pennsylvania
GOVERNOR'S CENTER FOR
LOCAL GOVERNMENT SERVICES

The Zoning Officer

Planning Series #9

> ready > set > succeed





Commonwealth of Pennsylvania
Edward G. Rendell, Governor
www.state.pa.us

Department of Community
& Economic Development
Dennis Yablonsky, Secretary

newPA.com

The Zoning Officer

Planning Series #9

Twelfth Edition
May 2008

Comments or inquiries on the subject matter of this publication should be addressed to:

Governor's Center for Local Government Services
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, Pennsylvania 17120-0225
(717) 787-8158
1-888-223-6837
E-mail: ra-dcedclgs@state.pa.us

This and other publications are available for viewing or downloading free-of-charge from the Department of Community and Economic Development web site. Printed copies may be ordered and purchased through a private vendor as indicated on the web site.

Access **www.newPA.com**
Select *Community*
Select *Local Government Information*
Select *Publications*

Current Publications relating to planning and land use regulations available from the Center include:

Pennsylvania Municipalities Planning Code (Act 247, as amended)

Planning Series
#1 Local Land Use Controls in Pennsylvania
#2 The Planning Commission
#3 The Comprehensive Plan
#4 Zoning
#5 Technical Information on Floodplain Management
#6 The Zoning Hearing Board
#7 Special Exceptions, Conditional Uses and Variances
#8 Subdivision and Land Development
#9 The Zoning Officer
#10 Reducing Land Use Barriers to Affordable Housing

NOTE: These publications are periodically revised or updated to reflect changes in Pennsylvania planning law.

Preparation of this publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania.

Table of Contents

The Zoning Officer

Introduction

The broad duty of the zoning officer is to administer the zoning ordinance consistent with the zoning purposes detailed in the Municipalities Planning Code (MPC) § 604 (Zoning Purposes). This task is daunting, far-reaching and demanding. It requires great attention to detail on a day-to-day basis, while at the same time, demands a future vision of the community as it relates to ordinance provisions. Yet, this vision is constrained by the literal language specific to provisions in the zoning ordinance.

Daunting, far-reaching or all encompassing because MPC § 604.1, under zoning purposes states that:

> *The provisions of zoning ordinances shall be designed:* ***to promote, protect and facilitate any or all of the following****: the public health, safety, morals and the general welfare; coordinated and practical community development . . . and . . . adequate water supply for domestic, commercial, agricultural or industrial use, and other public requirements;* ***as well as preservation of the natural****, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.*

This abbreviated list becomes more demanding when examined in detail, and requires an individual with community vision. However, this future image of the community is, limited by law, to the specific language provided in the ordinance. Nonetheless, clear zoning determinations, supported by ordinance provisions reflecting community vision can make the difference.

A well-administered zoning enforcement program can help an old or mediocre zoning ordinance perform as efficiently as a new model. Good enforcement procedures will obtain the optimum in compliance – the real objective. Consistent and effective administration can minimize money spent on legal suits, while avoiding having to live with a violation that "beat" the system. Even a bare bones zoning ordinance with few limitations can cause the solicitor to pull his or her hair if the enforcement is casual and haphazard.

Appointment

Although there are no state licensing or educational requirements, the MPC requires the zoning officer to meet qualifications established by the municipality and to be able to demonstrate a working knowledge of zoning. State law also provides one negative requirement – the zoning officer "shall not hold any elective office in the municipality." *Section 614.*

Section 614 also stipulates that a zoning officer shall be appointed to administer the zoning ordinance in accordance with its literal terms, and specifically states that the zoning officer "shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance." The MPC clarifies that "zoning officers may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of their employment." Such powers are available only when the municipality authorizes the zoning officer to institute enforcement proceedings, either generally or for a specific violation. The authorization should be included in the minutes of the governing body.

To summarize statutory requirements, the zoning officer is appointed by elected officials (refer to MPC Section 107 for definition of the "appointing authority"). The municipality is expected to establish job qualifications and to have a zoning officer who has demonstrated a working knowledge of municipal zoning. A zoning officer should not be appointed based on politics or a willingness to accept meager compensation. The zoning officer may not hold any elective office in the municipality, i.e., cannot be a mayor, councilman, or supervisor, but

presumably might be able to be an elected school director. The zoning officer's discretion is limited and he or she must enforce the ordinance literally. Any disagreements with the zoning officer's literal administration can be settled judicially through the appeals process, or legislatively by a clarifying zoning amendment.

Duties on the Job

Land use matters begin with an application to the municipal zoning office for a permit. Generally, there are two types of permits: (1) a permit approving start of construction and (2) a use permit, which acknowledges that under the municipal zoning ordinance that the use is a permitted activity on the property. Municipalities use zoning permits as a method of policing and enforcing land use regulations.

Since not all land use applications involve construction, use permits can take two forms: (1) authorize or legalize use of the property, and (2) use occupancy permit after construction is completed as a means of insuring that the construction and the occupying use conforms to the application as filed and that all municipal requirements are met.

With the adoption of Act 45 of 1999 and the implementation of the statewide Uniform Construction Code (UCC), the only "building permit" that a municipality is permitted to issue would be in conjunction with the administration of the UCC. Local officials must be careful to make a distinction between the permit issued acknowledging compliance with zoning requirements and the similar UCC permit. Municipalities administering the UCC should evaluate the names given to the various zoning and UCC permits to avoid confusion for permit applicants.

