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Local Land Use Controls in Pennsylvania

PLANNING SERIES #1



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Preparation of this publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania. Technical Assistance from Michael Baker Jr., Inc. and The Law Firm of Susan J. Smith was used in the preparation of this publication.

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I. Local Land Use Controls in Pennsylvania

Preface

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

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

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

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

II. Introduction

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

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

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

Statutory Overview of Authority

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

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

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

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

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

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

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

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

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

Private Property Rights, Regulations, and Environmental Stewardship

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

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

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

Land use regulation does not simply regulate the built or developing environment. Another key element of land use regulation is the protection and preservation of natural and historic resources. Sections 603(b)(5), 603(c)(7), 603(g)(2),

604(1), 605(2)(iii), and 605(2)(vi) of the MPC specifically authorize municipalities to address valuable natural and historic resources in land use planning and regulation. As discussed above, such regulation must be balanced with the right of a property owner to develop property as he or she desires.

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

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

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

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

Comprehensive Plan

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

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

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

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

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

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

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

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

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

References

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

III. Land Use Ordinances

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

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

Subdivision and Land Development

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

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

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

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

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

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

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

Manufactured Home and Manufactured Home Park Regulations

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

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

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

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

Zoning

Zoning is the second most common type of land use ordinance. Sixty-eight percent of Pennsylvania's municipalities have enacted zoning regulations. Twelve counties have enacted some type of county level zoning. In total, 1,730 municipalities have zoning regulations in effect.

Zoning at the municipal or county level is in effect in 68% of Pennsylvania's municipalities covering:

- 54% of the total area
- 92% of the total population
- 98% of the urban population
- 69% of the rural population

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

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

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

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

Zoning Techniques

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

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

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

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

Planned Residential Development Provisions

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

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

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

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

Traditional Neighborhood Development (TND)

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

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

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

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

Form-Based Zoning

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

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

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

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

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

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

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

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

Transferable Development Rights (TDRs)

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

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

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

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

Official Map

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

1. Existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same.
2. Existing and proposed public parks, playgrounds and open space reservations.

3. Pedestrian ways and easements.
4. Railroad and transit rights-of-way and easements.
5. Flood control basins, floodways and flood plains, storm water management areas and drainage easements.
6. Support facilities, easements and other properties held by public bodies undertaking the elements described in section 301.”

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

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

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

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

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

Sixty-four or more Pennsylvania municipalities and one county have adopted official maps as of early 2011. It is still an unfamiliar tool, and while most local officials are not aware of its usefulness, usage is growing. Municipalities that have used an official map have found them to be an invaluable community planning tool. For example, in southeastern Pennsylvania, townships in Chester County (East Caln, West Bradford) have witnessed extraordinary growth and related pressure for public services. An official map in these municipalities enables residents, businesses, developers, and those thinking of locating there to predict the area’s future landscape, quality of life, and economic opportunity. Similarly, growth in Millcreek Township, Erie County, has necessitated focused growth management measures. There, the official map is used to delineate intersections and roadway improvements, reserve open space and farmland, and identify flood control basins.

Additional resources on the official map include the following:

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

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IV. Related Ordinances and Implementation Techniques

Impact Fees

Municipal Capital Improvement (Transportation Impact Fee) Ordinance

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

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

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

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

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

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

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

Recreation Impact Fee

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

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

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

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

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

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

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

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

Specific Plans

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

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

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

Floodplain Regulations

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

In Pennsylvania, the Floodplain Management Act, Act 166 of 1978, requires all municipalities that have been identified by the Federal Emergency Management Agency (FEMA) as having areas subject to flooding to adopt floodplain management regulations. Regulations must meet minimum standards set by the National Flood Insurance Program. In

general, for new construction or improvements in flood-prone areas, the regulations require residential structures to be elevated above the base flood elevation (the elevation of a flood having 1% probability of occurring any year, also known as a 100-year flood), and nonresidential structures to be elevated or flood-proofed to above the base flood elevation.

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

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

Stormwater Management

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

Uniform Construction Code

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

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

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

Capital Improvements Program

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

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

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

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

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

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

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

Constitutional Constraints on Controls

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

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

Planning Coordination

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

Local government officials, individually and collectively, must continually look beyond municipal boundaries. The MPC mandates intermunicipal planning and coordination in regard to some matters. For instance, Section 301(a)(5) of the MPC specifies that a comprehensive plan must include “[a] statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities...and a statement indicating that the existing and proposed development of the

municipality is generally consistent with the objectives and plans of the county comprehensive plan.” When a governing body adopts or amends a comprehensive plan it must “... *consider the comments of the county, contiguous municipalities and the school district.* . .” (MPC Sections 301 and 302, emphasis added.)

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

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

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

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

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

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

Examples of other planning coordination needs include:

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

Land Use Ordinance Administration

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

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

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

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

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

References

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V. Planning Assistance from DCED

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

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

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

VI. Other Planning Assistance

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

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

**Pennsylvania Department of Community & Economic Development
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