health, safety or welfare the court of common pleas should be petitioned for an injunction. The activity 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. Sale of lots in a subdivision, which has not been approved by the municipality, could constitute a serious threat to the general public and the municipality and result in a financial loss to unsuspecting consumers. Court action to enforce the subdivision and land development ordinance might be appropriate under circumstances as described in the previous sentence, i.e., sale of lots in an unapproved subdivision.

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 on-site 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 or a formal complaint to enforce the ordinance.

Suggested Progressive Enforcement Actions

Where an infraction is less serious, a civil judgment can be obtained by filing a complaint with the district justice, but only after the violation is documented. This is an important power because the right to commence enforcement action under subdivision and land development regulations is not granted to anyone other than the municipality. 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 after which a complaint will be filed with the district justice. Prior to filing a formal complaint with a district justice, the violation notice can be appealed to the governing body as provided by MPC Section 909.1(b). Upon hearing an appeal the governing body and party involved can craft an appropriate solution. Once a complaint is filed with the district justice the matter is out of municipal hands.
3. If the violator neither appeals nor takes corrective action and the deadline expires, file a complaint form with the district justice. Until a more appropriate civil complaint form is instituted by the judicial system, the form to file is the Trespass and Assumpsit Complaint.

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.

Judgments

Under Section 515.3, liability for a violation results in a $500 judgment plus court costs including attorneys fees for the municipality. No judgment commences or is payable until the date of the determination of the violation by the district justice. If the violator neither pays nor timely appeals the judgment, the municipality may petition the court to enforce the judgment. 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. However, the court of common pleas, upon petition, may grant a stay tolling or temporarily suspending the per diem (daily) judgment pending a final adjudication. The enforcement process should normally be initiated by progressive actions.

At this point, it is appropriate to interject a note on coordination by the enforcement officer with the solicitor and governing body. Some municipalities delegate in advance to the zoning officer the authority to initiate enforcement proceedings. Other governing bodies may wish to be consulted or to have the solicitor review the violation file before further enforcement proceedings are initiated.

Preventive Remedies

MPC Section 507 requires that where a subdivision and land development ordinance has been enacted, no division of land or land development shall be made except in accordance with provisions contained in the ordinance. Section 511 provides the authority and power to enforce bond or financial security for improvements required to be installed according to adopted subdivision and land development regulations.

Thus, both MPC Sections 507 and 511 require that final plans be prepared in accordance with adopted subdivision and land development regulations. MPC Section 515.1 specifically allows remedies by law or in equity to 1) restrain, correct or abate violation of subdivision and land development regulations, 2) to prevent unlawful construction, 3) to recover damages and 4) to prevent illegal occupancy. A description by metes and bounds to

transfer or sell property does not exempt the seller or the person that transfers land from any remedies or subsequent judgments. Remedies for land development violations are far reaching with good administration.

In addition, a municipality may refuse to issue any permit or grant any approval required to further improve or develop any property in violation. This authority to deny permits or approvals to individuals under Section 515.1 is reproduced below and 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.*

Another authority added by recent amendments is that as a condition for granting a permit or approval the municipality may 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.

Remedies to Complete Improvements

What happens when a required public improvement is left unimproved or never begun? MPC Section 511 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 corporate bond or other type of financial guarantee by appropriate legal or equitable remedies. Further, if 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. Obviously, recovery efforts are futile if the developer goes bankrupt first. All funds recovered shall be used solely for installation of improvements covered by such security and may not be used for any other municipal purpose.

Since subdivision and land development regulations are not self-enforcing pieces of legislation, close attention and thorough administration is required. Generally speaking, if regulations are reasonable, compliance is easier to obtain. For example, standards for municipal streets serving 5 or 6 lots can and possibly should be different than public streets serving 50 or 60 lots. Subdivision and land development regulations as well as other municipal land control measures should be reviewed frequently and the reasonableness of standards evaluated on a regular basis.

Public improvements are permanent in nature and are a municipal responsibility over the long term. Recognition of the importance of these improvements underscores the significance of proper planning and construction of any public investment. A subdivision and land development ordinance is one of several possible local control measures a municipality can implement. Although division of land and land development plans may be an initial indication that growth or development is about to occur, a municipality armed with only a subdivision and land development ordinance would be at a disadvantage. Other local control ordinances must be an integral part of any guided community development process. Land use control measures such as zoning, floodplain and storm water management as well as erosion and sedimentation control ordinances must also be considered. All can be used to complement administration and enforcement of subdivision and land development regulations.

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 Pennsylvania Municipalities Planning Code 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 ordinance provisions, but also thorough 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. Recent rulings by the United States Supreme Court have 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.

Appendix I

Timing Provisions in the Municipalities Planning Code

(As of January 2003)

Note: Below information is general in nature. Users should refer to the section cited for additional details and requirements related to timing provisions.

Section	Subject	Time Period	Description
		ARTICLE I	**General Provisions**
107	Public Notice	Once each week for 2 successive weeks	How often notice shall be published in a newspaper of general circulation (required for certain public hearings and meetings)
107	Public Notice	30 days/7 days	First publication shall be no more than 30 days and second publication shall be no less than 7 days from the date of the hearing/meeting.
		ARTICLE II	**Planning Agencies**
203(b)	Planning commissions	4 years	Term of each planning commission member.
206	Removal of planning commission member	15 days	Advance notice that must be given to a planning commission member prior to vote by the governing body to remove the member.
207	Annual report	By March 1	Date each year by which a planning commission shall submit a written report of its record of business.
		ARTICLE III	**Comprehensive Plan**
301(c) 302(d)	Comprehensive plan review and update	At least every 10 years	Time frame within which a municipal or multimunicipal comprehensive plan shall be reviewed and a county comprehensive plan shall be updated.
301.3	Submission of municipal plan to county planning	At least 45 days	Time prior to the required public hearing in which a copy of a proposed municipal comprehensive plan or amendment must be forwarded to the county planning agency for comments.
301.4	County comprehen-sive plan	3 years	Period beginning with the effective date of the act (Act 170 of 1988) by which counties shall have prepared and adopted a comprehensive plan.
302(a)	Comments on a municipal comprehen-sive plan	45 days	Time allotted to the county, contiguous municipalities, and the local school district to make comments on a municipal comprehensive plan; the governing body may act to adopt the plan upon receipt of comments from all said bodies, or after 45 days if comments are not received.
302(a.1)	Comments on a county comprehensive plan	45 days	Time allotted to municipalities and school districts within the county and contiguous municipalities, school districts, and counties to make comments on a municipal comprehensive plan; the governing body may act to adopt the plan upon receipt of comments from all said bodies, or after 45 days if comments are not received.
303(b)	Planning agency comments on certain municipal actions affecting a comp plan	45 days	Time within which recommendations of a planning agency regarding whether certain proposed municipal actions are in accord with the objectives of the adopted comprehensive plan shall be made in writing to the governing body.

