2012 Supplement

Pennsylvania Municipalities Planning Code Recodification & Amendments 1988-2005

Historical Development and Commentary on Amendments

Local Government Commission
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Local Government Commission

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Chapter 1

Introduction

This publication, *2012 Supplement [to the] Pennsylvania Municipalities Planning Code Recodification & Amendments 1988-2005 Historical Development and Commentary on Amendments,*[1] embodies the four pieces of legislation that were enacted to amend the Pennsylvania Municipalities Planning Code (MPC)[2] since Act 206 of 2004:

- The act of July 4, 2008, P.L. 319, No. 39 (House Bill 1329, Printer's Number 3192), cited as "Act 39 of 2008" or "2008-39."
- The act of November 23, 2010, P.L. 1101, No. 111 (House Bill 1609, Printer's Number 2269), cited as "Act 111 of 2010" or "2010-111."
- The act of July 5, 2012, P.L. 928, No. 97 (House Bill 823, Printer's Number 3792), cited as "Act 97 of 2012" or "2012-97."
- The act of October 24, 2012, P.L. 1258, No. 154 (House Bill 1718, Printer's Number 3804), cited as "Act 154 of 2012" or "2012-154."

In order to provide the reader with a better understanding of these amendments, this supplement considers it from two overlapping vantage points: (1) through a chronological summary (Chapter 2); and (2) on the basis of how particular articles and sections of the MPC have been affected (Chapter 3). The latter chapter provides more detail and identifies changes under each section heading. In the event that some aspect of legislative intent or legislative history is relevant to the understanding of a particular article or section, the analysis may also comment on those matters.

Due to the complexity of the statutory language, this document simply contains a review of the MPC amendment as construed by the Commission staff. Because differing views of various provisions will undoubtedly exist, the Commission urges readers of this publication to exercise caution in the interpretation of this statute. All questions regarding the contents of this document should be directed to Michael P. Gasbarre, Executive Director of the Local Government Commission.

[1] The information provided in this publication is intended to assist Members of the Pennsylvania General Assembly and their constituents; its contents are not legal opinions and are not substitutes for legal advice. Nothing in this publication constitutes a binding determination of the rights or remedies of any individual, municipality, or other person or entity. The Local Government Commission does not render legal advice or consultation. If legal advice is sought, in all cases, a municipal solicitor or private attorney should be contacted to undertake an up-to-date, full, and complete examination of pertinent statutes, court rulings, ordinances, and regulations. Nothing herein is intended to be an official restatement of the contents of the law, and the contents of this publication may not reflect the current state of the law. Court rulings, later amendatory statutes, and various other factors must be considered. To this extent, the Local Government Commission issues a specific disclaimer.

[2] The act of July 31, 1968, P.L. 805, No. 247.

Chapter 2

Chronological Summary of Amendments

2008 Optional Notice of Ordinance/Decision; Procedural Validity Challenges Time for Appeal; Procedural Defects of Decisions

The amendments to the MPC made by Act 39 of 2008 were a legislative response to the perceived uncertainty in the finality of land use ordinances and decisions. Many held that this uncertainty existed as a result of a series of court cases culminating in *Glen-Gery Corporation v. Zoning Hearing Board of Dover Township*[3] and *Luke v. Cataldi*.[4]

To help bring certainty and prevent unforeseen appeals long after an ordinance was enacted or a decision rendered, Act 39 takes a two-pronged approach:

1. With regard to the appeals from ordinances generally, Act 39 clearly places these challenges in the court of common pleas and, because of its cross-referencing Section 5571.1 of Title 42 of the Pennsylvania Consolidated Statues (Pa.C.S.),[5] it establishes time limitations, presumptions, and burdens of proof for challenges to land use ordinances based on procedural defects. With regard to appeals from decisions, Act 39 imposes similar time limitations, presumptions, and burdens of proof, and also imposes standing requirements. Nevertheless, the existing rights of certain property owners that have relied on the ordinance or decision appealed from are protected.
2. The second prong of Act 39's approach to *Glen-Gery* and *Cataldi* involves the option of a municipality or any interested party having a right to use a new procedure after the enactment of an ordinance or the rendering of a decision. Under this approach, despite possible pre-enactment or pre-decisional procedural defects, post-enactment or post-decisional notice of the ordinance

[3] 907 A.2d 1033 (Pa. 2006).