If the applicant meets the requirements of the zoning ordinance, as the zoning officer understands them, the application should be approved. A zoning officer is not vested with any discretionary power to waive requirements or to tighten the ordinance to protect some perceived public need. MPC Section 614 puts it quite clearly: "The zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance." In other words, if the application does not meet the requirements, a zoning officer should make the determination to deny it. If the applicant or concerned property owner disagree with the officer's determination, their remedy is to appeal the action to the zoning hearing board.

A zoning officer may not reject a permit based on grounds outside or not part of the zoning ordinance. For example, the officer cannot determine to deny a permit because the structure or use violates a deed restriction or restrictive covenant. Both are private matters and enforceable by parties to the contract and not the municipality. In fact, if a zoning officer interferes with a legal use and their actions have no basis in the zoning ordinance, their actions can be blocked. *Russell Minerals Fayette, Inc. v. ZHB of Fayette County*, 160 Pa. Commonwealth Ct. 344, 634 A.2d 836, 1993.

Compensation

The MPC does not address the mode of compensation for zoning officers. Salary, hourly rate or commission based on the value of permits issued have been used. A salary or an hourly rate is most appropriate. Zoning officers may be part-time, and may work in two or more municipalities.

The zoning ordinance was not enacted as a device to produce revenues and the municipality should not be making a profit on the fees. MPC Section 617.3(e) permits the governing body to charge reasonable fees to defray the costs of administering the zoning ordinance. The ideal situation would be for the fees to offset costs, or to be slightly in the red. A profit indicates the fees are too high or perhaps the overworked zoning officer needs more staff assistance.

Removal

The zoning officer, not the solicitor nor an elected official, is charged with administering the zoning ordinance according to its literal terms. If an elected official, for instance, directs the zoning officer to do an improper act, try to document that unusual advice. Ask for a letter or memorandum explaining the rationale. In the event the zoning officer is fired for issuing a proper permit or for denying a deficient application, the zoning officer is entitled to a hearing under the Local Agency Law for redress of the dismissal.

Zoning officers may be fired for cause, just as any other municipal employee. Misfeasance, nonfeasance and malfeasance are reasons for dismissal, although the municipality may also remove the zoning officer pursuant to the terms of his or her employment contract or agreement.

Applications and Administrative Matters

It is essential that the Zoning Officer be accessible and comfortable working with the public. In most municipalities, the zoning officer addresses the initial concerns and questions of the public and all applications and appeals are also processed through the zoning officer who must be knowledgeable of the zoning ordinance. Certain applications cannot be granted unless a special exception or a variance is obtained from the zoning hearing board or the governing body approves a conditional use. Other permits and applications processed include variances, nonconforming uses or structure certificates and occupancy permits.

A zoning permit should only be issued when there is compliance with the ordinance, other municipal ordinances and laws of the Commonwealth. If the use or structure is not clearly allowed, the permit should be denied. Private contracts, deed restrictions and other limitations on the use are ***not*** legal reasons for denial; only zoning ordinance reasons are sufficient. In applying the zoning ordinance, the zoning officer should use defined terms found in the ordinance and use commonly accepted definitions for undefined terms. A checklist for other required permits would help to avoid delay for the landowner and prevent mistakes by the municipality.

A number of other permits, such as a municipal or PENNDOT highway occupancy permit, a sewer permit and the related building and construction safety codes permits, might be necessary for a given zoning application. Final subdivision or land development approval may also have to be obtained after zoning approval and before a building permit can be issued. The zoning officer is responsible for recording and filing all applications and plans for permits and noting the action taken. These applications, plans, and documents shall be a public record. They are not secret or classified information.

Without some sort of record system, zoning administration tends to become rather reactive or hit-and-miss. A given property or lot may have been created by a subdivision plan with conditions attached. Before a zoning or building permit is granted for such a lot, the zoning officer should be aware of those conditions and that granting the permit will not violate any condition. Similarly, an existing lot, structure or use might be nonconforming and the reasons or degree of nonconformity ought to be documented on some type of central record system for easy checking anytime a zoning permit is sought. Related information concerning conditions attached to the grant of any conditional use, special exception or variance should also be noted in the basic file system, as well as the history of any prior permits (or violation notices).

The database could be as simple as a card file or a small computer database. The tax map parcel number is probably the best point of reference for any system. Additional files could be cross-indexed various ways for administrative ease, i.e., by name of owner, by address or zoning district, et cetera. A record system provides continuity to aid new employees, to assist the solicitor in building a solid case in the event of a legal appeal, to provide fairness and, not the least, to help prevent making costly mistakes. A little organization pays great benefits by avoiding having to cope with consequences of having issued a permit in error.

Maintaining the official zoning map or maps showing the current zoning districts and overlay areas, if any, is also a task of the zoning officer. Upon request, the zoning officer should make determinations of any zoning map district boundary questions. Such determinations may be appealed to the zoning hearing board.

Zoning Map Amendments

Whenever a zoning map amendment is proposed, the municipality must post notice of the public hearing conspicuously at points deemed sufficient along the tract. The municipality, which in most instances means the zoning officer, must post the affected tract or area at least one week in advance of the public hearing in order to notify all potentially interested citizens. The zoning officer must also send public notices via first-class mail and at least 30 days before the hearing date, to all the real property owners within the area being rezoned. *§609(b)(2)(i)*. The zoning officer should keep a record describing the date(s) and extent or location of the notices posted.

Inspections and Search Warrants

Discovery of zoning violations, especially illegal or intermitted activities, usually occurs by informant (complaint by a neighbor) or chance (while traveling to a meeting, lunch, etc.). Violations are also uncovered in the course of routine inspections undertaken during the development process, during building construction and at the occupancy permit stage. Adhering to an inspection timetable and a bureaucratic checklist for every project that has a zoning approval assures a uniform and comprehensive process. This type of record keeping helps the solicitor immensely when litigation is necessary.