Section	Subject	Time Period	Description
304(b)	County planning agency recommendations on certain municipal actions affecting a county comp plan	45 days	Time within which recommendations of a county planning agency regarding certain proposed municipal actions shall be made to the municipal governing body; the governing body may take said action upon receipt of recommendations from the county planning agency, or after 45 days if recommendations are not received.
305	Municipal and county planning agency recommendations on certain school district actions affecting municipal & county comp plans	At least 45 days	Time allotted to municipal and county planning agencies to make recommendations prior to execution of certain actions by a school district.
306(b)	Forwarding of adopted municipal comp plan	30 days	Time after adoption within which a municipal governing body shall forward a certified copy of its comprehensive plan or amendment thereto to the county planning agency.
307	State land use and growth management report	2005, then 5-year intervals	Year by which the Center for Local Government Services shall issue a land use and growth management report, and interval at which the report shall be reviewed and updated.
ARTICLE IV Official Map			
402(a)	Planning agency review of proposed official map or amendment	45 days	Time, after referral by the governing body to the planning agency of a proposed official map or amendment thereto, within which the planning agency shall report its recommendations to the governing body on a proposed official map or amendment, unless the governing body agrees to an extension of time, and after which the governing body may proceed without planning agency recommendations.
402(b) 408(b)	County review of proposed official map or amendment	45 days	Time, after a proposed official map or amendment thereto shall be forwarded to a county planning agency (or county governing body if no planning agency exists), within which the county planning agency shall make comments to the municipal governing body, and after which the municipal governing body may proceed without county comments. This 45-day time period shall occur at the same time as 45-day municipal planning agency review period.
402(b) 408(c)	Adjacent municipality review of proposed official map or amendment	45 days	Time, after a proposed official map or amendment thereto that shows any street or public lands intended to lead into an adjacent municipality shall be forwarded to an adjacent municipality, within which the adjacent municipality shall make comments to the governing body proposing the official map or amendment, and after which the governing body of the proposing municipality may proceed without adjacent municipality comments. This 45-day time period shall occur at the same time as 45-day municipal planning agency review period.
402(b)	Other public body review of proposed official map or amendment	45 days	Same time period as open for review and comments by the municipal planning agency, county planning agency, and adjacent municipalities within which local authorities, park boards, environmental boards, or similar public bodies may offer comments and recommendations to the governing body or planning agency, if requested by same.
402(c)	Recording of official map or amendment	60 days	Time from the effective date within which a copy of an official map or amendment thereto, verified by the governing body, shall be submitted to the county recorder of deed and recorded.
405	Planning agency review of proposed special encroachment permit	30 days	Time, before granting any special encroachment permit authorized in Section 405, which the governing body may allow the planning agency to review and comment on the special permit application.

Section	Subject	Time Period	Description
406	Time limitation on official map public reservations	1 year	Time after which the reservation for streets, watercourses, and public grounds shall lapse and become void after an owner of such property submitted written notice of intention to build, subdivide, or develop the land or made application for a building permit, unless the governing body shall have acquired the property or begun condemnation proceedings.
408(c)	Forwarding an official map or amendments to the county and adjacent municipalities	30 days	Time after adoption within which a municipality shall forward a certified copy of an official map, the adopting ordinance, and later amendments to the county planning agency (or county governing body where no county planning agency exists) and any adjacent municipalities into which proposed streets or lands are intended to lead.
ARTICLE V Subdivision and Land Development			
502(b)	County planning agency review of municipal subdivisions & land developments	30 days	Time allotted to the county planning agency to for review and report on applications for subdivisions or land developments in municipalities with their own S&LD ordinance. Municipalities shall not approve such applications until receipt of the county report or expiration of the 30 days.
503(1)(i)	Applicant dispute of S&LD review fees	14 days	Time from the applicant's receipt of the bill for the S&LD fees within which the applicant shall notify the municipality that such fees are disputed (in which case the municipality shall not delay approval or disapprove the application).
504(a)	Municipal and county planning agency review of proposed S&LD ordinance	At least 45 days	Time prior to a public hearing on a proposed S&LD ordinance in which the governing body shall submit the proposed ordinance to the planning agency (unless the proposed ordinance was prepared by the planning agency) and the county planning agency (where one exists) for recommendations.
504(b)	Forwarding an adopted S&LD ordinance to the county	30 days	Time after adoption within which a municipal (not including county) governing body shall forward a certified copy of the S&LD ordinance to the county planning agency (or county governing body where no county planning agency exists).
505(a)	Municipal and county planning agency review of proposed S&LD amendments	At least 30 days	Time prior to a public hearing on a proposed S&LD amendment in which the governing body shall submit the proposed ordinance to the planning agency (unless the proposed ordinance was prepared by the planning agency) and the county planning agency (where one exists) for recommendations.
505(b)	Forwarding an adopted S&LD amendment to the county	30 days	Time after adoption within which a municipal (not including county) governing body shall forward a certified copy of a S&LD amendment to the county planning agency (or county governing body where no county planning agency exists).
506(a)	Publication and advertisement of proposed S&LD ordinance or amendment	60 days/7 days	Time no more than (60 days) nor less than (7 days) prior to passage of a proposed S&LD ordinance or amendment during which the governing body shall publish the proposed ordinance or amendment (or the title and a brief summary prepared by the municipal solicitor) in a newspaper of general circulation in the municipality.
506(b)	Readvertisement of proposed S&LD ordinance or amendment in the event of changes	At least 10 days	In event substantial amendments are made to the proposed S&LD ordinance or amendment, time prior to enactment in which the governing body shall readvertise in a newspaper of general circulation a brief summary of all the provisions in reasonable detail together with a summary of the amendments.