[4] 932 A.2d 45 (Pa. 2007).

[5] Section 5571.1 (Appeals from ordinances, resolutions, maps, etc.) of Title 42 (Judiciary and Judicial Procedure) of Pa.C.S. was added by the act of July 4, 2008, P.L. 325, No. 40, or Act 40 of 2008.

or decision would be provided, and a new 30-day period would be established during which certain appeals may be brought and after which no further appeals would be permitted.

It should also be noted that Act 39 provides additional notice requirements for conditional use proceedings similar to those that exist for variances and special exceptions.

2010 Traditional Neighborhood Development

Act 111 of 2010 amended the MPC as it pertains to traditional neighborhood development (TND) by clarifying provision for TND in a zoning ordinance, providing that a Manual of Written and Graphic Design Guidelines may be included in or amended into land use ordinances, authorizing a municipality to enact subdivision and land development provisions containing TND design standards, and making minor changes to afford greater flexibility.

2012 Notice to School District; Wastewater Processing Cooperative Planning Dispute of Review and Inspection Fees; Financial Security

Act 97 of 2012 amended the MPC by providing that municipalities submit a written monthly report to the superintendent of schools in which a residential development or planned residential development was approved during the previous month, and adding an article entitled Wastewater Processing Cooperative Planning, which requires persons to provide written notification of an application for a development, plat approval, planned residential development, construction permit, or waiver from land development to a wastewater system official if the development or construction will be serviced by a second class A county wastewater authority.

Act 154 of 2012 amended the MPC by increasing from 45 days to 100 days the time period an applicant has to dispute review fees in relation to land development, and from 30 days to 100 days the time period an applicant has to dispute an inspection fee; further providing for costs of arbitration in fee disputes involving a municipal consultant and an applicant; and adding provisions for a surcharge against a party if a neutral arbitrator finds that the disputed fees charged are excessive by more than $10,000. The amendment also clarifies the amount that may be retained by a municipality in relation to release of financial security at the time of completion of public improvements.

Chapter 3

Amendments by Article and Section

The amendments made to the MPC by Act 39 of 2008, Act 111 of 2010, Act 97 of 2012, and Act 154 of 2012 have impacted particular articles and sections of the MPC as follows. Please note that no attempt is made to summarize the entire content of any of the amended sections. Only the most significant aspects of how these sections were modified by the amendatory act are discussed.

Article I – General Provisions

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 107. Definitions	
Subsection (a). The following definition was added and amended:	
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"Traditional neighborhood development." This term was added by Act 68 of 2000 for the purposes of Article VII-A, which provides that "[t]he governing body of each municipality may enact, amend, and repeal provisions of a zoning ordinance in order to fix defined standards and conditions for a traditional neighborhood development . . . ." Subsequently, it was editorially amended by Act 111 of 2010 to provide greater flexibility.	**2000-68** **2010-111**
Section 108. Optional Notice of Ordinance or Decision; Procedural Validity Challenges.	
Added by Act 39 of 2008, Section 108 addresses challenges to the validity of procedurally defective ordinances or decisions. The Pennsylvania Supreme Court decisions in *Glen-Gery Corporation v. Zoning Hearing Board of Dover Township*[6] and *Luke v. Cataldi*[7] essentially gave aggrieved parties a perpetual opportunity to challenge ordinances and conditional use approvals on the basis of a procedural defect in the process of the enactment or the rendering of a decision when the alleged defect	**2008-39**

[6] 907 A.2d 1033 (Pa. 2006).