The Fourth Amendment to the U.S. Constitution requires search warrant to protect individuals against unreasonable searches and seizures. In criminal investigations, a statement of "probable cause" is needed to obtain a warrant. Search warrants may be obtained for enforcing other ordinances that are technically criminal. But, search warrants are not available in connection with violations of "land use ordinances" authorized by the MPC.

Inspections should follow a routine procedure. The zoning officer, as noted above, must obtain permission from a responsible adult before entering a residence or business. This should be done despite the fact that the zoning officer can enter "open fields" to make a visual inspection with the naked eye. *Forsythe v. Commonwealth*, 601 A.2d 864 (1992). Visual inspections of a property are always legal if made from the right-of-way, sidewalk or other public place. Proper identification, preferably a badge and photo I.D. card, should be displayed. Explain the reason for the inspection and invite the owner or agent to accompany you on the inspection.

Conduct inspections during normal working hours or at least during daylight. Complete an inspection report, preferably on a pre-printed form, checking off various blocks and noting who granted permission for the inspection. Routine information always includes the address, the owner, date, time and person accompanying the zoning officer. Note whether any photographs were taken. Photographs are valuable as evidence and on the back of each record "who, what, when and where." The written record is important, because in a hearing or in court, it will demonstrate that a clear, established procedure exists and was followed.

Include the inspection report in the individual file for each property inspected. File other pertinent information, such as references to discussions, phone calls, or actions taken as recorded in planning commission or governing body minutes and copies of zoning hearing board decisions. An extra copy of the inspection is usually maintained chronologically by year, too, for administrative ease.

Enforcement Notices

Many zoning violators are unaware that they have committed an offense. With a little luck, some diplomacy and a friendly oral warning or informative letter, the tactful zoning officer is likely to obtain compliance. Successful convincing tactics such as these gain compliance, without setting in motion formal sanctions often involving extra expenses. The goal for the zoning officer should be compliance with the ordinance and not punishment for offenders. Nonetheless, there are always non-believers who will never respond in the desired fashion to the friendly verbal notice. This calls for an escalation of enforcement.

An enforcement notice is warranted if there is no immediate danger to the public health or safety. This letter may be sent by certified (or registered) mail, return receipt requested, or served personally upon the owner of record, directing that correction of all conditions found in violation be made within a stated period of time. According to MPC Section 616.1, the notice must also be sent to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record. Depending upon the nature of the violation, the zoning officer should tailor the compliance period accordingly, such as within 5, 10 or up to 30 days. If compliance is initiated but more time is needed, it would be prudent to grant an extension. The goal is not to fine or otherwise punish, but to gain compliance.

An enforcement notice or letter of violation pursuant to MPC Section 616.1 must state at least the following:

1. the name of the owner of record and any other person against whom the municipality intends to take action.
2. the location of the property in violation.
3. the specific violation with a description of the requirements that have not been met, citing in each instance the applicable provisions of the ordinance.
4. the date before which the steps for compliance must be commenced and the date before which the steps must be completed.
5. that the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of time (generally 30 days from date of postmark) in accordance with procedures set forth in the ordinance. Note: It would be prudent for the zoning ordinance and enforcement notice to state clearly that the prescribed appeal period is 30 days.
6. that failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation with sanctions clearly described.

Although it is not necessary, the enforcement notice could be imprinted with the municipal seal and notarized to make it appear more formal and increase its impact on the violator.

It is important to note that the violator of a land use ordinance, such as zoning or subdivision, may appeal the enforcement notice to the zoning hearing board (ZHB). If the zoning officer omits the violation notice step and proceeds directly by filing a civil complaint form with the district justice, the appeal process, for better or worse, is out of municipal jurisdiction. The possibility of a variance, if appropriate, is lost. The municipality can appeal an adverse ZHB decision and can also appeal a dismissal by the district justice since the action is not criminal.

If the violation has not been corrected or abated, the next step is to take the violation to court, starting at the district justice level if there was no appeal of the violation notice. The proper form to file is the Civil Complaint Form. For a discussion of the district justice's role in zoning enforcement, see *Johnston v. Upper Macungie Township,* 638 A.2d 408 (1994).

The Pennsylvania Supreme Court has adopted rules of procedure and a civil complaint form for civil enforcement actions brought under jurisdiction of the MPC. Municipalities should also be aware that unlike the summary (criminal) citation procedure, the municipality must pay a filing fee to commence an action with the civil complaint form for MPC violations.

At this point, it is appropriate to interject a note concerning coordination by the zoning 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 proceedings are initiated. We believe larger municipalities tend to delegate these responsibilities while smaller communities often involve the solicitor in these matters.

Hearings

At the hearing before the district justice, the zoning officer should be prepared with a complete file of inspections, notes and notices of violation. The burden of proof "beyond a reasonable doubt" under criminal actions does not apply. In a civil proceeding the standard is the easier to prove burden of a "preponderance of evidence." Attention to detail in building the record pays dividends at this time. Unless the zoning officer is experienced, the solicitor should present the evidence.

Causes of Action

MPC Section 617, Causes of Action, is reproduced below for reader convenience with emphasis added:

> *"In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any ordinance enacted under this act or prior enabling laws, the governing body, or with the approval of the governing body, an officer of the municipality, or any aggrieved owner or tenant of real property who shows that his or her property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality. No such action may be maintained until such notice has been given."*

Only the governing body or authorized zoning officer may institute an action with the district justice to enforce the zoning ordinance. The aggrieved owner or tenant can file an equity action in court, not with the district justice, and only after serving notice to the municipality at least 30 days in advance. The 30-day notice provided to the municipality presumably is to allow the municipality time to investigate the situation and to issue a violation notice if warranted.