Section	Subject	Time Period	Description
508	Decision on applications for plat approval	No later than 90 days	Time during which the governing body or planning agency shall render its decision on an application for plat approval and communicate the decision to the applicant. The 90-day time period begins following the date of the regular meeting of the governing body or planning agency (whichever first reviews the application) next following the date the application is filed, or after a final order of 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.
508(1)	Decision on applications for plat approval	No later than 15 days	Time following a decision on an application for plat approval in which the governing body or planning agency shall communicate a written decision to the applicant personally or by mail to the last know address.
508(3)	Decision on applications for plat approval	No later than 90 days; no later than 15 days	Time frames, in accord with 508 and 508(1), within which if the governing body or planning agency fails to render or communicate a decision the plat shall be deemed approved unless the applicant agrees to a time extension or a change in the manner of presentation/communication of the decision.
508(4)(ii)	Application of S&LD ordinance changes to approved plat	5 years	Time from approval of a plat within which no subsequent change or amendment in the zoning, subdivision, or other governing ordinance or plan shall be applied to adversely affect the right of the applicant to commence and complete any aspect of the approved development in accordance with the terms of such approval. (NOTE: Please refer to Sections 508(4)(iii), (iv), (v), (vi), and (vii) for additional criteria and provisions related to the 5-year vested interest in an approved plat.)
508(6)	Action on state high occupancy permit	60 days	Time from the date of an application for a state highway occupancy permit for driveway access (presumably for a proposed subdivision or land development, though the MPC is silent on this) within which the PA Department of Transportation shall act on the permit application by either approval, denial, return of the application for more information or correction, or determination that no permit is required.
509(b)	Resolution of contingent approval of a final plan	90 days	Time after which a resolution of the governing body or planning agency indicating approval of a final plat contingent on the developer obtaining satisfactory financial security shall expire unless a written extension, not to be unreasonably withheld, is granted in writing by the governing body.
509(f)	Estimate of cost of completion of required improvements	90 days following scheduled completion date	Date on which a cost estimate for required improvements in a subdivision or land development is based for purposes of determining the amount of required financial security (110% of said cost estimate)
509(h)	Increase in amount of financial security	1 year	Time after posting of financial security in which, if more time is needed to complete required improvements, the amount of financial security may be increased by an additional 10% for each one-year period or to an amount not exceeding 110% of the cost of completing improvements as reestablished on the expiration of the preceding one-year period.
509(j)	Partial release of financial security	45 days	Time, after receipt of a request to release such portions of financial security necessary for payment to contractors performing work on required improvements, which the municipal engineer shall have to certify in writing to the governing body that such portion of work has been completed in compliance with the approved plat, and after which the governing body if failing to act shall be deemed to have approved the release of funds as requested. (The governing body may require retention of 10% of the estimated cost of said work.)
509(k)	Financial security for performance	Not to exceed 18 months	Term permissible for financial security which may be required to secure the structural integrity and functioning of required improvements.

Section	Subject	Time Period	Description
510(a)	Release from improvement bond	10 days	Time, after receipt of notice by registered mail of the completion of required improvements, within which the municipality shall direct the municipal engineer to inspect said improvements.
510(a)	Release from improvement bond	30 days	Time, after receipt by the municipal engineer of the notice of completion of improvements, within which the engineer shall file with the governing body and make and mail to the developer by registered mail a written report indicating approval or rejection of said improvements.
510(b)	Release from improvement bond	15 days	Time, after receipt of the engineer's report, in which the governing body shall notify the developer in writing by registered mail of the governing body's action (presumably with regard to approval or rejection). (NOTE: If the governing body or engineer fail to comply with the specified time limitations, all improvements will be deemed to have been improved and the developer shall be released from liability pursuant to its financial security.
510(g)(1)	Developer reimbursement of inspection expense	10 working days	Time, after date of billing for reimbursement of expenses incurred for inspection of required improvements, within which an applicant shall notify the municipality that such expenses are disputed as unreasonable or unnecessary (in which case the municipality shall not delay approval or disapprove the subdivision or land development or related permit).
510(g)(2)	Failure to agree on amount of inspection expenses	20 days	Time, from the date of billing, within which, if the municipality and the applicant cannot agree on the amount of expenses that are reasonable and necessary, the applicant and municipality shall be mutual agreement appoint another licensed professional engineer to make a determination of the amount of reasonable and necessary expenses.
510(g)(3)	Decision on disputed amount of inspection expenses	50 days	Time, from the date of billing, within which the mutually appointed engineer shall hear evidence, review documentation, and render a decision on the amount of reasonable and necessary expenses.
510(g)(4)	Failure to agree on amount of inspection expense and appointed engineer	20 days	Time, from the date of billing, within which, if the municipality and applicant cannot agree on an engineer to resolve disputed inspection expenses, the President Judge of the Court of Common Pleas shall appoint such engineer who shall not be the municipal or applicant's engineer.
513(a)	Recording of plats	90 days	Time, after final approval or the date the approval is noted on the plat, whichever is later, within which the developer shall record such plat in with the county recorder of deeds.
ARTICLE V-A Municipal Capital Improvement			
504-A(b)(4)	Challenge to composition of advisory committee	90 days	Time, following the first meeting of the impact fee advisory committee, after which a legal action challenging the composition of the advisory committee may not result in invalidation of the impact fee ordinance.
504-A (c)(2)(ii)	Land use assumptions	At least 5 years	Future time period for which land use assumptions serving as prerequisite for the transportation capital improvements plan shall project changes in land use and development.
504-A(c)(3)	County planning review of land use assumptions	At least 30 days	Time prior to the required public hearing in which the advisory shall forward land use assumptions to the county planning agency for comments.
504-A (d)(1)(v)	Projection of traffic volumes	Not less than 5 years	Time period from the date of the preparation of the roadway sufficiency analysis for which a projection of anticipated traffic volumes must be projected for the analysis.

Section	Subject	Time Period	Description
504-A(e)(3)	Transportation capital improvements plan	At least 10 working days	Time prior to the date of the required public hearing in which the transportation capital improvements plan shall be made available for public inspection.
504-A(e)(4)	Transportation capital improvements plan	No more than annually	Frequency with which the governing body may request the impact fee advisory committee to review and make recommendations on the capital improvements plan and impact fee charges.
505-A(b)	Impact fee ordinance	At least 10 working days	Time prior to adoption of the impact fee ordinance in which the ordinance shall be available for public inspection.
505-A(c)(1)	Impact fee ordinance	Not before adoption of the resolution creating the impact fee advisory committee/ Not less than 1 nor more than 3 weeks	Two different instances in which a municipality shall publish intention to adopt an impact fee ordinance if it chooses the option to publish such notice.
505-A(c)(2) & (3)	Impact fee ordinance period of pendancy	Not to exceed 18 months	Period, after adoption of the resolution creating the impact fee advisory committee, for which an impact fee may have retroactive application (meeting certain provisions). An ordinance adopted after more than 18 months shall not be retroactive to plats submitted for preliminary or tentative approval prior to the legal publication of the proposed ordinance. In such case, any fees collected shall be refunded.
505-A(g)(1)	Certain refunds of impact fees	1 year	Time, following written notice of completion, with undispersed funds, of the transportation capital improvements plan sent by certified mail to those persons who previously paid impact fees, after which if there is no claim for refund the funds may be transferred to other municipal account.
505-A(g)(1)	Certain refunds of impact fees	3 years	Time within which, if the municipality fails to commence any road improvement, any person who paid impact fees shall upon written request receive a refund (plus interest) of that portion of the fee attributable to the uncommenced road improvement.
ARTICLE VI Zoning			
607(e)	Enactment of zoning ordinance Review by County	45-days prior to public hearing	Provides for a 45-day review time by County planning agency.
608	Enactment of zoning ordinance	Within 90 days of last public hearing	Provision for the governing bodies to vote on enactment.
608	Filing zoning ordinance	Within 30 days after enactment	Requirement that the municipal zoning ordinance be filed with the county planning agency or governing body.
609(b)(1)	Posting property for zoning map change	One week prior to hearing	Requirement that properties subject to zoning map changes be posted.
609(b)(2)	Zoning map change notice(s)	30 days prior to hearing	Owners of parcels affected by proposed zoning map change to be mailed notice of public hearing (not required for a comprehensive rezoning).
609(c)	Referral to municipal planning agency (amendments)	30 days prior to pubic hearing	Time of referral to planning agency of any zoning amendment not prepared by same.
609(e)	Referral to county planning agency (amendments)	30 days prior to public hearing	Time of referral to county planning agency of zoning amendments.
609(g)	Filing zoning amendment	Within 30 days after adoption	Requirement that amendments to the zoning ordinance be filed with the county planning agency or governing body.