[7] 932 A.2d 45 (Pa. 2007).

Manner in Which Articles and Sections are Impacted	Amendatory Acts

implicates notice or other constitutional rights. Section 108 is a legislative response to these decisions.

The essential purpose of the section is to permit interested parties to provide notice of the passage of an ordinance or the rendering of a decision. This notice would trigger a "post enactment" or "post decisional" 30-day period within which the validity of the ordinance or decision may be challenged. After the closure of this period, no future appeal may be permitted as a matter of law. In theory, any lack of notice or due process constitutional violations created by a procedural defect would be readdressed and, therefore, remedied by the provision of additional notice and opportunity to contest the validity of the ordinance or decision that is provided by this section.

Specifically, the section permits the governing body, or, in specific cases, a resident, landowner, or applicant, to publish notice of the existence of a land use ordinance or decision. The notice may be published at any time, once a week for two successive weeks. The section also creates a 30-day period during which (1) a decision may be challenged on procedural or substantive grounds, or (2) an ordinance may be challenged on procedural grounds. Any appeal brought after the 30-day period shall be dismissed, with prejudice, unless the appellant can successfully assert that the application of the time limitation creates a deprivation of due process. The section also provides that nothing in the section shall be construed to modify or extend the 30-day limitation on actions in which an appellant was a party to the entry of a decision or otherwise had an adequate opportunity to contest the procedural validity of an ordinance, or the procedural or substantive validity of a decision.

Appeals taken within the 30-day period initiated by the optional Section 108 notice are to be conducted, in the case of challenges to ordinances, in accordance with procedures provided in amendments to Title 42 (Judiciary and Judicial Procedure) of Pa.C.S. by Act 40 of 2008.[8] Appeals challenging the procedural validity of decisions shall be conducted in accordance with the procedures provided by Section 1002.1-A of the MPC, also added by Act 39.

[8] Act 40 of 2008 (the act of July 4, 2008, P.L. 325, No. 40) added Section 5571.1 to Title 42 of Pa.C.S., known as the Judicial Code. In a mechanism similar to that found within Section 1002.1-A of the MPC, the section specifies that challenges to the validity of any ordinance, map, or similar enactment of a political subdivision shall be brought within 30-days of the intended effective date of the enactment. Appeals are permitted outside of the 30-day period only if the application of the time bar would result in an unconstitutional deprivation of due process. In terms of the validity of the enactment, a challenge brought within the 30-day period may result in an enactment being deemed void from inception for any defect in the process of enactment. In challenges permitted to proceed beyond the 30-day period, an enactment may only be deemed void if a failure to substantially comply with procedure deprived the public of knowledge of an enactment or an opportunity to participate in its passage.

Article V – Subdivision and Land Development

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 503. Contents of Subdivision and Land Development Ordinance	
This section sets forth the various provisions that may be included in a subdivision and land development ordinance.	
Clause (1) (pertaining to the submittal and processing of plats), specifically subclause (i) (pertaining to review fee billing and dispute notification) in relevant part, was amended by specifying that, should an applicant dispute the amount of any review fees, the applicant, within *100 days* of the transmittal of the bill, must notify the municipality and the municipality's professional consultant that such fees are disputed and must explain the basis of the objection to the fees.[9, 10]	**2012-154**
***	
Section 508.1. Notice to School District	
This section was added to require that each month a municipality provide notice, as defined, in writing to the superintendent of a school district in which a plan for a residential development has been finally approved during the preceding month.	**2012-97**
Section 509. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plat Approval.	
***	
Subsection (j) was amended to clarify that the governing body, prior to final release of financial security upon completion of improvements and certification by its engineer, may only retain 10% of the *original* 110% of posted financial security.	**2012-154**
Subsection (k) was editorially amended.	**2012-154**
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[9] *Commentary:* Subclause (i) initially had been added by Act 170 of 1988 to provide that the applicant, *within 10 days of the billing date,* may notify the municipality of a dispute of the review fee. Subsequently, it was amended by Act 68 of 2000 to provide that the applicant, *within 14 days of the receipt of the bill,* may notify the municipality of a dispute. Then, again, it was amended by Act 206 of 2004 to provide that the applicant, *within 45 days after the date of transmittal of the bill,* may notify the municipality and the municipality's professional consultant of a dispute, which shall explain the basis of the objection to the fee. It was further amended by Act 206, stating that failure of an applicant to dispute a bill within the specified 45 days is a waiver of the applicant's right to arbitration of the bill.