Enforcement Remedies

Currently under the MPC, identical enforcement remedies sections are found in the MPC at Sections 515.3, 617.2 and 712.2. Enforcement remedy provisions were added to eliminate any criminal penalty or imprisonment for violation of land use ordinances. The emphasis is placed on gaining compliance rather than punishment. 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 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. As noted previously, only the municipality may commence an action that is going to the district justice to enforce a land use ordinance violation. Citizens must commence an action directly to court.

Subdivision and Land Development Ordinance Enforcement

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 allows remedies by law or in equity to: 1) restrain, correct or abate any violation of subdivision and land development regulations, 2) prevent unlawful construction, 3) recover damages, and 4) 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.

The MPC clearly empowers the municipality to refuse the issuance of any permit or the granting of any approval that would be necessary to further improve or develop any property which has been or which has resulted from a subdivision in violation of the subdivision and land development ordinance. *MPC Section 515.1(b)*. In addition, before granting a zoning permit, the zoning officer should always make sure that any lot which a purchaser desires to develop is part of a development plan that has been granted final approval and has been duly recorded. Subsection (b) grants authority to deny a permit or approval not only to the owner of record at the time of such subdivision violation, but also innocent purchasers, vendees or lessees regardless who currently owns the illegal subdivision.

However, the municipality may issue a conditional approval or permit contingent upon satisfying requirements that would have been applicable to the property at the time an “applicant” acquired an interest in the property. The term “applicant” refers to any one of four situations: 1) the owner of record at the time of violation, 2) the vendee or lessee of the owner of record at the time of violation, even if there was no 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 to knowledge of the violation, and 4) the vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard to knowledge of the violation.

Injunctions

In certain circumstances, usually where there is a continuing problem, the municipality may, under MPC Section 617 and 515.1(a), proceed directly to court for an equity action or injunction. Both MPC sections authorize action to “restrain, correct or abate violations to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises.” If the injunction is ignored, the violator will be held in contempt of court. Governing body approval is required to initiate an injunction, and the solicitor takes the action. The zoning officer will have to provide testimony in court in most cases.

In the past, an occasional district justice who was philosophically opposed to zoning might have ruled against the municipality or only ordered a small fine upon conviction. Where there are repeated violations with no effective enforcement, an injunction action is an appropriate remedy.

Revocation of Permits

A revocation order comes into play when the applicant either falsifies, conceals or misrepresents information to obtain the zoning permit, or carries on construction beyond the scope of the permit. Error on the part of the zoning officer in issuing a permit is another reason for a revocation and will be discussed later.

In order to determine the reason for an alleged violation of the zoning permit and to arrange corrective action, the zoning officer should meet with the violator to allow the permittee to defend himself or herself before deciding to formally revoke the permit. If work is still in progress, the due process meeting or hearing can be arranged by issuing a "stop work" order. If work is completed, a "cease and desist" order would be used. Ultimately, when work has already been completed a certificate of occupancy would be withheld, or else revoked if it had already been issued where compliance was not obtained as a result of the due process meeting with the zoning officer.

Either of these orders can later be used to show that the municipality acted quickly in discovering and taking action and to dispel a possible claim that the municipality had implicitly consented to the violation. The stop work order and cease and desist order will have the side effect of building a good record in case the issue is litigated. The meeting between applicant and zoning officer might resolve the problem or else channel the problem to the zoning hearing board for a variance, where appropriate. If not, revocation is the proper action. Finally, a permit may be revoked for any valid reason during the pending of the appeals period even if the applicant has started or even completed construction.

Permits Issued in Error

If a permit has been issued in error, the quicker it is revoked the better. Except for revocations within the 30 days appeal period, there is no hard and fast rule governing if it is too late to revoke an erroneously issued permit. Facts and circumstances become all important. The applicant must advance 5 factors to obtain a vested right to continue to use property under an improperly issued permit:

First, due diligence by the applicant in attempting to comply with the law. This may include consulting or seeking the advice of the proper municipal officials such as the zoning officer who should be expected to have knowledge about zoning.

Second, good faith by the applicant throughout the proceedings. The law must not be deliberately disregarded nor the facts misrepresented or concealed.

Third, expenditure of substantial unrecoverable sums.

Fourth, expiration of the applicable appeal period, i.e. no timely appeal being filed from the issuance of the permit by anyone.

Fifth, the insufficiency of the evidence to prove that individual property rights or the public's health, safety or welfare would be adversely affected by allowing a vested right to use of the property in violation of the ordinance or law.

These 5 factors to be weighed were enunciated by Pennsylvania Commonwealth Court in *DER v. Flynn,* 21 Pa.Comm. Ct. 264, 344 A.2d 720 (1975) and cited approvingly by the Pennsylvania Supreme Court in *Petrosky v ZHB of Upper Chichester Township,* 485 Pa. 501, 402 A.2d 1385 (1979).

How involved should the zoning officer be with an application? In the *Petrosky* case, the building inspector visited the site at least 3 times during the construction period. On one visit, the inspector gave erroneous advice concerning the proper location of the footings for the building. Seven months later, the location was found to be in violation of setback requirements. The answer to the question is simple. The zoning officer should be knowledgeable, helpful and courteous, but should not be wrong! Improper advice could jeopardize the power to revoke a permit.