Section	Subject	Time Period	Description
609.1(a)	Curative amendment hearing	60 days	Time required for commencement of required hearing.
609.1(a)	Curative amendment planning agency review	30 days	Required referral to planning agency(ies) (per 609). This would include both the municipal and county agencies.
609.1(a)	Curative amendment notice of hearing	60-7 days	A single notice is required not more than 60 nor less than 7 days prior to passage.
609.2(1)	Municipal curative amendment	30 days	Time for municipality to declare by resolution specific substantive problems of a zoning ordinance and begin process of preparing a curative amendment.
609.2(2)	Enactment of municipal curative amendment	180 days	Time from 609.2(1) declaration to enact municipal curative amendment or reaffirm validity.
609.2(4)	Limitation municipal curative amendment	36 months	Time limit to use municipal curative amendment (can be waived if law changes or per Appellate Court order).
610(a)	Notice of enactment	60-7 days prior to enactment	Dates for the publication of a notice of proposed enactment (once only) prior to vote.
610(b)	Notice of enactment substantial amendments	10 days prior to enactment	Time for subsequent notice of enactment if substantial amendments are made to the ordinance prior to vote.
617	Causes of action	30 days	Time of notice an aggrieved owner/tenant must give to municipality before beginning action under 617 (present, restrain, correct or abate).
621	Methadone treatment facilities permit	14 days	Time for public hearing(s) prior to vote on permitting Methadone treatment facilities within 500 feet of certain land uses.
ARTICLE VII Planned Residential Development			
704	Referral of tentative approval	30 days	Time period for county planning agency to review and comment on tentative municipal PRD applications.
705(f)(2)	Remedial action for common open space maintenance	30 days and 14 days	The 30-day period is the time in the notice for the corrective action of common open space maintenance. The 14 days is the date of a hearing on such deficiencies, counted from the date of the notice.
705(f)(3) and (4)	Municipal maintenance of common open space	One year	Time period for municipal maintenance of PRD common open space before a second hearing is required on subject.
709(c)	Timing for final PRD approval, not phased Timing for final PRD approval phase	3 months12 months	Un-phased PRD to be given final approval* Time between application for approval.* *Can be extended upon consent of landowner.
711(b)(c)	Final PRD approval or refusal	45 days	Final approval to be granted from date of meeting of first reviewing body
Special Note: 711(c) also contains options for the applicant to file for alternate actions in case of refusal, i.e. delete unapproved variations or file for a public hearing on the application.			
711(e)	Time for PRD development to be considered as abandoned	See 508	See timing required of Section 508.
ARTICLE VII-A Traditional Neighborhood Development			
Section 702-A – Grant of Power – Relates the TND procedures (including timing) shall follow Section 609 (Zoning Ordinance Amendments).			

Section	Subject	Time Period	Description
ARTICLE VIII-A Joint Municipal Zoning			
For adoption, amendments and notices of intent to adopt, the procedures of Article VI Zoning will be used (see 608, 609 and 610).			
808-A	Withdrawal from a joint zoning ordinance	3 years, 1 year	Any municipality wishing to withdraw from a joint zoning ordinance cannot do so for 3 the first years and must always give a one-year notice to other participants. After 3 years 1 year notice can be waived see 808
ARTICLE IX Zoning Hearing Board and other Administrative Proceedings			
903	Term of Membership Zoning Hearing Board	3 years to 5 years	Three-member board 3 years; five-member board 5 years. Term to be staggered, one per year.
905	Removal of Zoning Hearing Board member	15 days	Required notice to a Zoning Hearing Board member to be removed for cause.
908(1)	Hearing notices – Zoning Hearing Board Posting of property	See 107One week	Public hearing notice per Section 107, property to be posted one week prior to hearing.
908(1.2)	Zoning Hearing Board Hearing(s)	60-45 days100 days	The first hearing to be commenced 60 days from request; subsequent hearing not more than 45 days apart; hearings to conclude 100 days from completion of applicant's case-in-chief, applicant entitled to 7 hours of hearing. See amendment for details. Process is quite complex.
908(9)	Decision/finding of Hearing Officer with no stipulation of acceptance	45 days30 days	Time to make Hearing Officer's finding and conclusion available to all parties.Time for board to make decision findings based on Hearing Officer's report.
908(9)	Deemed decision notice	10 days	If Zoning Hearing Board/Hearing Officer fails to meet time requirements (and applicant has not agreed to an extension), notice of deemed approval required.
908(10)	Copy of decision/finding	1 day	Time to deliver/mail copy of decision to applicant. To other parties, a brief summary is sufficient.
909.1(2)	Challenge to procedural defects in adoption	30 days	Time period for procedural deficiency challenge.
913.2(b)(1)	Decision on Conditional Use	45 days	Decision to be within 45 days of last hearing.
913.2(b)(2)	Deemed approval on Conditional Uses	60 or 100 days	Failure to commence hearing within 60 days of request or failure to render a decision in 100 days from presentation of applicant's "case-in-chief" is a deemed approval.
913.2(b)(2)	Notice of deemed approval	10 days	Public notice of deemed decision either by governing body or applicant.
913.2(b)(3)	Copy of decision	1 day	Final decision/findings delivered to applicant or mailed by the day after its date.
914.1	Time limits on appeals	30 days	Limit on time for appeals on approved preliminary or final application to the Zoning Hearing Board.
916.1(c)(6)	Issues on validity, curative amendment, time for decision	45 days	Time from last hearing to Zoning Hearing Board or governing body decision.