[10] *Commentary:* Given that the applicant has 100 days from the transmittal of the bill to notify the municipality and the municipality's professional consultant that the review fee is disputed (*see* Section 503(1)(i)), and given that the applicant has the right, within 100 days of the transmittal of the bill, to request the appointment of an arbitrator (*see* Section 510(g)(2)), it is conceivable that no time may exist for negotiation between review fee dispute notification and request for appointment of an arbitrator.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 510. Release from Improvement Bond	
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Subsection (g) (pertaining to reimbursement for inspection of improvements):	
Clause (1) (pertaining to inspection expense billing and dispute notification) in relevant part was amended by specifying that should an applicant dispute the amount of inspection expenses, the applicant within *100 days* after the transmittal of the bill, must notify the municipality and the municipality's professional consultant that such fees are disputed and must explain the basis of the objection to the fees.[11]	**2012-154**
Clause (1.1) was amended to clarify that the governing body shall submit the final bill to the applicant.	**2012-154**
Clause (2) was amended by specifying that then the applicant shall have the right, within *100 days* of the transmittal of the final bill or supplement to the final bill, to request the appointment of an arbitrator.[12]	**2012-154**
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Clause (5) was totally replaced, stating that the applicant shall pay the arbitrator's fee if the arbitrator upholds the disputed review or inspection fee. If the disputed review or inspection fee is $2,500 or greater than that decided by the arbitrator, then the charging party shall pay the arbitrator's fee. If the disputed fee is below $2,500 than that decided by the arbitrator, then the applicant and the charging party shall pay the arbitrator's fee in equal amounts.[13]	**2012-154**
Clause (6) was added to provide that if the arbitrator finds that the disputed review or inspection fee is unreasonable or excessive by more than $10,000, then the arbitrator shall award the fee to the applicant and shall impose a surcharge of 4% of the amount found as unreasonable and excessive on the charging party payable to the applicant.	**2012-154**
Clause (7) was added to further provide that a municipality or an applicant shall have 100 days after paying a review or inspection fee to dispute the fee as being unreasonable or excessive.	**2012-154**

[11] *Commentary*: Clause (1) initially had been added by Act 170 of 1988 to provide that the applicant, *within 10 working days of the billing date,* may notify the municipality of a dispute of the inspection expense. Subsequently, it was amended by Act 206 of 2004 to increase the time parameter to *within 30 days after the date of transmittal of a bill.*

[12] *Commentary:* Clause (2) initially had been added by Act 170 of 1988 to provide that if the municipality and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and municipality shall jointly, by mutual agreement, within 20 days of the from the billing date appoint a defined professional to review the expenses and make a determination on the amount that is reasonable and necessary. Subsequently, the clause was amended by Act 206 of 2004 to incorporate the current language and increase the time parameter to *within 45 days of the final bill or supplement to the final bill.*

[13] *Commentary:* Clause (5) was added by Act 170 of 1988 and was totally replaced by Act 206 of 2004 and again by Act 154 of 2012.

Article VI – Zoning

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 603. Zoning Provisions.	
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Subsection (c), which is based on a renumbered subsection (b) of the pre-Act 170 MPC, was editorially and substantively amended to authorize additional zoning functions that may or shall be included in the zoning ordinance.	
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Clause (2) was amended by Act 170 of 1988 to require the governing body to conduct a hearing, pursuant to public notice, on the application for a conditional use and to enable the governing body to attach conditions to the approval of a conditional use, similar to the zoning hearing board's ability to attach conditions to a special exception. The clause was amended further by Act 68 of 2000 to stipulate that conditions which are attached to an approval may not relate to offsite transportation and road improvements. Most recently, this clause was amended by Act 39 of 2008 to require additional notice of conditional use proceedings and decisions.	**1988-170** **2000-68** **2008-39**

Article VII – Planned Residential Development

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 711. Application for Final Approval.	
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Subsection (f) was added to require that each month a municipality provide notice, as defined, in writing to the superintendent of a school district in which plans for a planned residential development have been finally approved during the preceding month.	**2012-97**

Article VII-A – Traditional Neighborhood Development

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 702-A. Grant of Power.	
This section provides that the governing body of each municipality may enact, amend, and repeal provisions of a zoning ordinance in order to fix standards and conditions for TND. It also stipulates that enactment of TND provisions must be in accordance with the required procedures for the enactment of an amendment to a zoning ordinance as provided in Article VI. Act 111 of 2010 amended this section to further specify that any TND provisions must be consistent with Article VI (Zoning), except as otherwise provided in this article.	**2000-68** **2010-111**
Clause (1) stipulates that TND provisions must set forth the standards, conditions, and regulations. Act 111 of 2010 amended this clause to clarify that a zoning ordinance may designate one or more zoning districts exclusively for TND, or may permit TND in one or more specified zoning districts.	**2000-68** **2010-111**
***	
Section 706-A. Standards and Conditions for Traditional Neighborhood Development.	
***	
Subsection (d) requires that standards be established which govern the density or intensity of land use in a TND. The standards may vary from the density and intensity of the existing zoning provisions. Suggested criteria for such standards, which are not necessarily all inclusive, are described in nine categories. Act 111 of 2010 made minor editorial changes to paragraphs (5), (6), and (9) of this subsection to afford greater flexility.	**2000-68** **2010-111**
***	
Section 708-A. Manual of Written and Graphic Design Guidelines.	
This section authorizes the governing body of a municipality, which has adopted TND provisions, to also adopt by ordinance, upon review and recommendation of the planning commission, if one exists, a manual of design guidelines to assist applicants in preparing proposals for TND. Act 111 of 2010 added an authorization for including the manual in or amending the manual into a subdivision and land development ordinance and/or zoning ordinance.	**2000-68** **2010-111**
Section 708.1-A. Subdivision and Land Development Ordinance Provisions Applicable to Traditional Neighborhood Development	
Act 111 of 2010 added this section to authorize a municipality to enact subdivision and land development provisions containing TND design standards, as prescribed.	**2010-111**

Article X-A – Appeals to Court

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 1002-A. Jurisdiction and Venue on Appeal; Time for Appeal.	
This section expressly states that any decision rendered pursuant to Article IX is appealable only to the court of common pleas of the judicial district in which the land is located. It requires that the appeal be filed no later than 30 days after either the actual entry of the decision or 30 days after the decision is deemed to have been rendered. "Entry of decision" is defined to mean the date of service of the decision or the date of mailing as required by Title 42 of Pa.C.S., Section 5572.	**1988-170**
Act 39 of 2008 amended this section to provide that the 30-day limitation on actions from decisions shall apply in all cases, except those in which a constitutional deprivation of due process would result. It also amended the section to provide that appeals challenging the procedural validity of land use ordinances shall be taken to the court of common pleas and conducted in accordance with Section 5571.1 of Title 42 of Pa.C.S., which was added by Act 40 of 2008.	**2008-39**
1002.1-A. Time for Appeal; Procedural Defects of Decisions.	
This section, also added by Act 39 of 2008, essentially provides a mechanism for determining two questions: (1) whether an appeal (other than a Section 108 appeal) should be permitted to proceed, and (2) whether a decision should be deemed void. The section initially provides that the 30-day restriction on challenges to decisions contained within Section 1002 shall apply unless the challenger can successfully assert that he or she had insufficient notice to bring a challenge within the appeal period, and that the 30-day time bar results in an unconstitutional deprivation of due process. As noted, appeals brought pursuant to Section 108 are exempt from this analysis.[14] Furthermore, any appeal, including Section 108 appeals, contesting the validity of a decision may only be brought by a challenger whose substantive rights would, or could be affected by the decision. In terms of the validity of the decision, the section provides that challenges brought within the 30-day period provided in Section 1002 can result in a decision being rendered void if any defect in procedure is proven. For challenges permitted to proceed outside of the 30-day period, the decision can be rendered void only if the procedural defect caused either (1) a deprivation of substantial notice to the public	**2008-39**

[14] It is important to note that within Section 108 itself , at subsection (h), a similar qualification is provided:

> Nothing in this section shall be construed to abrogate, repeal, extend or otherwise modify the time for appeal as set forth in Section 1002-A where the appellant was a party to proceedings prior to the entry of a decision or otherwise had an adequate opportunity to bring a timely action in accordance with Section 1002-A to contest the procedural validity of an ordinance or the procedural or substantive validity of a decision.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
of proceedings related to the decision, or (2) a denial of an opportunity to participate in proceedings to those whose substantive rights would or could be affected by the decision. The section provides that substantial compliance with the public notice, written notice, and posting requirements of Section 908(1) shall constitute "substantial notice" to the public as a matter of law. The section also provides that any adjudication resulting in a decision being deemed void shall not affect any previously acquired rights of property owners who, in good faith, relied on the validity of the decision prior to the adjudication.	

Article XI-A – Wastewater Processing Cooperative Planning

Act 97 of 2012 is the corresponding act effecting the addition of Article XI-A to the MPC.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 1101-A. Definitions This section defines "Department" and "Wastewater system official" for the purposes of this article.	**2012-97**[15]
Section 1102-A. Notification requirement. Subsection (a) stipulates that a person who files an application for a development, plat approval, planned residential development, or waiver of land development under this act or for a construction permit under the Pennsylvania Construction Code Act, with limited specified exceptions, shall provide written notification of filing the application to the wastewater system official serving the property identified in the application and provide a copy of the notification to the municipality. Subsection (b) states that the municipality may not deem an application as administratively complete until it receives a copy of the notification.	
Section 1103-A. Review by wastewater system officials. Subsection (a) provides for the wastewater system official's review of the notification to determine the application's impact on the wastewater system. Upon receipt of the notification, the official has 30 days to complete the review with an extension of up to 15 days for good cause shown, unless another statute establishes a review period of 30 days or less in which case the review period in that statute applies. If the municipality does not receive findings from the official in the time period provided, the municipality shall proceed with the application as if it is in compliance. Subsection (b) provides for the wastewater system official's notification of findings to the applicant and the municipality, including a statement of the expected impact of the application on the current wastewater system as well as specific reasons, if applicable, for the exceedance of permitted capacity or the necessity for wastewater infrastructure upgrades. Subsection (c) conditions the approval of an application for development, plat approval, or planned residential development upon receipt of a waiver or approved exemption from sewage planning, or receipt of approval from the wastewater system	

[15] Act 97 of 2012 effected the addition of Article XI-A in its entirety.

Manner in Which Articles and Sections are Impacted	Amendatory Acts

official. It further conditions approval of an application for a construction permit upon review pursuant to this section.

Subsection (d) establishes a right of appeal for any person aggrieved by a decision of a wastewater system official as provided in the Pennsylvania Sewage Facilities Act.

Section 1104-A. Applicability.

This article applies to applications for development or construction that utilize wastewater treatment service provided by a county wastewater treatment authority incorporated in a county of the second class A, including all municipalities served by the authority. Second class A counties encompass Bucks, Delaware, and Montgomery.