Remember, a person or neighbor aggrieved has a right to appeal the grant of a building or zoning permit including grants of variance and special exceptions. The person aggrieved may even file an appeal later if he can prove that he had “no notice, knowledge, or reason to believe that approval had been given,” according to MPC Section 914.1(a). Because the holder of a permit cannot acquire vested rights prior to the expiration of the appeal period available to protestants, any expenditures made prior to such expiration are at the permit holder's risk. This has sometimes resulted in the removal of premature construction, harsh as it may seem.

Some municipalities warn all permit applicants of the risk in writing. A simple statement on the permit or even a flyer attached to the permit could avoid confusion as well as economic loss. If different municipal officials are charged with granting building permits and zoning permits, the procedures that are in place should be reviewed to ensure that building permits are not issued if the activity does not comply with the zoning ordinance. This will help to reduce both errors and appeals.

Registering Nonconformances

MPC Section 613 - "Registration of Nonconforming Uses," states that “zoning ordinances may contain provisions requiring the zoning officer to identify and register nonconforming use, structures and lots.” Before the original MPC was amended by Act 1972-93, Section 613 was permissive rather than mandatory. It merely said zoning ordinances may contain provisions for identifying and registering nonconformances. After the 1972 amendment and until Act 1988-170, the registration of nonconformances was mandatory. The duty was not specifically assigned to the zoning officer in the MPC until 1972. This contradictory legislative history possibly explains why so many municipalities do not have comprehensive records on nonconformances. Thus, the only specific duty assigned to the zoning officer by the MPC was changed back to a permissive act. Nonetheless, it is a prudent land use management practice to inventory nonconformances together with the reasons why they exist and register them accordingly.

Paradoxically, the case law seemed to run counter to the clear legislative mandate in effect from 1972 through 1988 to require registration. Court decisions indicated that as long as the municipality had a form or procedure available to register nonconformities, it had met the obligation of the MPC.

A comprehensive record would aid immeasurably when an owner desires to expand a nonconforming use or structure or asserts that his or her new use or lot is nonconforming. Some communities have hired a college intern, often following a zoning amendment, to survey every parcel to classify them as nonconforming and the reason or reasons why. An energetic planning commission could also volunteer to divide up the municipality to assist the zoning officer in accomplishing this task.

The burden of proof of establishing a nonconforming status is upon the party asserting it. It would be difficult for the landowner to claim a right to a nonconforming status if the zoning officer had a form available and the owner never applied. The zoning officer should make a registration form or procedure available to the public. Section 613, which makes the registration of nonconformances by the zoning officer permissive, does clarify that the zoning ordinance may require such identification and registration, and that the zoning officer must record the reasons why.

Preliminary Opinions

It was mentioned earlier that the only specific duty that had been assigned to the zoning officer by the MPC was to identify and register nonconformances. Unfortunately, there is another indirect responsibility for the zoning officer which is believed to be unique to Pennsylvania. Under MPC Section 916.2, the zoning officer can grant a "preliminary opinion" as to whether a proposed use or development complies with the zoning ordinance. A preliminary opinion should not be confused with some sort of an "informal" opinion. To obtain this preliminary opinion, the developer only has to submit "reasonable notice of the proposed use or development" and these plans and other materials are not required to meet the standards prescribed for preliminary, tentative or final subdivision or land development plans. The process is available to all developers, but it is rarely used.

If the preliminary opinion of the zoning officer is that the use or development complies with the ordinance, notice of such preliminary opinion is to be published once a week for two consecutive weeks in the newspaper. The notice must describe the use, the location and where plans may be examined. The notice serves as a point from which any adverse parties must file an appeal. If a disgruntled neighbor fails to appeal the zoning officer's preliminary approval on substantive grounds, it is deemed to be a preliminary approval of the development. Then, according to MPC Section 914.1, there may be no appeal from the final approval of a development plan granted by the planning commission or governing body except where the final plans substantially deviate from the preliminary approval.

Thus, the zoning officer can act as both the planning commission and governing body, usurping their powers by granting a preliminary opinion to a superficially described proposal. If the preliminary opinion is not appealed, a later final plan approval will not be subject to judicial review.

Sequence of Zoning/Subdivision Approvals

Zoning approval precedes subdivision or land development approval for obvious reasons. However, preliminary approval of a subdivision or land development plan can be obtained first, but final approval is conditioned upon obtaining zoning approval. The Pennsylvania Supreme Court has ruled that zoning issues must be resolved no later than the acceptance of the final plan. *Graham v. ZHB of Upper Allen Township*, 555 A.2d 79 (1989). Normally, zoning approval is obtained and then the developer goes to the expense of preparing detailed development plans and secures the requisite preliminary and final plan approvals. If approved, these fully described and documented plans, not mere sketches, are subject to appeal by persons aggrieved. The short-circuiting of the normal processes by a preliminary opinion of the zoning officer is unwise.

Relationship with the Zoning Hearing Board

In most municipalities, the zoning officer processes applications, such as requests for variances or special exceptions, for ZHB hearings. Since many ordinances treat changes and expansions of nonconformances as a special exception, they would be sent directly to the board for action. Also, appeals from the action of the zoning officer or a challenge to the validity of the ordinance are heard by the zoning hearing board. The zoning officer usually arranges the scheduling of hearings for the ZHB, prepares the public notice advertising and posts the affected tract of land at least one week prior to the hearing as required by the MPC.

At a minimum, the notice should identify the name of the applicant, the location of the property, the proposed use or action requested and the time, place and date of the hearing. The MPC requires that a notice be conspicuously posted on the affected tract of land, *Section 908(1)*, and that notice can be a copy of the typed notice advertised in the newspaper. Normally, the zoning officer is responsible for posting the notice on the property at least one week prior to the hearing and testifying at the zoning hearing that it was posted.