Section	Subject	Time Period	Description
916.1(c)(7)	Deemed denial , validity issues and curative amendments	46 days	If no decision is reached in the above-referenced, 46 days - request is a deemed denial.
916(d)	Time to commence Hearings	60 days	Time for Zoning Hearing Board, governing body to commence validity/curative amendment hearing (time extension possible).
916(g)	Time for developer to file application	2 years1 year	If a curative amendment or validity challenge is upheld, applicant has up to 2 years to file application for preliminary or tentative approval (subdivision PRD or land development) or one year to obtain a building permit (zoning).
916.2	Preliminary approval	2 weeks	A device used to obtain a preliminary opinion to limit challenges to ordinance or map, public notice for 2 successive weeks.
917	Application of amendments	6 months	Once a special exception or conditional use is approved, and the development is a subdivision or land development, the developer has a 6-month window to file for same based on the ordinance at the time of special exception or conditional use approval.
ARTICLE X-A Appeals to Court			
1002-A	Appeals on land use decisions	30 days	Time from date of entry of decision to appeal to Common Pleas Court.
1003-A(a)	Notice of appeal	20 days	Court must advise municipality within 20 days of any land use decision appeal (1002-A).
1004-A	Intervention	30 days	Any filing of intervention must occur within 30 days of the filing of appeal.
ARTICLE XI Intergovernmental Cooperative Planning and Implementation Agreements			
1103(c)	County municipal agreement	5 years prior to 8/2000	Time limit for cooperative agreement under county/municipal plans conforming to this article (grandfather clause).
1104(b)(1)	County and/or multi-municipal cooperative agreement	2 years	Time limit to achieve general consistency between county/multi-municipal plan and local ordinance.
1104(b)(4)	Annual Reports	Yearly	Annual Reports on activities under agreements.

Special Note: Amendment of Article VII PRD relative to timing via Act 2 of 2002 had no practical impact.

Appendix II

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 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 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 nor 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 nor 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)*.

Appendix III

Mandatory Dedication of Land for Park and Recreation Purposes

Section 503. Contents of Subdivision and Land Development Ordinance.
The subdivision and land development ordinance may include, but need not be limited to:

(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 park or recreational facilities 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 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.

(vii) Upon request of any person who paid any fees under this subsection, the municipality shall refund such fee, plus interest accumulated thereon from the date of payment, if the municipality had failed to utilize the fee paid for the purposes set forth in this section within three years from the date such fee was paid.

(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.

The following discussion of Section 503(11) of the MPC is based solely upon the interpretation and experience of a planner and park and recreation professional. It should in no way be construed as legal opinion or advice. A solicitor or attorney should be consulted if a legal diagnosis or translation of MPC

Section 503(11) is needed. Section 503(11) of the MPC provides specific and direct authority for a municipality to require a developer to dedicate land to the public that is suitable for the intended park and recreation purposes. An indirect mention of recreational facilities was included in the Act 231 amendments (passed in 1980) to Section 509 of the MPC, which governs financial guarantees for the completion of improvements.

In order to require mandatory dedication, the provision of common open space as a condition precedent to final plan approval, the municipality must meet the obligations listed in section 503(ll).

The municipality may also, if the developer voluntarily agrees, accept one or more or a combination of items including:

(a) The construction of recreational facilities by the developer

(b) The payment of fees in lieu

(c) The private reservation of land

First, construction of recreation facilities by the developer: some municipalities have worked with developers to not only receive a donation of land, but also build facilities such as basketball courts, tot lots, picnic areas, etc. A developer may agree to do both; however, in accordance with this legislation, the developer cannot be required to put facilities on the land. As a compromise, a developer may be willing to accept a decrease in the amount of open space required and in exchange, add several recreation facilities. To be fair and equitable, the extent of the developer's construction of recreation facilities would depend on the value of the land that was not dedicated as public open space. For example, if 10 acres is required, a compromise might be reached by requiring 5 acres plus a basketball court and tot lot.

Second, payment of fees in lieu: although “fees in lieu” is not defined, it refers to the payment of a sum of money to be used for park and recreation purposes. This fee should bear direct relationship to the amount or value of land that would otherwise have been dedicated. Furthermore, if the developer does not enter into an agreement, the fee in lieu option cannot be imposed.

How to encourage the fee in lieu option? For a variety of reasons, many municipalities prefer collecting fees instead of land, and have also found that some developers would rather pay fees in lieu or privately reserve land rather than dedicate land. Some municipalities may already have sufficient land and will be seeking developer contributions to help add the facilities for the new residents. If, during the development of a comprehensive park and recreation plan, it is determined a fee option will more successfully meet the community's park and recreation needs, there are two considerations that may influence developers to agree to the fee option.

> **Option 1:** Set the fee per acre markedly below the value of the land that would otherwise be required to be dedicated. The disadvantage here is that if you set the fee too low, insufficient funds will be able to provide the necessary facilities.
>
> **Option 2**: Tie the payment timetable to building permits. The MPC does not specify when fees should be collected; this decision is up to the individual municipality. At time of final plan approval, developers are often faced with a cash?flow problem. Considering this, many developers prefer the payment timetable to correlate with the issuance of building permits rather than a lump sum required at the time of final plan approval. If municipalities opt to tie the fee with permits, the disadvantage is that this can require more administrative involvement. For small community's without a full?time staff person, someone needs to be assigned to monitor when fees need to be paid.

Third, private reservations of land: this refers to the developer designating a parcel of land on the subdivision or land development plat (or plan), saving or reserving it for a specific purpose such as a playground. A written agreement is executed between the developer and the municipality concurrent with the final plat approval. The agreement basically explains and clarifies the obligations of the developer. It should stipulate whether the developer or a homeowners' association will be responsible for construction and maintenance of the designated recreational facilities, whether non?residents will be granted access or whether the private reservation can be revoked under some set of future circumstances. While the municipality benefits from a private reservation by eliminating maintenance costs, it also loses direct control.

Components needed for successful implementation

1. **Requirements cannot be made on pending plan applications.** Unless the municipality meets the requirements in the subclauses to subsection 503(11) and unless the subdivision and land development ordinance contains mandatory dedication provisions, the requirements cannot be applied or be imposed retroactively upon any pending plan application.

2. **Standards must be identified.** The ordinance must contain definite standards to determine the proportion of a development to be dedicated and the amount of fee to be paid in lieu of dedication. Some municipalities have used guidelines provided by the National Recreation and Park Association and modified them depending on philosophies and objectives developed in their comprehensive park and recreation plan. A common approach is a standard of X acres/1000 population. This has proved to be effective in some growing community's where there is a variety of housing types and densities. One major factor contributing to its effectiveness is that it directly relates park demand to the number of people generated by a given project. This interpretation holds that it is the people who create the demand, not the number of units or the amount of land being developed. Using this approach, some municipalities have developed a fee standard tied to the fair market value of the land.

3. **Accessibility to the development.** The land or fees, or combination thereof, are to be used only for the purpose of providing park or recreational facilities accessible to the development. "Accessibility" is not defined in the MPC. One interpretation is that facilities must be "in close proximity" or "in the general neighborhood" of the subdivision. For instance, standards developed by the District of Columbia suggest that a neighborhood playground should contain 3 to 5 acres of land, be within three?eighths of a mile (slightly less than 2,000 feet) walking distance with no major physical impediments or barriers such as an arterial road to cross. Accessible does not necessarily mean abutting or connected by a pedestrian walkway, but it could if the recreational facility were an offsite tot lot.

4. **Formally adopted recreation plan.** The governing body must have a formally adopted recreation plan, and the required park and recreational facilities must be in accordance with definite principles and standards contained in the subdivision and land development ordinance. A recreation plan should be adopted by resolution of the governing body. As a minimum, this plan could be a chapter of the comprehensive plan (see MPC Sections 301(2) and 302) or a stand-alone planning document. The Bureau of Recreation and Conservation in the Department of Environmental Protection, has additional information on elements of a comprehensive recreation, park, and open space plan and also what should be included in a chapter within a municipal comprehensive plan.

   Generally, the plan should include goals and objectives, land criteria for parks, prioritized capital improvements, park accessibility and reference the ordinance. Any standards developed should not be arbitrary or determined on a case-by-case basis. The standards must have a rational basis such as the National Recreation and Park Association's minimum guidelines and must be developed in conjunction with policies specified in the municipal recreation plan to determine park and recreation needs. It is also important that the subdivision ordinance and plan are in complete agreement and would work hand-in-hand in deciding what option the municipality would like from each developer.

5. **Reasonable relationship.** The amount and location of land to be dedicated or the fees to be paid in lieu shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision. Similar to the above discussion on accessibility, municipalities need to determine what is the service radius around a neighborhood or community park. When fees are collected in lieu of land, the purpose for which it is collected needs to be identified. Developers should not be expected to give cash contribution for the development of a neighborhood park 3 miles away. The more controversial issue is using fees in lieu to fund development of

community-wide facilities such as a public pool, community center or 25-acre community park. If this approach is taken, providing documentation within the recreation plan on how this facility bears a reasonable relationship to future residents would help support your case.

6. **Interest-bearing account.** The municipality must deposit any authorized fee into a separate interest-bearing account identifying the specific park or recreational purpose for which it is intended. Interpreting the legislation in the broadest sense, the term "facilities," would encompass the land underlying the park, athletic field or the specific use or facility being planned or constructed. Also, any interest earned should be earmarked to the specific project.

7. **Refund of fees**. The municipality must refund the fee plus interest upon request of any persons who paid any fee if the municipality has failed to utilize the fee for the purposes it was paid within a period of three years from the date the fee was paid. The MPC does not specifically identify when "the clock starts running." Some municipalities that use a payment timetable tied to building permits have interpreted this to mean that the 3-year time frame starts when the last building permit is received in a development.

Other issues to consider

1. **Is it proper or authorized for the municipality to require an applicant to maintain the on-site recreational facilities or to contribute to the repair or maintenance of off-site facilities?** The MPC provides no authorization for imposing maintenance responsibilities on the developer unless the developer would voluntarily agree. Where the developer is planning a condominium project or establishing a homeowners' association, it could be advantageous or convenient to agree to a private reservation of land, which implies private maintenance. By way of analogy, when a private subdivision street is offered for dedication and accepted by the municipality, the municipality assumes the maintenance and snow plowing responsibilities.

2. **Can mandatory dedication be required on non-residentially-zoned areas?** The MPC does not specifically prohibit non-residential or commercial properties; however, neither does it permit it. Under Sections 503.11(iii and v), reference is made to future inhabitants of the development. In its most restrictive sense, this is interpreted to mean residential subdivisions and that municipalities requiring a contribution from non-residential developers would be proceeding at their own risk.

3. **What should be the role of a park and recreation board or paid park and recreation director?** An extremely important part of the entire process is to make sure that the review of plans is properly established and that input should be provided by entities that will be responsible for either maintaining or programming the park. All plans that will require a developer contribution should be forwarded to persons responsible for the provision of park and recreation facilities and programs (board or staff). The board and/or staff person should be actively involved in the review process from the earliest contact on through the entire process attempting to ensure that the recreation needs and requirements are met. If the municipality wants a contribution of good, usable land for active recreation purposes, it is a lot easier to work with the developer at a preliminary plan stage than at the final plan stage.

   If there is a park and recreation board without any paid park and recreation staff, it is a good idea for this board and the planning commission to periodically hold joint meetings. This communication and coordination helps to insure that the community's needed park and recreational facilities are being met through the subdivision and land development administrative processes.

4. **How can municipal/school cooperation be fostered through mandatory dedication?** Areas of future growth should be surveyed to determine whether school sites shall be used for public recreation. If so, agreements should be made with the school district for such a provision. For example, if a subdivision is being built next to a school, the developer's contribution of open space could adjoin the school property. The school property that was once 15 acres now becomes 20 acres with 5 acres targeted for future park and recreation facilities to be used by the school during the day and residents in the evenings and weekends.

Appendix IV

Analysis of Transportation Impact Fees

General Intent (Section 501-A)

Article V-A of the Municipalities Planning Code, titled "Municipal Capital Improvement," authorizes all municipalities, except counties, to charge transportation impact fees on new development. As a prerequisite, the municipality must have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance, and zoning ordinance.

The effect of the act is to:

1. Expressly authorize the imposition of impact fees for capital improvements to the transportation system.
2. Closely define the procedures by which impact fees may be implemented.
3. Expressly exclude the use of impact fees for other purposes and to limit the extent of their use for transportation improvements.

Important Definitions (Section 502-A)

Impact fee – a charge or fee imposed by a municipality against new development to generate revenue for funding the costs of transportation capital improvements necessitated by and attributable to new development.

Offsite improvements – public capital improvements that are not onsite improvements and which 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 under a municipal ordinance.

Road improvement – the construction, enlargement, expansion or improvements of public highways, roads or streets, not including bicycle lanes, bus lanes, bus ways, pedestrian ways, rail lines or toll ways.

Transportation capital improvements – 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, according to the comprehensive plan and applicable district zoning regulations, has development potential, creating the need for transportation improvements to be funded by impact fees.

What impact fees may be used for (Section 503-A)

The law authorizes the use of impact fees for costs incurred for improvements designated in the municipality's transportation capital improvement program attributable to new development, including the acquisition of land and rights-of-way; engineering, legal and planning costs; and all other costs directly related to road improvements within the service area or areas, including debt service. Impact fees may also be used for a proportionate share of the cost of professional consultants hired to prepare a roadway sufficiency analysis. The proportionate share must be determined based on a formula specified in the act.

What impact fees may NOT be used for (Section 503-A)

Municipalities are expressly prohibited from using impact fees for:

1. Construction, acquisition or expansion of municipal facilities that have not been identified in the township's transportation capital improvement plan.
2. Repair, operation or maintenance of existing or new capital improvements
3. Upgrade, update, expansion or replacement of existing capital improvements to serve existing developments to meet stricter safety, efficiency, and environmental or regulatory standards that are not attributable to new development.
4. Preparation and development of land use assumptions and the capital improvements plan.
5. Road improvements due to pass?through traffic or to correct existing deficiencies.