The zoning officer represents the municipality as a party to the hearing. Once an application is filed, the zoning officer cannot discuss the case with the board. MPC Section 908(8) prohibits the board or the hearing officer from communicating, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate. The zoning officer should provide the applicant and other parties with copies of items sent to the zoning hearing board. The MPC subsection, in particular, prohibits the board from taking notice of any communication, reports, staff memoranda, or other materials except advice from the ZHB solicitor unless the parties are afforded an opportunity to contest the materials. The board shall not inspect the site or its surroundings after the commencement of hearings with any party or their representative (including the zoning officer) unless all parties are given an opportunity to be present.

At the hearing, the zoning officer should testify under oath, giving a factual summary of the application, noting when and how the application was advertised and posted and opinions regarding the case. The zoning officer, under any circumstance, should not prepare the zoning hearing board decision!

The zoning hearing board has no enforcement powers. Neither can provisions of the MPC be read as authorizing a zoning hearing board to initiate permit revocations. A zoning hearing board, according to Commonwealth Court, exists solely as an adjudicative body empowered to review matters brought to it under the respective provisions of the MPC. The zoning hearing board does not have any jurisdiction to act as an enforcement officer even in respect to its own previously issued approvals or conditions. Where landowners violate specified conditions set by the zoning hearing board, the zoning officer should order compliance, and if deemed necessary, issue a notice of revocation for noncompliance with conditions. The landowners would then be entitled to file a timely appeal with the zoning hearing board for a hearing under MPC Section 909.1(a)(3) to decide whether the landowners had in fact violated conditions.

Mediation Option

Parties to proceedings under the MPC may utilize mediation. Mediation is defined as “a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences culminating in a written agreement which the parties themselves create and consider acceptable.” Section 908.1 offers this option as a supplement to proceedings initiated under Articles IX and X-A. Mediation is not mandatory. The municipality may choose to offer mediation, but any party may refuse to participate in mediation. Mediation is not a substitute for the proceedings that are required by Articles IX and X-A. Current legal process for the resolution of land use disputes shall continue to exist as a matter of right. Mediation is not intended to subvert the letter of the law, but rather to facilitate the final disposition of the proceedings when flexibility in the application of relevant standards and conditions is authorized under the MPC. The MPC specifically prohibits the zoning hearing board from initiating mediation or even participating as a mediating party.

In order to encourage use of the mediation process, Section 908.1 prohibits the evidentiary use of any offers or statements made during mediation in any subsequent judicial or administrative proceeding. Anticipated benefits of offering mediation as an official option under the MPC include: (1) assistance in relieving an overburdened court system and support for a public policy in Pennsylvania that encourages out-of-court settlements; (2) providing a potentially less costly, more efficient mechanism for resolving local land use disputes; and, (3) providing a less polarized process than that which an adversarial administrative hearing and legal proceeding tends to create.

Suggestions for Zoning Changes

The zoning officer is likely to be the first person to spot problems requiring a legislative solution. The zoning officer should report difficulties to the planning commission and governing body and offer solutions. Sometimes minor adjustments are needed and other times new provisions should be added to deal with new phenomena or circumstances. Examples of yesteryear's new zoning subjects could include B & B's (Bed and Breakfast establishments), yard sales, dish antennas and group homes. A recent special zoning topic example is the no-impact home-based occupation added in 2002 by Act 43 to §107 – Definitions.

Variances tend to be improperly and frequently granted when a zoning map change or textual revision might be the appropriate action. Frequent and similar variance requests, especially in the same geographic area, may signal the need to study a zoning amendment. The zoning officer is encouraged to consult with the solicitor when facing a new or unfamiliar problem. A clarifying legislative solution may save wear and tear on the zoning hearing board and decrease stress on the zoning officer, too.

Use Registration Permits and Occupancy or Use Permits

Zoning enforcement can be enhanced by a nontraditional, or at least a nonzoning approach. In 1976, Act 89 gave boroughs and townships the power to enact a "Use Registration Permit Ordinance", a power which cities had enjoyed since 1955. By means of this separate ordinance, sellers of real estate are required to give prospective buyers a use registration permit that certifies that the property or use complies with the zoning ordinance and that there are no uncorrected violations of any housing, building, safety or fire ordinance. In the case of a nonconforming use, a certificate from the zoning officer will satisfy the requirements of the Act.

An ordinance of this type provides consumer protection for the innocent purchaser, fosters property maintenance and enhances zoning and codes enforcement. The law, however, does not apply to rental situations and excludes buildings designed or intended to be used exclusively for single family or two-family occupancy and churches. Section 515.1(b) of the MPC also allows the withholding of zoning permits where a subdivision violation has occurred, even though the lot owner may have been an innocent purchaser. A similar, but less complicated, process can be incorporated in zoning ordinances by requiring both a building or zoning permit and a use or occupancy permit. The building or zoning permit is issued prior to construction and states that the proposed building and proposed use comply with the zoning ordinance. The use or occupancy permit is issued after construction and states that the actual construction or use complies with the zoning ordinance. Both must be required by the ordinance and are issued by the zoning officer.

Coordination

Zoning is one of the most important tools to carry out a community's comprehensive planning program. Consistent zoning enforcement will help achieve those planning goals, but a zoning officer cannot be expected to discover every violation or discover each violation immediately. Some violations are not readily apparent, for example, a double occupancy in a single-family zone. But zoning doesn't operate in a vacuum.