Prohibitions (Section 503-A)

Impact fee ordinances must be established only as authorized in the act. The law expressly prohibits a municipality from requiring as a condition for approval of a land development or subdivision application the following, except as specifically authorized under the act:

1. Offsite improvements or capital expenditures of any nature whatsoever
2. Contributions in lieu of improvements
3. Exaction fees
4. Connection, tapping or similar fees (except as specifically authorized under Act 203 and Act 209)

The act does not specifically address the ability of municipalities and developers to negotiate and enter into voluntary agreements for offsite improvements other than those covered by impact fees.

Onsite improvements (Section 503-A)

The act does not affect a municipality's power to require onsite improvements. However, the municipality may not withhold approval of a development for the reason that an "approved capital improvement program" has not been completed.

Joint Municipal Impact Fees (Section 503-A)

Act 68 of 2000 granted the authority for 2 or more municipalities, other than counties, to adopt transportation impact fees as originally provided for by Article V-A. Municipalities participating and having adopted a joint municipal (multimunicipal) comprehensive plan consistent with Article XI can implement the requirements of Article V-A cooperatively through an intergovernmental cooperation agreement.

Procedures to adopt impact fee ordinance (Section 504-A)

Appointment of advisory committee. The township must first appoint, by resolution, an impact fee advisory committee consisting of 7 to 15 members. The township also has the option of appointing its planning commission to serve as the impact fee advisory committee. At least 40 percent of the members of the advisory committee must be representatives of the building and real estate industries. If the township appoints its planning commission as the advisory committee, it must appoint additional ad hoc voting members so that at least 40 percent of the committee represents the building and real estate industries whenever the planning commission is operating as the advisory committee. The composition of the advisory committee can be challenged for a period of 90 days from the first public meeting of the advisory committee.

In the resolution, the township must also describe the geographical area or areas for which the advisory committee will develop the land use assumptions and conduct the road sufficiency analysis studies.

Development of land use assumptions. The advisory committee must first develop land use assumptions to predict future growth and development within the areas designated by the township in its resolution. The land use assumptions report must include a description of existing land uses and the roads within the designated area(s). The report must also reflect projected changes in land use, densities of residential and non?residential development, and population growth rates for the next 5 years. The report may be based on and refer to prior plans and studies prepared for the township. A copy of the report must be forwarded to the county planning agency, all contiguous municipalities and the local school district for comment at least 30 days before the committee holds a public hearing.

With passage of Act 68 of 2000, municipalities may jointly hire a professional to prepare a multiple-municipality roadway sufficiency analysis. By joining together, municipalities can take advantage of economies of scale, plus one roadway sufficiency analysis serves all the cooperating municipalities and the reports will be consistent. This offers advantages for those electing to participate in this approach.

The committee must conduct a public hearing for the consideration of the land use assumptions, and then present a written report to the township. The township must approve, disapprove or modify the land use assumptions by resolution.

Preparation of roadway sufficiency analysis. In the next step, the advisory committee must, in consultation with a traffic or transportation engineer or planner commissioned by the township, prepare or have prepared a roadway sufficiency analysis to establish the existing levels of service on roads and the preferred levels of service within the designated area(s). These levels of service must be in accordance with the categories defined by the Transportation Research Board of the National Academy of Sciences or the Institute of Transportation Engineers. The analysis must be done for any road within the area for which there is a projected need for improvements due to future development. If a road is not included in the analysis, it will not be eligible for impact fees.

The road sufficiency analysis must also specify:

- The required road improvements needed to bring the existing level of service up to the preferred level of service.
- Projected traffic volumes for the next five years.
- Anticipated traffic due to persons traveling through the area, separate from the trips generated by residents, and the forecasted road deficiencies created by these trips.

The township must take action by resolution to approve, disapprove or modify the roadway sufficiency analysis provided by the advisory committee.

The Capital Improvements Plan. Using the information from both the land use assumptions and the roadway sufficiency analysis, the advisory committee must then determine the need for road improvements to correct any existing deficiencies and to accommodate future development. The committee must first identify the transportation improvements that should be included in the plan and establish the boundaries of one or more transportation service areas. These areas may not exceed 7 square miles, or approximately 2.6 miles by 2.6 miles.

The plan must also include an estimate of the cost of the road improvements, using standard traffic engineering standards. A maximum contingency fee of 10 percent may be added to the estimate.

The plan must include the following:

- A description of existing roads within the transportation service area(s) and anticipated road improvements not attributable to new development.
- Road improvements due to pass-through traffic.
- Road improvements due to future development.
- The estimated cost of the road improvements, with separate calculations for costs to correct existing deficiencies; costs attributable to pass-through trips; and costs attributable to future development.
- A projected timetable and budget for the road improvements identified in the plan.
- Proposed sources of funding for each capital improvement, including federal, state and municipal funds, impact fees and any other source.

Public hearing. Once the capital improvements plan has been completed, the advisory committee must hold a public hearing. The plan must also be available for public inspection at least 10 working days prior to the public hearing date.

Presentation and adoption of plan. The plan must be presented to the municipality at a public meeting. The board of supervisors may make changes to the plan prior to its adoption.

State and federal highways. Roads that qualify as a state highway or rural state highway may only be funded by impact fees to a maximum of 50 percent of the total cost of the improvements.

Update of capital improvements plan and impact fees. The township may periodically request the advisory committee to review and update the capital improvements plan and impact fee charges.

Development of impact fee ordinance (Section 505-A)
Once the capital improvements plan has been completed and adopted, the governing body must then prepare an impact fee ordinance, which must set the following procedures.

Calculation of fee. The impact fee is calculated based on the total cost of the identified road improvements within a given transportation service area attributable to new development within that service area. This figure is then divided by the number of anticipated peak hour trips generated by the new development. This calculation for peak hour traffic must be estimated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers. The resulting figure will be the per trip cost of transportation improvements within the service area.

When fee is determined and collected. The impact fee must be determined as of the date of preliminary land development or subdivision approval. The per trip cost established for the service area is multiplied by the number of trips to be generated by the new development or subdivision using generally accepted traffic engineering standards. The builder or developer must pay the calculated impact fee at the time the building permit is issued for the development or subdivision. A guarantee of financial security in lieu of the payment of the full fee is not allowed, unless the applicant has agreed to construct the road improvement himself.

Allowable exemptions (Section 503-A). The township may include in its impact fee ordinance exemptions for de minimis applications, or small land development with a negligible impact, affordable housing as defined in the act or growth that the township determines to have an overriding public interest.

Additional traffic studies. The municipality may authorize a special transportation study to determine traffic generation for a new nonresidential development. The developer may also voluntarily prepare or commission and submit a traffic study at his own expense. The study must be submitted prior to the imposition of the impact fee and must be taken into consideration by the municipality in either reducing or increasing the fee.