With the anticipated implementation of Act 45 of 1999, the statewide Uniform Construction Code (UCC), close coordination between the zoning officer and the building code official will become critical, as the UCC building permit should not be issued prior to zoning approval. Further, a vigilant code official can bring many zoning violations that may go unnoticed for years to the zoning officer's attention. The zoning officer should, of course, reciprocate when codes violations are detected during the course of normal business and zoning inspections. To be able to cooperate, both officers must be somewhat familiar with the other's duties and respective regulations. After all, building, housing and safety codes are related tools utilizing the same police power in order to attain common community development objectives.

Codes

Uniform Construction Code (Act 45 of 1999). The statewide building code, entitled the Uniform Construction Code, will become an important factor for nearly every resident within the state of Pennsylvania when it is implemented. This new, comprehensive building code establishes minimum regulations for most new construction, including additions and renovations to existing structures. Although the regulations and procedures may seem complex, this new code will have a positive impact on safety and building standards for future construction throughout the Commonwealth. Exempt from the UCC are new and renovated buildings contracted or permitted prior to the effective date of the law, certain utility and miscellaneous use structures, and agricultural buildings that do not house people.

As municipalities consider how to comply with Act 45, local officials will in many cases turn to the zoning officer for advice and assistance. Zoning officers should take it upon themselves to become familiar with the Act and the accompanying regulations. As was mentioned previously, close coordination between the zoning officer and the designated building code official is critical element in the proper and efficient administration of both regulations. Zoning officers should be in on the “ground floor” as their officials address the UCC requirements.

The building codes adopted through Act 45 will consist of most of the International Code Council's 2003 code series. This series includes the International Building Code (IBC) and the International Residential Code (IRC) and replaces what are commonly know as the BOCA and CABO building codes respectively. The Pennsylvania Department of Labor & Industry has been designated as the lead agency to facilitate implementation of the code and prepare the requirements regulating training, certification and administration.

More information on the UCC, as well as “training and certification requirements” and “administrative and enforcement regulations” prepared by the Department of Labor and Industry, can be accessed through their website at www.dli.state.pa.us.

When properly adopted, administered and enforced, the UCC and other codes can increase the quality of housing through the regulation of new construction. They can also promote the improvement and rehabilitation of older sections of the community, as well as be a vital step in the achievement of the goals in the community's comprehensive plan.

Property Maintenance Codes. The importance of the Property Maintenance code, formerly referred to at various times as an “existing structures” code or “housing” code, has been increasingly recognized in recent years. The property maintenance code sets responsibilities for cleanliness of structures, for the disposal of garbage and rubbish and for other activities needed to keep the structure and surrounding area in livable condition. Since this code applies to existing structures, no permits are required and it is the responsibility of the Code Enforcement Officer to originate a systematic inspection of all dwellings in the community.

Even though these types of codes may appear to be complex, the adoption, implementation and enforcement further enhances solid community development. It should be noted that the “Pennsylvania Municipalities Planning Code” empowers local planning agencies to prepare and present building and housing codes

Multimunicipal Zoning Enforcement

The authority for a joint or shared zoning officer is implied by the power to enact joint municipal zoning and to create joint zoning hearing boards. The Intergovernmental Cooperation Law (Act 1972-180 as amended) provides further authority for multimunicipal cooperation. Municipalities desiring to establish multimunicipal zoning enforcement should contact the Governor’s Center for Local Government Services because it may be eligible as an activity for funding under the Shared Municipal Services Grant Program.

Municipalities that are not in the path of growth often have less than a fulltime need for a zoning officer. In these generally more rural areas, it is not uncommon and is logical to share a well-trained zoning administrator with another municipality. Administering two or three ordinances can provide fulltime work for the administrator and addresses the lack of qualified or interested persons to administer the land use ordinances in the community.

Those municipalities operating a joint municipal zoning ordinance under Article VIII-A of the MPC can determine whether there will be one or more zoning officers to administer the joint ordinance. See MPC Section 815-A(b).

Conclusion

If you can't say “no,” chances are you should not be a zoning officer. The job is tough and demanding, but somebody has to do it. The job is complex, requiring numerous skills, not the least of which is communications proficiency. Without a zoning officer to properly administer the zoning ordinance, all the time, money and planning invested for orderly community development is wasted. The information in these pages should answer many questions for the novice zoning officer and offer some reassurances to those more experienced with zoning administration.

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 de-tails 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.

Section	Subject	Time Period	Description
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.
406	Time limitation on official map reservations for public grounds	1 year	Time after which the reservation for 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.

Section	Subject	Time Period	Description
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.
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.

Section	Subject	Time Period	Description
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.
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.

Section	Subject	Time Period	Description
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.
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.

Section	Subject	Time Period	Description
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.
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.

Section	Subject	Time Period	Description
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).			
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.

Section	Subject	Time Period	Description
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.
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

Summary of Zoning Officer Duties

It is the duty of the Zoning Officer to:

1. Receive appeals and applications for conditional uses, special exceptions and variances, and forward them to the governing body or the zoning hearing board, as appropriate. Schedule, advertise and post notices on property subject to a ZHB hearing at least one week prior to the hearing. In addition, post a notice on the affected tract or area involved with a zoning map amendment as described in MPC Section 609(b) at least one week prior to the hearing. Provide applicant and other parties with copies of items sent to the zoning hearing board. Provide testimony at hearings of the zoning board.
2. Issue permits only where there is compliance with the provisions of the zoning ordinance, with other municipal ordinances, and with the laws of the Commonwealth. Permits for construction or uses requiring a special exception or variance shall be issued only upon order of the zoning hearing board. Permits requiring a conditional use shall be issued only upon order of the governing body.
3. When required by the zoning ordinance, identify and register nonconforming uses and structures and record the reasons.
4. Conduct inspections and surveys as prescribed by the governing body or ordinance to determine compliance or non-compliance with the terms of the zoning ordinance.
5. Issue enforcement notices and orders in writing by certified or registered mail or served personally, as described below, upon persons, firms, or corporations deemed by the zoning officer to be violating the terms of the ordinance directing them to correct all conditions found in violation. If any such person or persons does not comply with the written notice of violation within a prescribed period of time, the zoning officer shall notify the governing body for their action, or, if authorized in advance, file a civil complaint with the district justice. Note: A civil complaint should not be filed until the expiration of the appeal period.