Adoption of impact fee ordinance. The township must adopt an impact fee ordinance that specifies the boundaries and fee schedule for each transportation service area. The ordinance must be available for public inspection at least 10 working days prior to the public meeting at which the ordinance is to be adopted.

Retroactivity. The impact fee ordinance may be made retroactive for a period of up to 18 months after the adoption of the resolution creating the impact fee advisory committee. The impact fee assessed during the 18-month period may not exceed $1,000 per anticipated peak hour trip or the subsequently adopted impact fee, whichever is less.

Accounting of impact fees. Fees collected by the township must be deposited in an interest bearing account designated solely for impact fees and clearly identifying the transportation service area from which the fees were received. Fees collected from a transportation service area can only be used within that transportation service area. The township must provide an annual accounting for this account.

Credits. The builder or developer is entitled to receive credit against the impact fee for the following

- The fair market value of any land dedicated to the municipality for future right-of-way, realignment or widening of existing roadways, determined as of the date the land development or subdivision application was submitted.
- The value of any road improvement constructed at the applicant's expense, at the same rate identified in the capital improvements plans.

Refund of impact fees. Impact fees must be refunded to the applicant, along with any accrued interest, under the following circumstances:

- The municipality has terminated or completed the capital improvements program for the transportation service area and funds are left over.
- The municipality has failed to begin construction of any road improvement within three years of the scheduled construction date stated in the capital improvements plan.
- After completion of a road improvement, the actual expenditures were less than 95 percent of the costs for which the fee was paid.
- Construction on the new development has not started, and the building permits have expired or been altered so as to decrease the impact fee due.

To refund the fees, the municipality must provide written notice by certified mail to the builder or developer who paid the fee. If the funds are unclaimed after a one?year period, the municipality may use the fees for any other purpose.

Appeals (Section 506-A)

An individual required to pay an impact fee may appeal any matter relating to the fee with the court of common pleas. The court may appoint a master to hear testimony and make a report and recommendations. The parties would be responsible for their separate costs.

Tap-in fees (Section 507-A)

The law requires municipalities that assess tap?in or similar sewer and water fees to comply with the provisions of Act 203 of 1990, which amends the Municipalities Authorities Act.

Note: Fees for recreational facilities are addressed in Section 503(11) of the Municipalities Planning Code, Act 247 of 1968, as reenacted and amended. You may also wish to review this action in conjunction with the Pennsylvania Transportation Partnership Act, P.S. 53 Sect. 1621 et seq.

Appendix V

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 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 Land Use Planning and Technical Assistance Program (LUPTAP) is an important component of the Growing Smarter Action Plan of the Governor's Center for Local Government Services. LUPTAP provides matching grants for municipalities preparing to develop and strengthen community planning and land use management practices.

Guidelines for LUPTAP incorporate the principles of the Land Use Planning Executive Order 1999-1 and the recent changes to the MPC. The guidelines make clear that 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.

LUPTAP funding is one of the Center's most significant support programs. 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. LUPTAP funds can also be used to develop or update zoning or subdivision and land development ordinances, or to utilize advanced technology, such as a Geographic Information System. Municipalities are permitted and encouraged to use up to $1,000 of the funding received toward educational programs on planning issues for local officials. The training and education program offered by the Center's training partners represent an excellent use of the funds.

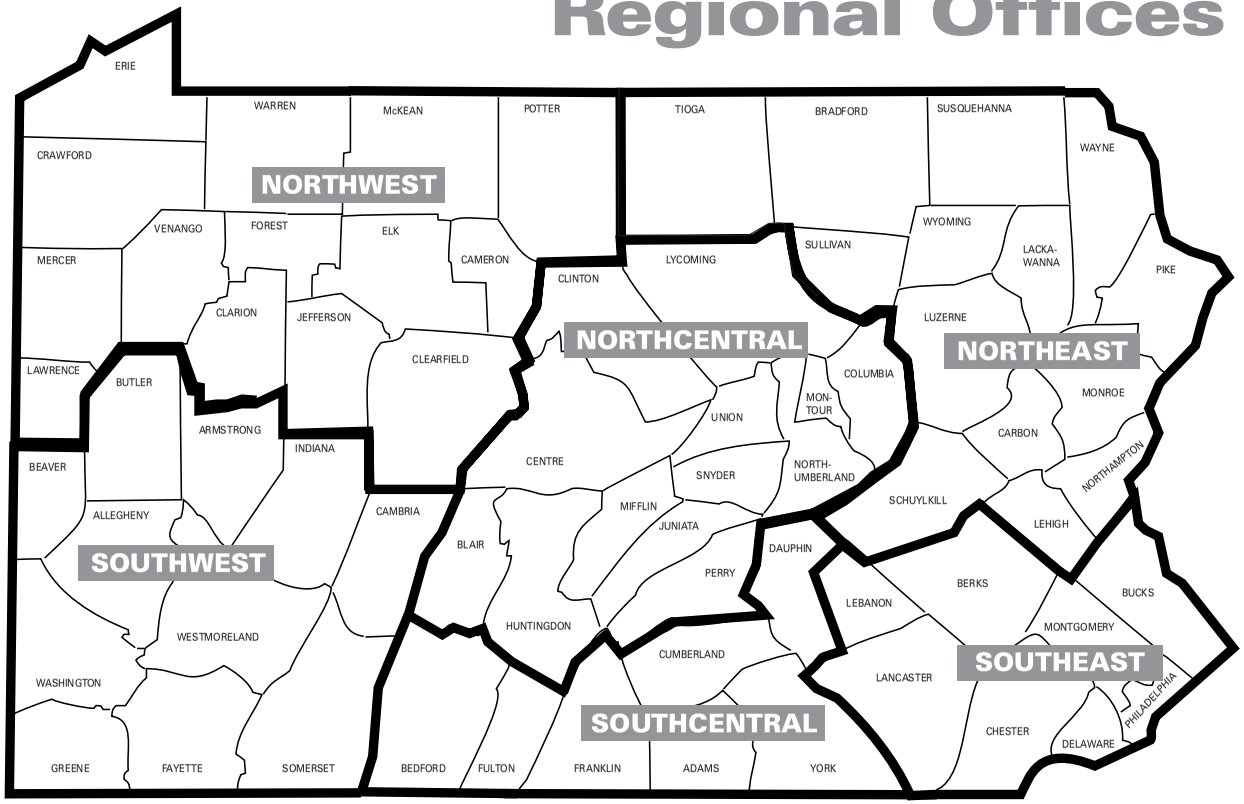
The goal of the Center is to enhance the existing planning curriculum by offering courses to local government officials through established partnerships with the Pennsylvania State Association of Boroughs (PSAB) and the Pennsylvania State Association of Township Supervisors (PSATS). The Center is proud to partner with PSAB and PSATS and draw on their understanding and experience in planning and growth issues to develop, promote and conduct these courses.

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 in are:

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

Governor's Center for Local Government Services

Regional Offices



Southwest

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