   An enforcement notice shall state at least the following:

   (a) The name of the owner of record and any other person against whom the municipality intends to take action.

   (b) The location of the property in violation.

   (c) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.

   (d) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

   (e) That the recipient of the notice has the right to appeal to the zoning hearing board within 30 days (from the date delivered or postmarked if mailed) in accordance with procedures set forth in the ordinance.

   (f) That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation with possible sanctions clearly described.

6. Act on behalf of the municipality in any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, demolition, maintenance or use of any building or structure, to restrain, correct, or abate such violation, so as to prevent the occupancy or use of any building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. Note: Some municipalities require approval by the governing body and review by the solicitor before a civil complaint is filed. An injunction request requires governing body approval and is prepared by the solicitor.

7. Revoke by order a building or zoning certificate issued under a mistake of fact or contrary to the law or the provisions of the ordinance.

8. Record and file all applications and plans for permits and the action taken thereon. All applications, plans, and documents shall be a public record.

9. Maintain a map or maps showing the current zoning districts and overlay areas for all the land within the municipality. Upon request, the zoning officer shall make determinations of any zoning map district boundary question. Such determination may be appealed to the zoning hearing board.

10. Upon the request of the governing body or planning commission, present facts, records or information to assist the zoning hearing board in making decisions.

11. The zoning officer shall not issue a building permit or zoning certificate for the erection, construction, reconstruction or alteration of a building in a subdivision or land development prior to the final approval of the subdivision and land development plan in full compliance with the Subdivision and Land Development Ordinance, and the recording of the plan with the recorder of deeds.

Appendix III

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

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

The 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. The 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 and the recent changes to the MPC. The guidelines make clear that priority consideration for funding is given to municipalities that incorporate multimmunicipal 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 new 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 new courses.

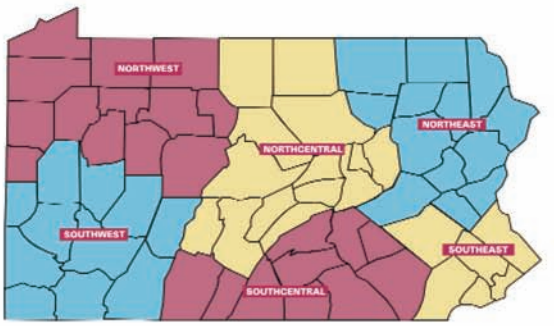
The courses offered by PSAB are directed primarily at economic development and downtown revitalization efforts as alternatives to sprawl. The courses PSATS offers focus on best practices and conservation. The primary audience for education and training programs is local government officials, however, other groups such as professional planners, municipal solicitors, elected officials and citizens, in general, can benefit from these enhanced planning programs.

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.

Appendix IV

Governor's Center for Local Government Services



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

888-2CENTER (888-223-6837)
717-787-8169 | Fax: 717-783-1402
newPA.com

Frederick A. Reddig, Executive Director
Vacant, Deputy Director

Dean Fernsler, Local Government Policy Manager
Mitch Hoffman, Local Government Policy Manager
Vacant, Local Government Policy Manager

Local Government Policy Specialists

Madra Clay
Karen O'Neill
Ron Stern

Thomas Fee
Sean E. Sanderson

Dan Fitzpatrick
Erik Solivan
Colton S. Weber

Governor's Center for Local Government Services Regional Offices

Southeast Regional Representatives
Ronald Bednar, AICP, Community Planning
Phone: 215-560-2259 | Fax: 215-560-6722

Marita Kelley, Local Government Services
Phone: 888-223-6837 | Fax: 717-783-1402

Northeast Regional Representatives
Matt Domines, Local Government Services
Phone: 570-963-4166 | Fax: 570-963-3439

Ed LeClear, Community Planning
Phone: 888-223-6837 | Fax: 717-783-1402

Southcentral Regional Representatives
Harry Krot, Local Government Services
Phone: 888-223-6837 | Fax: 717-783-1402

Ed LeClear, Community Planning
Phone: 888-223-6837 | Fax: 717-783-1402

Northcentral Regional Representative
Kim E. Wheeler, AICP, Community Planning
& Local Government Services
Phone: 570-523-1054 | Fax: 570-523-0906

Southwest Regional Representatives
Michael S. Foreman, Local Government Services
Phone: 412-565-5199 | Fax: 412-565-7983

Deborah Grass, Local Government Services
Phone: 412-565-2552 | Fax: 412-565-7983

Denny Puko, Community Planning
Phone: 412-565-5005 | Fax: 412-565-7983

Northwest Regional Representatives
Philip Scrimenti, Local Government Services
Phone: 814-871-4189 | Fax: 814-871-4896

Denny Puko, Community Planning
Phone: 412-565-5005 | Fax: 412-565-7983

10/25/2007

Governor's Center for Local Government Services | newPA.com

Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

USPS 100
APPROVED POLY

pennsylvania
DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT