

*SUMMARY
REPORT
2001-2010*

*MPC
SUBCOMMITTEE*

July 2010

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Legislative Committee
PA Chapter-American Planning Association

July 2010

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The MPC Task Force/Subcommittee

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Summary Report

The MPC Task Force/Subcommittee

After nearly ten years the MPC Subcommittee is ending its work on the Municipalities Planning Code. From 2001 to 2010 the Subcommittee has faithfully carried out its mission.*

The work of, first, the MPC Task Force, and then, the MPC Subcommittee, cannot be reduced to a page or two of summary comments. To do so would be a disservice to, and be disrespectful of, the hard work and diligence of the many people who contributed their time, energy, and thought toward improving planning in the Commonwealth by working for a better Municipalities Planning Code. The Chapter owes them its gratitude.

A full record of the work is called for, and this Summary Report will provide it. The hope is that sometime in the future it may provide the background and basis for further Chapter legislative efforts. If not, at least there will be a permanent record so that the Subcommittee's work is not forgotten. It should have a place in the institutional memory of the Pennsylvania Chapter-American Planning Association.

This Summary Report has two major sections. Part 1 contains the rationale and recommendations for the work completed under the original mission statement of the Task Force. It includes some of the fundamental work from the Task Force's Final Report of June 2002 (revised February 2003). For example, the relationship of the Chapter to the Municipalities Planning Code is explicated, with the results of the analysis of the sections of the MPC that were found to be in need of improvement. The Task Force also undertook to develop a set of "Planning Principles" that was adopted by the Chapter Board. The six major recommendations for action by the Chapter is included, and commentary is provided regarding the status of the recommendations through June 2010.

Part 2 contains material drafted by the Subcommittee for the purpose of creating a new Municipalities Planning Code. Although much of the content and terminology is recognizable, the Subcommittee recommends a streamlined Code that is a truly enabling statute that avoids-- to the greatest extent possible-- being overly prescriptive. A new planning statute makes it possible to reduce redundancy and inconsistencies among provisions, a serious pervasive problem of the current MPC. Most importantly, these changes would make the enabling statute more "user-friendly" and promote innovative and creative planning solutions to community problems.

The material included is a "work in progress;" it is not as near completion as the Subcommittee hoped. Drafting, however, is only one small step in the process. It would need the concurrence of the Chapter membership before moving the proposal into the public arena where other interests and points of view would be engaged in the give-and-take of the legislative process. But, the Subcommittee's goal is to make the planning perspective the central one in the process.

**NOTE: in the intervening years the Pennsylvania Planning Association, or PPA, was renamed the American Planning Association-Pennsylvania Chapter.*

**LIST OF PARTICIPATING MEMBERS OF THE
MPC TASK FORCE/SUBCOMMITTEE, 2001-2010**

Over the years many people have contributed to the work of the Task Force/Subcommittee in various ways. Their efforts to further good planning in the Commonwealth are gratefully acknowledged.

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PART 1

Municipalities Planning Code Task Force and Subcommittee 2001-2010

Selected Sections from the 2002 Final Report

MPC Task Force

Part 1 contains selected portions of the 2002 report (revised June 2003) prepared by the MPC Task Force/Subcommittee. They are included to provide a context for the recent efforts of the group to prepare a draft of a New Municipalities Planning Code. Many of the conclusions and recommendations from the report are still relevant.

In the Final Report the group emphasized the critical role of the Pennsylvania Planning Association (now American Planning Association-Pennsylvania Chapter) as the legitimate organization in the Commonwealth to promote good planning and sound planning legislation. We called for the Chapter to provide assertive leadership for planning in Pennsylvania. Eight years later the need remains.

1. The Pennsylvania Planning Association & the Municipalities Planning Code

In the Commonwealth of Pennsylvania the Municipalities Planning Code is the state law that provides for local, county, and regional community planning. In the Commonwealth of Pennsylvania the Pennsylvania Planning Association is the statewide organization that presents itself as the spokes-organization for planning, and for the Municipalities Planning Code.

From the beginning, PPA and the MPC have been linked. When interest was first expressed in the mid-1950's to consolidate the disparate provisions for planning in the various municipal and county codes into a single, unified statute, the then Pennsylvania Planning Association, in concert with the Pennsylvania State Planning Board under its Executive Director Francis E. Pitkin, provided the leadership to bring it to realization. The achievement of a consolidated planning enabling act is, arguably, the single most important event in the development of planning in Pennsylvania.

Adopted in 1968 as the Act of 1968, P.L. 805, Number 247, it was the culmination of some ten years of study, meetings and negotiation involving a task force of people from a wide range of interest groups, including planners (both professional and members of local planning commissions), public officials, solicitors to municipal governments, home builders and developers. But it was the energy and leadership of PPA and the State Planning Board that was central to the effort. The interest and support from the newly established Department of Community Affairs, of which Joe Barr was the Secretary, added strength to the endeavor and its consideration by the General Assembly.

When it was adopted in 1968, the MPC was a relatively clear piece of legislation that expressed the principles and best practices and responsibility by local governments in the exercise of planning. The model code that was formulated by a task force had been modified somewhat in its content when it was introduced for legislative consideration. The negotiations moved it in the direction of selective specificity to satisfy legal concerns regarding the power and authority of

participating agencies, like zoning hearing boards, or practicing professionals, like attorneys and engineers. Nevertheless, the MPC was adopted in the spirit of its being enabling legislation as a broad expression of principles and best practices, and resistant to the temptation of prescriptive measures and procedures that are better left to local innovation and action.

Its enactment and signing by Governor Raymond P. Shafer was a triumph, and set planning in the Commonwealth on a new course. The promise of the new code's early amendment to assure the visible and viable exercise of that planning responsibility by qualified professional planners, and knowledgeable and informed citizen members of planning commissions, assured the gubernatorial approval of the statute.

(In 2002) it is now 34 years later. We have had 34 years of planning under the MPC. It has been amended both incrementally and by omnibus action over that period of time. Since its initial enactment, it seems that at nearly every session of the General Assembly some proposal to amend it has been made.

The original MPC was not a perfect document, far from it. But there is the belief that as new ideas, new needs and new opportunities emerge, the Municipalities Planning Code will be improved so that the benefits of sound planning will be expanded. Over the years many planners have worked to improve the MPC. They have collaborated with others and sought to bring about a practical and useful code. The efforts of these planners is gratefully acknowledged and appreciated.

The General Assembly, through its Municipalities Planning Code, must set expectations and high standards for planning, and for protecting the rights of all its citizens. This it does admirably in setting standards for ensuring that exclusionary residential zoning does not occur. There are numerous provisions for ensuring equal protection of citizen rights in hearings. Participation is called for at significant points in the enactment of community plans and land use regulations. These high standards must be uniform throughout the Commonwealth, and planners support them.

There is the reality, however, that the Code is being altered in ways that, unfortunately, move it away from sound planning principles. Of course, that's not true of every change to the MPC, but the erosion of the MPC is making the MPC less of an enabling statute and more of a special interest statute, a trend that is clearly perceptible.

This is particularly evident in the Acts 67 and 68 amendments of 2000. In its effort to promote itself as being proactive in the fight against urban sprawl, the General Assembly promoted Acts 67 and 68 as legislation to fight urban sprawl, but it provided precious little in the way of tools for those who actually have to fight the battles-- local and county planners. Legislators provided no support for curbing infrastructure providers who prematurely extend facilities into undeveloped territory, highway builders who make rural areas accessible to developers at the expense of developed urban areas, or realistic and practical authority to ensure citizens that service capacity will be available to support development and can be paid for fairly. Planning practitioners know the degree to which they are limited by inadequate tools, and they take the brunt of criticism when citizens don't see the planning results they want and expect.

There are many examples of how the MPC is being eroded. For example:

- The habit of the General Assembly to enact vague standards, like “zoning ordinances shall provide for the *reasonable* development of minerals in each municipality.” Standards like “reasonable” and “unreasonable” satisfy the drafters because they are nonspecific. But it creates uncertainty among municipal officials and landowners, and ultimately requires years of litigation –at great cost to everyone– to resolve the problem originally created by the Legislature. Imprecise legislative standards do more harm than good.
- “Two-headed” land use policies, like those enunciated in the policy definition of “Preservation or Protection.” This is an example of attempting to assuage the interests of both environmental and development interests, but satisfying neither. Planners, and the public, see these as disingenuous tactics by the Legislature. They know these will lead to contention in municipalities and will be costly to resolve.
- Legislators often complain about “one-size fits all” solutions, but they have no compunction against imposing such “one-size fits all” standards like forestry activities “shall be a permitted use by right in all zoning districts in every municipality.” Another recent amendment, this one Act 43 of 2002, calls for “no-impact home-based businesses” to be allowed as a permitted use by right in all residential districts. Rather than enable localities to deal with these land uses by applying local knowledge and expertise, the Legislature has placed itself in the mode of a super planning commission. In fact, they are imposing “one size fits all” from Harrisburg.
- Planners and the public agree that some authority in the MPC is not intended to be used. This may be a cynical view, but it is a realistic one. An example is Article V-A, Municipal Capital Improvements. Instead of providing real impact fee authority to municipalities to allow them to recoup reasonable costs for improvements generated by new development, and thereby ease the financial burden on current residents, the Legislature supplied the little-used, high cost, overly complex “municipal capital improvements” remedy. It’s more of a burden on municipalities than a help and does nothing to resolve fundamental issues of equity.
- The MPC has also moved away from being an enabling statute by being overly and unnecessarily specific in its details to the point where the Legislature is designing communities. A case in point is Article VII-A, Traditional Neighborhood Development. The authority for this is redundant. Municipalities in Pennsylvania already could do this under existing law if they wished to, but the new Article is nothing more than a design manifesto.
- Undue specificity, such as is found in Article VII, Planned Residential Development, and Article VII-A, Traditional Neighborhood Development, are hindrances to innovative planning. More interesting solutions would emerge if these Articles simply provided the authority to act without straight-jacketing local planners.

- The MPC is constantly being amended in ways that are not based on the practicalities of using and administering the Code. The barriers and inconsistencies that confront planners and planning commissions on a daily basis are not the ones that recent amendments address. Legislators are responding to special pleaders, but not to practicing planners. The obvious examples are home builders, agriculturalists, forestry, and mining interests. It is not that they should not be heard; but, they must be part of the total community planning fabric, and not allowed to operate outside it.

2. Who Speaks for Planning in Pennsylvania? For the MPC?

The Pennsylvania Planning Association is the only entity that can speak for planning and the Planning Code. Without forceful action by PPA to speak up for the MPC, its further erosion is inevitable. It has to lead, just as it did in 1968.

During the time that the Pennsylvania State Planning Board was active—from the 1930s to the 1960s-- there was a voice in state government for planning. There was an identifiable “state planner.” Because of the prestige of the Board’s members, and its Executive Director Francis Pitkin, planning could command attention. But those voices have not been heard in Harrisburg for years. In the case of the State Planning Board, it has not been heard for more than a decade until about seven years ago. A tremendous vacuum was created.

If PPA is truly the “keeper of the flame” with respect to the MPC, what must it do next?

- PPA must assert its singular role as *the* state organization dealing with local planning in the Commonwealth. It must assume the responsibility to be the recognized spokesman for planning.
- While there are numerous Task Force recommendations for clarifying and improving the MPC as it currently stands, the resources of PPA should address a comprehensive review and revision of the MPC with a focus on the expression of best planning principles and practices, from the viewpoint of planners in the Commonwealth.
- PPA must initiate new planning ideas. Planners know what is needed, and they must shape the debate about planning. It must forcefully argue its position and show how citizens’ lives will be improved.
- The MPC is too central to PPA not to be a permanent unit within the Association’s structure. Ultimately, such a group should be assigned the leadership in crafting a new MPC.

There are several ways this might be done. One would be to expand the responsibilities of the PPA Legislative Committee. Another would be to create a permanent MPC subcommittee within the Legislative Committee. Another would be to create a separate MPC Committee whose principal responsibility would be the comprehensive revision of the MPC, and to periodically propose amendments to the MPC as a proactive expression of the interests of the PA Planning Association.

There is no expectation that PPA should undertake this effort alone. There are knowledgeable people, both in the Commonwealth and nationally, whose experience and capabilities can and should be brought together in such an endeavor. The key to its happening, however, will be the sense of purpose that PPA expresses as the state planning association among many state government associations, and that the MPC is a planning document first and foremost. PPA assumes its responsibility to ensure that the MPC facilitates and enhances the capabilities of local governments to plan for their future, and to make that future a reality for their citizens.

3. Planning Principles

[NOTE: This introduction is not found in the 2002 Final Report but has been added to explain why it was developed and how it is used by the MPC Subcommittee.]

Every profession and professional society has core principles it adopts as its own. They are the value system that members of the group share. They are made public for others to see and know what the group believes; what it bases its actions on, and; what it expects of its members.

Prior to the work of the MPC Task Force the Pennsylvania Planning Association had no statement of planning principles for the organization. (Some PPA members belong to the American Planning Association and the American Institute of Certified Planners which has its own ethical and professional standards.)

This statement was developed as part of the original Task Force's work; it needed to enunciate and explicate what its core values were. Without it, the Task Force's work on the Municipalities Planning Code would have no foundation for analysis and recommendations. So, it codified the fundamental ideas in Pennsylvania planning. Not every planner necessarily agrees with every principle, but as a body of precepts it stands for the organization.

The Board of Directors of the Pennsylvania Planning Association adopted the Statement of Planning Principles, with only very slight modifications from the draft proposed by the Task Force.

In addition to telling others what we believe in, the Task Force/Subcommittee has actively used the Principles as a yardstick against which it measures legislative proposals that are forwarded to it for comment. On occasion, some reasonably-sounding proposed piece of legislation has been found to violate some of our Principles, and our subsequent recommendation to the Legislative Committee was for the Chapter not to support such legislation.

a) Statement of Planning Principles

The Pennsylvania Planning Association speaks for planning and planners in the Commonwealth. In doing so, the Association must be identified with the core ideals and values planners share. This Statement of Planning Principles was adopted by the PPA Board of Directors in 2003.

The Public Interest.

The planning process must faithfully serve the public interest.[In contrast to serving narrow interests to the detriment of the broad public welfare.]
(See *APA Ethical Principles in Planning*.)

Equity.

The ethical position of planners and the plans they help create should support fair, equitable, and respectful treatment of all people who reside, or may desire to reside, and work or do business in the communities being planned.

Private Property.

Planning serves to protect and promote the American institution of private property. Sound planning and regulation helps maintain the value of private property rights over the long term.

MPC is Enabling Legislation.

The MPC is an enabling planning statute. As such, it should provide broad planning and regulatory authority. It should be permissive rather than prescriptive. Basic public and private rights should be protected by uniform requirements. Creative, innovative, and flexible planning is encouraged by having a Planning Code that is truly enabling. The MPC should not single out certain land uses and separate them from the other land uses in a community in order to give them special treatment in planning and land use regulations. Such treatment is a barrier to truly comprehensive planning.

Planning is Voluntary.

While the value of having a planning process in all communities is unquestioned, the decision of municipalities to engage in planning must be voluntary. Coerced planning does not lead to good planning; municipalities should not be forced to plan.

Equal Treatment of Private and Public Actions.

Private property must conform to publicly enacted land use regulation, but such regulations must be supported by current, adopted plans, goals, and objectives. A plan provides the basis upon which the appropriateness of regulations can be tested.

If private property must conform to regulations, then public agencies and bodies should likewise be

required to comply with the same standards in those regulations. Public bodies should not be permitted to be treated differently from the private sector. State agencies should be required to comply with zoning, subdivision and land development, building, and other codes and ordinances and procedures.

The Primacy of the Comprehensive Plan.

The importance of the comprehensive plan should be elevated. It should be required as the basis for land use regulations and local governmental actions.

State Planning.

The Commonwealth should have an active planning component in the Executive Branch. It is needed to express the planning interests of the Commonwealth, and to provide a forum for state agencies, municipal and county governments, and others, to address the important planning issues that confront all of them. This state planning activity should be led by a vigorous and articulate state planning board, supported by a highly qualified professional planning staff.

Plan Adoption.

The formal adoption of municipal, multimunicipal, county, and regional plans, and subsequent amendments to them, should be mandatory.

Land Use Regulations.

Land use regulations must be based on an adopted comprehensive plan. This standard serves to protect the public interest.

Concurrency.

Public infrastructure and services must be either in place, or planned for, before building development projects are approved.

Capital Improvements Plans.

A capital improvements plan should be a required element of a comprehensive plan. Capital budgeting demonstrates the public's commitment to implementing its adopted comprehensive plans. Ongoing capital budgeting should be a requirement for implementing the concurrency requirements.

Impact Fees.

All development generates costs; however, in many

instances the costs fall unfairly on citizens who derive no benefit from the development. Fees, or services in lieu of fees, should be used to equalize the burdens on current and future residents of communities.

Consistency.

Comprehensive plan elements must be internally consistent. Plans between municipalities should be consistent (but not necessarily *conforming*). Consistency of action with plans must be required. The public interest is promoted when publicly produced plans and official actions are consistent.

Accessibility of Planning.

All municipalities should be enabled to plan. Planning is not a luxury, but a necessity. The opportunity to plan should not be foreclosed from municipalities because of size, location, or financial resources. The planning needs of municipalities in these circumstances may be accomplished through various means, such as: inclusion in the planning done by other municipalities and counties; through special grants; pro bono planning consultation; university student participation; and others.

Language of the Code and Its Provisions.

The language of the MPC should make its enabling and procedural authorizations understandable and easy to use by local officials and citizens. Whenever possible, legal terms should be expressed in common English.

Planning Standards.

The MPC should include accepted planning standards and professional identification, as it currently does

for engineers, landscape architects, and surveyors.

Appropriate Scale of Planning

Comprehensive planning deals with problems. As such, it must address problems at the scale that is relevant to the problem being addressed. Some problems are entirely within a single municipal jurisdiction; some involve several jurisdictions; some extend over a region. The MPC should permit flexibility in planning organization so that municipalities can deal effectively with distinct problems such as water supply and protection, environment, traffic impacts, regional land use impacts, etc.

Citizen Planning Commissions.

Planning commissions are, historically, a fundamental feature of local planning. They must be supported and strengthened. Standards for members' qualifications should be developed.

Planning Cooperation.

Effective planning is achieved through cooperation. Cooperation among municipalities and other governmental jurisdictions and agencies should be the expected, standard practice.

Education for Planning.

Well-prepared and educated citizen and professional planners is required if sound planning and land use regulations are to be prepared. The impacts of plans and regulations on the well-being of citizens and institutions is too great to be left to planners who are untrained. Training should include technical, legal, social, economic, communication, municipal finance and ethical impacts of planning.

b) Detailed Statement of PPA Planning Principles and Enhancing the PA Municipalities Planning Code

[Appendix 1 of Report]

This supplement to the *Statement of Principles* was prepared by Danny Whittle, AICP

The members of the Pennsylvania Planning Association are committed to performing and fostering public planning that, first and foremost, serves the public interest. As planners, we are committed to effectively advocating the following principles as means to faithfully serving the public interest.

1. We advocate the protection of private property rights. At the same time, we understand the necessity of balancing individual rights and the rights of communities and the public at large.

2. We advocate vision-based, consensus-driven planning as the benchmark against which all state, regional, and local policy determinations are measured.
3. We advocate a regulatory framework for implementing local, regional and state land use plans based on local determinations derived from sound comprehensive planning.
4. We advocate state enabling legislation that facilitates the widespread use of growth management tools and techniques aimed at protecting the character and integrity of local communities, including their design and culture. State enabling legislation should assist all communities to realize their community and economic development potential, with particular attention paid to:
 - revitalizing depressed areas.
 - facilitating the provision of affordable housing through variety and mix of housing types to meet a range of household needs at all income levels.
 - protecting air quality, environmentally sensitive lands, designated agricultural areas, recreational areas, historic and cultural resources, and water quantity and quality.
5. We advocate effective planning for long-term natural resource protection that promotes the preservation of this Commonwealth's natural and historic resources and prime agricultural land.
6. We recognize the priority of planning for affordable housing as a primary organizational policy. Accordingly, we advocate proactive local and state government actions to increase and diversify housing resources.
7. We advocate the availability of diverse and adequate fiscal resources to effect sound planning.
8. We advocate balancing public and private sector values in state, regional, and local decision making and policy setting.

Consistent with these principles, the members of the Pennsylvania Planning Association propose the following priorities for future revisions to the Pennsylvania Municipalities Planning Code.

A. The MPC must foster sound planning and in doing so,

1. Every amendment or addition to the PA MPC should be judged against how it contributes to meeting the purposes stated at Section 105 of the MPC. The stated purposes are to:

- + protect and promote safety, health and morals;
- + accomplish coordinated development;
- + provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic, practical, and social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions;
- + guide uses of land and structures, type and location of streets, public grounds and

other facilities;

+ promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources;

+ promote the preservation of this Commonwealth's natural and historic resources and prime agricultural land;

+ encourage municipalities to adopt municipal or joint municipal comprehensive plans generally consistent with the county comprehensive plan;

+ ensure that municipalities adopt zoning ordinances which are generally consistent with the municipality's comprehensive plan;

+ encourage the preservation of prime agricultural land and natural and historic resources through easements, transfer of development rights and rezoning;

+ ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable;

+ encourage the revitalization of established urban centers.

2. Every amendment, or addition to the PA MPC, should be judged against whether it is consistent with pre-existing language and, where it is not, whether the pre-existing language has been, or should be, repealed.

3. Revise those statutes and rules which promote effective planning and which streamline, improve, and integrate current planning processes.

4. Promote legislative initiatives that foster local fiscal impact analysis and/or full cost accounting as part of a sound planning program; the update and adoption of a state plan that clearly provides budgetary guidance on state priorities, and; adequate funding to prepare and implement local comprehensive plans.

5. Promote amendments to the MPC that describe measurable planning performance criteria for each of the required elements listed at Section 301.

B. The MPC must foster equity in planning and plan implementation. To that end, we support:

1. Amendments to the MPC that foster fair, equitable, and respectful treatment of all people who reside or may desire to reside in the communities being planned. Economic, environmental, and social equity are paramount. Accordingly, we support statutes and rules that promote equity among all citizens.

2. MPC amendments that are aimed at balancing individual property rights with the interests of the public-at-large.

3. Amendments that require public bodies, agencies, public utilities, and common carriers to

abide by the same standards and regulations as must private land owners and developers. The MPC should require equal treatment of both private and public actions.

C. The MPC should place comprehensive planning at the forefront of local land use planning enabled under the law. To that end, we support:

1. MPC amendments that establish the primacy of the comprehensive plan as the basis for local land use regulations and other local government action that affects the form of the community.

2. MPC amendments that require that the comprehensive plan whether municipal or county be formally adopted by the municipality.

3. MPC amendments that foster a move toward concurrency of required public infrastructure with new development. In doing so, the MPC should require that comprehensive plans demonstrate a direct relationship to local capital improvement programming, the adoption of official maps of planned future infrastructure, and the establishment of equitable and predictable impact fees in support of new development.

4. MPC amendments that establish appropriate linkages between planning for potable water and waste water and land use planning. We advocate provisions in state law that provide for greater sustainability in water-related decisions and improved linkages between water, waste water, and land use policies and actions.

5. MPC amendments that provide for more citizen participation in the planning process. Citizen standing and participation is fundamental to an effective planning and growth management process. We support the rights of citizens to stand up for environmental quality and public health, and oppose proposals to weaken notice provisions and other provisions that limit public participation.

D. Planning Education. Well prepared and educated citizen and professional planners are required if sound planning and land use regulations are to be prepared.

1. We support MPC amendments that recognize that professional and citizen planners alike must be well trained to effectively serve our communities.

2. We support MPC amendments that recognize that professional planners should be certified under accepted standards of PPA.

3. We support MPC amendments that recognize that citizen planners should possess minimum training in the principles of comprehensive planning, land use regulation, and subdivision and land development planning.

4. We support MPC amendments that recognize that both professional and citizen planners should maintain their training through continuing education programs.

4. Part III: Recommendations

NOTE: *The Final Report of 2002(revised June 2003) contained six recommendations for action by the Chapter Board of Directors and Legislative Committee. These recommendations are reprinted and updated with a brief summary of actions taken to date.*

The MPC Task Force is aware that only a relatively few actions to amend the MPC as it currently exists are proposed at this time. This section is the Task Force's recommendations for future actions regarding the Municipalities Planning Code to be implemented by the PPA Board of Directors and the Legislative Committee.

Recommendation #1: Establish a permanent successor to the MPC Task Force to continue the review work of the Task Force, with the overall mission being the total revision of the MPC.

The Task Force believes that the MPC, even if amended to include all of the previous recommended changes in this report, still needs to be completely overhauled. A task force with a one-year time frame is not capable of addressing the myriad of complicated problems that the current MPC, as well as associated legal interpretations, creates for planning professionals, local officials, and others. We recommend, therefore, that a permanent subcommittee to the Legislative Committee be created to review, revise and recommend a total revision of the MPC. Only in this way can the MPC be responsive to the varying needs of the Commonwealth, in particular the physical, social, and environmental issues which cannot be resolved necessarily with a prescriptive, one-size-fits-all Planning Code.

There are other ways this work may be structured which the PPA may want to consider. For example, a permanent MPC Committee could be established, or a separate MPC Task Force of limited term could be established. The Task Force does not have a recommendation regarding the membership of same.

Action to date: *The MPC Task Force completed its assignment within the time frame set for it and the Final Report was accepted by the Chapter Board. Recommendation #1 was approved and the MPC Subcommittee of the Legislative Committee was established. The Subcommittee continued to work on drafting a new MPC, but that activity has been curtailed with the Chapter's decision in May 2010 to lower the priority given to promoting a new MPC. The status of the Subcommittee is unclear at this time.*

Recommendation #2: State Planning Board and State Planning Office

The Task Force recommends the re-creation of the State Planning Board as a highly visible means to create recognition for the importance of planning at all levels of government in the Commonwealth. In addition, the Task Force recommends the re-establishment of a State Planning Office to function as the key disseminator of information and technical planning resources, as well as coordinator of Commonwealth-level programs. The State Planning Board

and Office should be coordinated so that key programs and resources are provided in a functionally efficient and effective fashion. The State Planning Office should be staffed by qualified professional planners.

Action to date: *Governor Rendell re-established the State Planning Board as recommended, but it is not known what actions, if any, the Chapter leadership may have taken to promote this. A State Planning Office has not been re-established; staff of the PA Department of Community and Economic Development provides assistance to the SPB. At this time there is not a dedicated professional staff and budget for this Board as recommended.*

As currently constituted the State Planning Board is made up of representatives of the various local government associations, designated legislators, and APA-PA Chapter officials. (It's not the same level of "movers and shakers" from finance, labor, industry, and government—including at one time both US Senators Joe Clark and Hugh Scott—who served on the Board from the 1930s to 1960s.) It does not appear that the current group has accomplished much since the SPB was re-formed nor has it been a strong voice for planning. So, while our recommendation has come to pass, the anticipated result has not been significant.

Recommendation #3: Education of State Legislators about Planning

Elected state officials and their staff must be educated about the importance of planning in general and the need for an MPC which promotes and enables sound and effective planning across the Commonwealth. We should guide them away from making the MPC a prescriptive hammer preventing local planning innovations. Education can help them understand the need for changes to the MPC. It has the added benefit of creating a direct connection between legislators and staff to PPA. The Task Force recommends two possible methods to accomplish this:

- A "Legislators' Planning Caucus" to be informed by planners, and to provide programming to caucus members about various issues specific to the Commonwealth and its municipalities. Such programming would include small seminars conducted by professional and citizen planners representing the various geographic areas of the Commonwealth.
- Professional Planner Interns to work with Legislators and staff, to provide the planning perspective about issues faced by the General Assembly.

The Task Force further recommends researching the experiences of other State APA chapters to learn how other state chapters coordinate their efforts with legislators.

Action to date: *These recommendations were intended to get the Chapter actively involved in the legislative process through developing working relationships with state legislators. The premise was that by educating legislators they would be able to assess the value of planning legislation coming before them. We were aware, of course, that planning legislation is heavily lobbied by many influential sources, many of whom have funds to distribute to lawmakers to help them look favorably on legislation they favor. Nothing has been done by the Chapter on this recommendation.*

Recommendation #4: In combination with Recommendation #1, establish a continuous process for revising the MPC

The Task Force recommends a regular, continuing process for revising the MPC, which requires a long term commitment of PPA. The first step in this process is the completion of the MPC review started by this 2001-2002 Task Force. Many areas of the MPC were not addressed in this review, including all or most of following Articles:

Article I	General Provisions
Article II	Planning Agencies
Article IV	Official Map
Article V-A	Municipal Capital Improvement
Article VII	Planned Residential Development
Article VII-A	Traditional Neighborhood Development
Article VIII-A	Joint Municipal Zoning
Article IX	Zoning Hearing Board and Other Administrative Proceedings
Article X-A	Appeals to Court
Article XI	Intergovernmental Cooperative Planning and Implementation Agreements

In addition, the Task Force's recommendations for Comprehensive Plans (Article III), Subdivision and Land Development (Article V), and Zoning (Article VI) provide only minimal changes that do not address the following issues:

1. What is the role of Comprehensive Plans, Zoning and Land Development controls in the future of the municipal, regional, and county-wide growth management?
2. How do we address the varying needs and contexts afforded by the diverse interests and problems of Pennsylvania's municipalities, particularly those that are urban, suburban, suburbanizing, and rural, and particularly with respect to geographic location within the Commonwealth?
3. How do we establish a Planning Code that enables the best planning for each municipality, yet draws the necessary legal boundaries to avoid the occasional abuse of authority?
4. How can the MPC be improved as an enabling statute in the future, to provide (a) municipalities and planners the flexibility and authority they need to resolve complex and ever-changing problems, and (b) insure against the abuse of same?

To address these, as well as other critical and specific issues, the Task Force recommends consideration of a complete reorganization of the MPC. The current organization of the Code in separate enabling authorizations may no longer be workable. It may be more advantageous to organize a new Code along problem or other lines, so that it can deal with such important, though sometimes conflicting, planning tenets of environmental protection, transportation, economic growth, and the promotion of social equity.

Action to date: *Several years after the Task Force 2002 Final Report it became evident to Subcommittee members that it was unrealistic to expect that the changes recommended by the*

Task Force would be acted upon by the General Assembly. Those who continued to believe they would were either naïve or engaging in wishful thinking. There was no institutional initiative by the Chapter to aggressively push for change.

Consequently, the MPC Subcommittee turned its attention to formulating a new MPC, and this has been the group's primary work in the past several years. The draft materials prepared to date are included in Part 2 of this report. While there is broad agreement of the need for a new MPC, the support from the Chapter has been tepid, and the level of interest from rank-and-file planners has been indifferent. The Chapter has decided that a new MPC no longer is a high priority. When, or if, work on a new MPC may be resumed is not known at this time.

Recommendation #5: Support for planning education at all levels.

A high level of education and preparation is necessary for everyone who is engaged in planning. The Task Force recommends targeting educational opportunities the following groups to address their specific planning responsibilities.

- Experienced as well as entry-level planning professionals
- “Para-professional” planning technicians (zoning officers, code enforcement officials)
- Appointed planning and zoning officials (Planning Commissioners, Zoning Hearing Board members)
- Elected officials
- Other professionals who impact planning (engineers, surveyors, attorneys)
- Youth (e.g., Planners Day in School)
- The General Public

Orienting programs to these various groups is not difficult, but it does require the resources and efforts of PPA.

Action to date: *Although it was not part of this recommendation, the Chapter re-emphasized the standing Education Committee whose portfolio includes planning educational opportunities for a variety of audiences, such as those enumerated above. The Education Committee took on the task of preparing an outline for initial and continuing education of planning commissioners, zoning hearing board members, and zoning administrators. (see Recommendation #6).*

The job of fashioning a legislative proposal was assigned to a new Required Training Task Force. This work was completed in a year and an effort was made to interest planners in promoting the concept. Such programs are found in several states. A Chapter President's grant was obtained by the Chapter to promote this legislation. Recently the grant was returned. When, or if, this initiative will be resumed is not known at this time.

The most effective educational program is directed to appointed planning and zoning officials through the PA Municipal Planning Education Institute, which is a collaborative effort of the PA Chapter and Penn State University Cooperative Extension. Institute courses provide from 4,000 to 7,000 hours of planning education annually.

Recommendation #6: Training and Credentialing of Planners provided in the MPC

The subject of officially sanctioned training and credentialing of planners has been a topic of debate since the MPC was originally adopted in 1968. There is currently an interest in the development of a certification or credentialing of planners by state government agencies as well as government associations.

Given this recent interest, the Task Force believes it is now appropriate and timely to seek an amendment to the MPC calling for citizen planners and other officials to receive instruction which will qualify them for the work they have been asked to perform in the public interest. Such instruction must be provided by qualified instructors. Establishing standards for planning professionals should be a task of PPA. (Such standards would not be in the MPC.)

PPA should have a pre-eminent role in the development of MPC amendments calling for officials' planning education. It must be involved in determining the appropriate content of such training. PPA should also take the lead in establishing, maintaining, and monitoring the qualifications for professional planners.

Action to date: *The Subcommittee is not aware of any serious discussion in Pennsylvania regarding the credentialing of professional planners. Required training for planning and zoning appointees and zoning administrators was discussed in the preceding section.*

In summary, several of the 2002-2003 recommendations have been followed and some goals achieved. Others have resulted in spotty or insignificant advances. Some appear not to have been of interest or concern, or to have ever been looked at. Nevertheless, the six recommendations represented a well-thought out agenda for planning legislation with some suggestions for how to achieve them. Probably the opportune time for achieving this set of recommendations is past.

5. Part IV: Unified Development Ordinance

The basic authority and structure of planning and regulatory tools in Pennsylvania were set in the original MPC and have only changed in a small way. A comparison of the articles in the 1967 enactment and the current 19th edition are essentially the same. However, the current Code has become much larger, more prescriptive, duplicative, and frequently inconsistent. There have been some repeals and additions, but the latter are basically variations on the original theme.

While some modifications have been made—such as regarding zoning appeals—perhaps the most significant change was the addition of the limited impact fee authority in Article V-A, although it is extremely cumbersome, costly, and infrequently used. Others, like traditional neighborhood development, is a variation on the basic zoning idea and is essentially the urban form of “planned residential development.”

Task Force member Tom Shepstone drafted a recommendation for a “unified development ordinance.” It would add a new tool for planning, blending aspects of subdivision, land development, planned residential development, and zoning. It would simplify procedures, integrate two, related, land use regulations, and give more authority and responsibility to local officials.

Small and limited resource municipalities could benefit from such a streamlined procedure. It could be adopted by other municipalities and bring the same advantages to them.

The proposal generated some interest on the part of a few members of the House, and several meetings were held in Harrisburg to see if such legislation could be moved forward. After a period of initial enthusiasm interest in the proposal waned and the idea has died.

6. Part V: Review and Revisions to Selected MPC Provisions

A major assignment of the Task Force was to review several of the current articles to the MPC. This in-depth examination, with suggested revisions, was intended to identify portions of the MPC that needed immediate attention. The entire document needs to be overhauled, but that would have to wait for a later time. There is full discussion of what should be done when various Articles are revised.

The immediate goal was to try to improve the MPC “in-place,” that is to keep the existing statute but improve it so that better planning would be possible.

The Task Force was asked to prioritize recommendations as First Priority and Second Priority. Among the criteria developed by the Task Force in its assessment were the following.

1. Will the amendment have widespread support from municipal officials, professional and citizen planners?
2. Will it make an improvement in the short-term?
3. Will it remove serious inconsistencies in the MPC?
4. Is it simple and easily understood?
5. Will it have wide impact?
6. Will it remove problems in using particular MPC provisions?
7. Does it encourage flexibility and innovation in planning?
8. Will it make a significant difference in planning practice, *i.e.*, is less prescriptive?

Commentary

As a result of the review there were 35 recommended amendments to the Code: 22 first priority and 13 second priority. Amendments were proposed for Articles II, III, V, V-A, VI, IX, as well as some definitions in Article I.

Perhaps the most egregious affront to sound planning is the infamous Section 303(c) which has been used to disparage the value of comprehensive and other plans. This is a cloud that hangs over planning in the Commonwealth. It was the first priority of any of the recommended changes. Various attempts have been made to change this section, but to this point they have

failed.

That may not have been a bad thing. Some of the changes proposed actually made the provision worse than presently exists. It points up the truism about being careful about you wish for. In such instances, no change may be better than the proposed change.

Two recommendations of the Task Force did find their way into the MPC when Act 99 of 2004 was passed. We are not certain of the role, if any, the Chapter may have had in its passage.

On Page 43 of the 2002 Final Report, regarding Section 906 (pertaining to zoning hearing board alternate members) the report recommended—

In Section 906(b), replace the first sentence with the following:

If alternate zoning hearing board members have been appointed by the governing body, then for each member that is absent or disqualified, the chairman of the zoning hearing board shall designate one or more alternate members as needed to hear the appeal or application until it is concluded and a decision rendered.

Act 99 of 2004 provision amended the MPC as follows:

[If] The chairman of the board may designate alternate members of the board to replace any absent or disqualified member,.....until the board has made a final [determination of] decision on the matter or case.

On Page 45 of the 2002 Final Report, regarding Section 107 pertaining to the definition of “multimunicipal plans,” it was recommended that the following be added:

All of the municipalities in a Multi-Municipal Comprehensive Plan shall not be required to be contiguous if all of the participating municipalities are within the same school district.

Act 99 of 2004 amended the definition of “Multimunicipal plan” in Section 107 as follows:

“a plan developed and adopted by any number of contiguous municipalities, including a joint municipal plan as authorized by this act [.] , *except that all of the municipalities participating in the plan need not be contiguous if all of them are within the same school district.*

PART 2

A New Municipalities Planning Code for Pennsylvania

PART 2

A New Municipalities Planning Code for Pennsylvania

A start has been made toward constructing a new Municipalities Planning Code but it is still a “work in progress.” In no way is it complete; much more needs to be drafted. But, this is the point the Subcommittee is at as it concludes its work.

It takes considerable time to generate ideas for planning legislation, fully discuss, and then refine them. Even so, the new ideas remain open to further refinement and discussion as additional and related components are considered. It’s a reiterative process, and that’s laborious and time-consuming. But, ultimately, it produces something worthwhile.

It’s been an open process. The Subcommittee has always welcomed new persons to participate in the work. Membership, loose as it is, varies from meeting to meeting; continuity of participation would be nice but realistically unattainable. That adds to the complexity, and time, of the process.

As the Subcommittee has noted on many occasions, putting a draft of the legislation together is but one step in a very long process. The group believes the accomplishment of a new MPC must be approached as a “campaign;” it will take years and the collaborative work of many. First, of course, it will be necessary for the planners in Pennsylvania — both Citizens and Professionals — to be in substantial agreement that the legislation proposed represents the best thinking of those directly involved in the day-to-day working of planning. A disunited band of planners will not succeed. Planners have to get their act together.

Remember, it took about ten years for the original Code to be developed and adopted. That was nearly a half century ago.

Following is a record of the work produced through June 2010 on a draft for a new Pennsylvania Municipalities Planning Code by the MPC Subcommittee. It is not a finished product; some material is in outlined form with detailed commentary, while some has been put in standard legislative format.

Our goal has been to produce a planning statute that will ***make planning better***. By “better planning” we mean planning that is *technically sound, sensitive to the community it serves, forward looking, focused on clearly defined issues, realistic in its reach relative to resources, concerned with its implementation, adaptable to changing circumstances, and respected by officials and citizens*.

The Subcommittee has tried to do two things in the drafting process. First, it endeavors to bring the planning perspective to the document. This perspective seems to have been lost over the past 42 years as the MPC has been tinkered with by non-planners. A planning statute should enable good planning based on the best current practices of the profession. Second, it should help

instruct the users about what planning is and provide understandable and coherent reasons for why it is done and what it is intended to achieve. The current Code authorizes many things but doesn't give reasons for them. For example, why should a comprehensive plan be adopted? This draft attempts to overcome this serious limitation. Our rationale is that if planners cannot explain what they are doing—and why—they cannot persuade others to follow them.

Obviously, it is necessary to let the legislators—who are not planners but nevertheless enact the legislation that directs planning—know why a particular provision is recommended. Our first instructional task is to teach the legislators what planning is. They make the rules by which we carry out our profession. Some think they know what planning is, but actually working as a planner day-to-day with the Code is far different from having a perfunctory acquaintance with it.

One big concern is, who is the constituency for a new MPC? Who is clamoring for change? From what we observe, not many individuals and organizations are. Nor are the members of the General Assembly, who continue to tinker with it but are apparently not concerned with whether it as an integrated and consistent piece of legislation. Professional and Citizen planners are too busy trying to make the current rules work to focus on a whole new Code.

The Subcommittee is not naïve. It is well aware that planning impacts private property, personal wealth, taxes, and freedom. Even officials who employ planners are wary of planning and not always committed to the plans that are prepared for them. We assume that every provision will be heavily lobbied; every interest will want its concerns met first, regardless of its impact on the general welfare of the people of the Commonwealth. But, planners have a sacred responsibility to promote the public welfare. Somehow, that voice must be heard, and loudly.

There are many things to consider. What if nothing changes? What will be the consequences to municipalities and citizens of the Commonwealth? What does the Pennsylvania Chapter have to gain, or lose? How will its status be affected if it acts, or doesn't act?

Into this not very inviting milieu the MPC Subcommittee has recommended that the time is now to promote better planning through a new MPC. In the face of a prolonged and contentious “campaign,” it will take resources, a well-conceived strategy, and plenty of courage.

But, who will speak for planning in the Commonwealth?

The Pennsylvania Municipalities Planning Code

AN ACT

To empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development through comprehensive planning of all government functions and to promote the public health, safety, morals and general welfare of their citizens.

The Act enables units of government that choose to use its provisions to achieve coordinated development and minimize problems that presently exist or which may be foreseen and thereby prevented and avoided.

This Act provides for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts.

A simplified, streamlined Code with 5 Articles, instead of the 18 in the current Code is recommended. Instead of separate Articles for every authorization, we recommend including several in a single Article. For example, all of the land use regulatory authorizations can be individual parts of a single Implementation article. All similar procedural provisions for, as an example, the enactment of a land use regulation, can be in a single Article.

NEW TABLE OF CONTENTS

ARTICLE I: Statement of Principles/ Planning as a governmental function

ARTICLE II: The Planning Agency

ARTICLE III: Comprehensive Planning

ARTICLE IV: Implementation of the Comprehensive Plan

Zoning/Subdivision and Land Development/Official Map/Unified
Development/PRD/TND/Capital Budget and Program, etc.

ARTICLE V: General Procedures

Ordinance enactment/ordinance amendment/plan reviews/application reviews,
etc.

Other articles may be developed for specialized planning activities or procedures.

1. New Article I: General Provisions

*This new version provides two special provisions which are quite different from what is found in the current MPC. The **Statement of Principles** establishes that the decision of municipalities to plan is voluntary. Further, it sets as the ethical foundation for planning fairness and justice for all people.*

*The **Purpose of the Act** statement is much different from the current MPC version which, after the introductory statement (essentially the same as first appeared in the 1968 enactmen) is simply a listing of the topics added by subsequent amendments. This new version is a statement defining what municipal and county planning is, and what its fundamental purpose is. It sets standards and expectations for what planning should be. **It clearly notes that the responsibility for community planning is vested in the elected governing body.***

Statement of Principles, Purpose of the Act, and General Provisions

Section 101. Statement of Principles.--- While the value of having a planning process in all communities is unquestioned, the decision of municipalities to engage in planning must be voluntary. The planning process must faithfully serve the public interest. The ethical position of planners and the plans they help to create should support the fair, equitable, and respectful treatment of all people who reside, may to desire to reside, and work or do business in, the communities being planned. Planning serves to protect and promote the American institution of private property.

Section 102. Purpose of the Act.--- It is the purpose of this Act to provide good planning through the comprehensive planning of all government functions. The purpose of planning is to promote an understanding of a geographical governmental jurisdiction in all its aspects: people, economy, public finance, cultural and social structure, geography, natural resources, private property, use of land and buildings, transportation, governmental structure, among other considerations. Planning is an essential function that enables those empowered by the Act to provide services and meet the needs of the present generation without compromising the ability of future generations to meet their needs. A purpose of planning is to balance the social, economic, and cultural well-being of people, their communities, and the environment.

Local and county governments are designated as the primary authorities for planning and managing development within their jurisdictions. The elected governing body of the unit of government is granted the powers in the Act and shall be the chief planning decision body of government. The governing body may create a planning agency to assist in this task. For the planning function to be carried out effectively, it must be supported with professional planning staff and/or consulting services, and an adequate budget.

The Act encourages municipalities, counties and regions to prepare and adopt comprehensive plans to establish policies to guide the administration of local land use and related regulations, the acquisition and disposition of land and interests in land, and the scheduling and implementation of capital projects.

The Act provides for standard planning procedures to ensure that they are open, accessible,

timely, fair, and efficient. It includes a system of administrative and judicial review of local planning and development decisions that encourages both effective citizen participation and the prompt resolution of disputes to ensure that community interests are served.

Cooperation, coordination, and consistency among various governmental public jurisdictions, private sectors, and other interests in the planning and development process is expected and encouraged. This Act provides that all relevant parties to a particular problem or concern can participate in the solution to the problem, regardless of jurisdictional boundaries.

Section 103. General Provisions.---

- (1) Short Title
- (2) Effective Date
- (3) Construction of Act (use present Act)
- (4) Constitutional Construction (use present Act)
- (5) Appropriations, Grants and Gifts (use present Act)
- (6) Definitions (notes regarding definitions)
 - 1) All current definitions should be reviewed and changes made if necessary.
 - 2) New definitions may be needed.
 - 3) The following current definitions should be deleted or substantially modified to make them useful to the users of the Planning Code: General consistency, generally consistent, Planned Residential Development, Forestry, Minerals, Specific Plan and Traditional Neighborhood Development. Also Public infrastructure services should be limited to consideration of densities.

Definitions to be included in New Article I Definitions

Definition of Comprehensive Plan

A comprehensive plan is a general plan for the interrelated physical, economic, social, cultural, and natural features of a municipality for a future period of time, which serves as the framework for decisions of the elected governing body regarding the change, development, and sustainability of the municipality.

Definition of Community Facility

A service or activity, whether provided by public, private, or semi-public agencies, which is intended to contribute to the safety, health, general welfare, and pleasurable aspects of daily living of persons in a municipality, county, or region. Such services and activities may

include such things as: health, recreation, public safety, education, personal care,etc.

Definition of Capital Improvements Budget

Definition of Capital Improvements Plan

2. New Article II: Planning Agencies

The current Article II, Planning Agencies, has several deficiencies that this new version improves. First, it clearly establishes that the planning authority in a municipality or county is vested in the elected governing body which may establish a distinct agency to advise it on matters of development and community-building.

It clarifies and distinguishes the various forms of planning agency available to municipalities, and it attempts to make it easier for municipalities to create planning agencies that are organized to deal with specific issues or resources. And, it attempts to explain the purposes of a planning agency.

For the first time county planning agencies are specifically identified as a distinctive form of planning agency, with duties far different and more extensive than that of municipal planning agencies.

Joint Planning Agencies, which were excised in the MPC amendments of 2000, are re-instated, thereby overcoming a serious omission.

Finally, initial and continuing education of municipal, county, joint, and special purpose planning agencies is required.

1. Purpose of Planning Agencies

The elected governing body is the ultimate planning authority for the municipality. At its discretion it may be assisted by planning agencies which it creates to advise on policy regarding the long term physical, economic, and social development of the municipality or jurisdiction.

2. Creation of Planning Agencies. The Governing Body shall have the power to create or abolish planning agencies, by ordinance, to serve the municipality. The forms of planning agency are:

- a) Planning Commission. A citizen group of residents of the municipality.
- b) Planning Department. An agency of paid professional planners, and related staff.
- c) Combination planning commission and planning department. The duties of each shall be indicated in the ordinance creating it.
- d) In addition, the Governing Body may create, by resolution, a planning committee, comprised entirely of members of the elected governing body. A planning committee may perform all of the duties and responsibilities provided in this act.
- e) The Governing Body may enter into agreements with other jurisdictions to create, by ordinance or resolution, joint planning agencies or special purpose planning agencies. (example: joint planning commission, watershed planning group.)

f) The engineer for the municipality, or an engineer appointed by the governing body, shall serve the planning agency as engineering advisor. The solicitor for the municipality, or an attorney appointed by the governing body, shall serve the planning agency as legal advisor.

3. Responsibility of Governing Body

- a) Shall provide funds and resources to be used by the planning agency(ies) in furtherance of its authorized responsibilities.
- b) May employ administrative and technical services to aid in carrying out the provisions of this act either as consultants on particular matters or as regular employees of the municipality.
- c) Provide funds to staff the planning department.
- d) May approve the use and utilization of any funds, personnel or other assistance made available to the planning agency by the county, the Commonwealth, or the Federal government or any of their agencies, or from private sources.
- e) Have approval authority for applications as provided in land use ordinances, and may delegate responsibilities as authorized in this act. (*example: SALDO decisions*)

4. General Powers and Duties of Planning Agencies

- a) Shall maintain and keep on file records of its actions. All records and files of the planning agency shall be in the possession of the governing body.
- b) At the request of the governing body shall be required to
 - Direct preparation of a comprehensive plan.
 - Direct preparation of other functional and project plans.
 - Direct preparation of a zoning ordinance, unified development ordinance, subdivision and land development ordinance, official map, and make recommendations on proposed amendments.
 - Administer the subdivision and land development ordinance.
 - Review, and when authorized, approve subdivision and land development applications.
 - Do such other acts or make such studies as may be necessary to fulfill the duties and obligations imposed by this act.
 - Direct the preparation and maintain a capital improvements program.
 - Direct the preparation of environmental studies.
 - Direct the preparation of a municipal water resources plan.
 - Direct the preparation of studies regarding the feasibility and practicability of using renewable energy sources in specific areas of the municipality.
 - Confer and cooperate with, and coordinate, the work of other municipal commissions and boards on plans and programs related to the areas of work and responsibility of the planning agency.
 - Require from other departments and agencies, including municipal authorities, such available information as relates to the work of the planning agency.
 - Present testimony before any board.
 - Hold public hearings and meetings.
 - Promote interest in and understanding of planning, and provide educational programs in planning and related subjects.
 - Make recommendations to governmental, civic, and private agencies and individuals as to

the effectiveness of proposals of such agencies and individuals.

- Provide information to civic and private agencies and individuals.
- Charge such fees to recover costs of services as may be permitted by the governing body.
- In the performance of its functions enter upon any land to make examinations and surveys with the consent of the owner.
- Review the zoning ordinance, unified development ordinance, subdivision and land development ordinance, and such other ordinances and regulations governing the development of land no less frequently than it reviews the adopted comprehensive plan.

5. Municipal or County Planning Commission

a) Purpose. To assist the governing body manage the long-range development and sustainability of the municipality or county by-

- advising on physical development projects.
- recommending solutions and plan for land use and quality of life problems that exist.
- identifying issues that may be future problems.
- representing the municipality in its efforts to cooperate with and coordinate land use actions with other municipalities and jurisdictions.

b) Membership

1) 3 to 9 members

2) Up to 3 alternate members

3) Majority shall be “citizen” members who are not officials or employees of the municipality; a minority may be “officials” of the municipality. *(examples: on a 3 member commission at least 2 shall be citizen members; 4-5 member commission at least 3 shall be citizen members; 6-7 member commission at least 5 shall be citizen members; 8-9 member commission at least 6 shall be citizen members.)*

4) Term of office: 4 years

5) Qualifications; resident of municipality; successful completion of required training as required in this act; annual continuing education as provided in this act.

6) Removal for cause.

7) Conduct of business:

Commission selects its leaders annually.

Leaders may succeed themselves.

Commission shall adopt bylaws to govern its operations and procedures.

All commission meetings shall be governed by Sunshine Law.

Commission shall keep records of its business.

Commission shall submit to the Governing Body by March 1 of each year a report of its activities of the past year and its plan of activities with estimated costs and resources needed for the coming year.

Commission may provide interim reports as necessary or requested by the governing body.

6. County Planning Agency.

a) Purpose. A multi-function planning agency that primarily serves the county governing body by advising on development policy affecting county governmental services, programs,

and facilities. The county planning agency also serves as a link to the planning activities of municipalities within the county, and with Commonwealth, Federal, and other governmental jurisdictions.

b) If a county planning department is established it may serve as the staff of the county planning commission.

c) Duties and Responsibilities. In addition to the general duties and responsibilities of planning agencies indicated in Subsection 4:

- May cooperate with other planning agencies, and participate with them, in the preparation and implementation of comprehensive and other plans.
- With the consent of the county governing body may perform planning services for any municipality whose governing body requests such assistance.
- Shall provide reviews of applications as required by law (*examples: SALDO, amendments to land use ordinances, agricultural security areas, etc.*)
- Undertake the cooperative planning of natural and man-made systems and features that are not contained in a single municipal jurisdiction (*examples: watersheds, agricultural soils, riparian and greenways, stormwater management, floodplain management, historic preservation, hazard mitigation.*)
- Provide technical planning and information services on a contracted or for fee basis for such things as dispute mediation, grant writing, statistical information; model ordinances, GIS mapping, public information, and others as needed and appropriate.
- Assemble, organize, analyze and disseminate data related to planning.
- Provide administrative services for such programs as CDBG, farmland preservation, administration of land use ordinances, and others as needed and appropriate.
- Conduct planning education, on a fee or contracted basis, for planning agencies and citizens, including course development, scheduling and delivery.
- Participate in statutory inter-agency planning and cooperation, including Metropolitan Planning Organization, Census Bureau, school districts, and others as needed and appropriate.

[NOTE: Much of sections 7, 8 and 9 are modified from pre-2000 Article XI.]

7. Joint Planning Commission

a) Purpose. To encourage municipalities and counties to effectively plan for their future development and to coordinate their planning with neighboring municipalities, counties, and other governmental agencies.

b) Creation of JPC. The governing bodies of two or more municipalities may, by ordinance, authorize the establishment and participation in a joint planning commission.

c) Each member municipality may from time to time, upon the request of the JPC, assign or detail to the commission any staff of the municipality to make special surveys or studies.

d) Membership. The number and qualifications of the members of a JPC shall be such as may be determined and agreed upon by the governing bodies.

- 1) Members of the JPC shall be required to meet the required training and continuing education standards for planning commission members. Members who have received the required training for a position on a municipal or county planning commission shall be exempted.
- 2) Members of a JPC shall serve without salary but may be compensated for expenses incurred in the performance of their duties.
- 3) Every JPC shall adopt rules for the transactions, findings and determinations, which record shall be a public record.
- 4) A JPC shall elect a chairperson whose term shall not exceed one (1) year and who shall be eligible for reelection. The commission may create and elect from its membership other offices as it may determine.

(e) Organization and Staffing

- 1) The ordinance which creates a joint municipal planning commission shall:
 - a) state the purpose for the creation of the planning commission;
 - b) specify which of the activities identified by this act the joint municipal planning commission shall be authorized to undertake;
 - c) specify which activities shall remain with the local planning commissions, when they are retained;
 - d) specify how the work of the joint planning commission and local planning commissions shall be coordinated, integrated, and communicated;
 - e) specify the notice and procedures which a member municipality must follow when withdrawing from the joint municipal planning commission;
 - f) specify the notice and procedures when the member municipalities decide to dissolve the joint municipal planning commission.
- 2) Within the limits of its financial resources joint municipal planning commissions shall have the power to appoint such employees and staff as it may deem necessary for its work, and contract with professional planners and other consultants for services it may require.
- 3) A joint municipal planning commission shall submit to the governing bodies of the member municipalities, by April 30, a report of its activities of the past year, implications of changes for future planning, and its plan of activities with estimated costs for the coming year. The commission may provide interim reports at its discretion, or when requested by any of the member governing bodies.

(f) Finance

- 1) The governing bodies of municipalities shall appropriate funds for the purpose of operating a joint municipal planning commission.
- 2) With the consent of the governing bodies a joint municipal planning commission may also receive grants from the federal or state governments, or from individuals or foundations, and shall have the authority to contract therewith.

(g) Program

- 1) A joint municipal planning commission shall identify issues of significance to the area encompassed by the member municipalities and indicate those activities that

will require coordination and cooperation among them.

2) At the request of the governing bodies of the member municipalities the joint planning commission shall prepare and maintain a comprehensive plan, in accordance with this act, for the guidance and continuing development of the participating municipalities.

3) With the approval of the governing bodies of the member municipalities a joint municipal planning commission may prepare other plans and studies.

4) In the preparation of the joint municipal comprehensive plan consideration shall be given to the comprehensive plans of the county, adjoining municipalities, and the member municipalities in order that the objectives of each plan can be protected and promoted to the greatest extent possible to attain consistency among the various plans and the joint municipal comprehensive plan.

8. Cooperation Among Joint Municipal Planning Commission, Municipalities, & Others.

Every joint municipal planning commission shall encourage the cooperation of the participating municipalities in matters which concern the integrity of the comprehensive plan or maps prepared by the commission and, as an aid toward coordination, all municipalities and public officials shall, upon request, furnish the joint municipal planning commission within a reasonable time the available maps, plans, reports, statistical or other information the commission may need for its work.

9. Intergovernmental Cooperation.

For the purposes of this act, the governing body may utilize the authority granted under 53 PA.C.S § § 2303 (a) (relating to intergovernmental cooperation authorized) and 2315 (relating to effect of joint cooperation agreements).

10. Required Training of Planning Commissioners.

Appointed members and alternates of municipal, county, joint municipal planning commissions, and special purpose planning agencies shall successfully complete an initial qualifying course within one year of appointment. In each successive year of appointment members shall complete a required number of credits or hours of continuing education in topics related to planning. Failure to comply may be the basis for removal for cause. Joint municipal planning commission members and members of special purpose planning agencies who have completed these requirements as an appointee of a municipal or county planning agency shall be exempted.

3. New Article III: Comprehensive Planning

*This Article is renamed “Comprehensive Planning” to more accurately reflect that Pennsylvania municipalities prepare and act on plans, not all of which are of the particular type referred to as a “comprehensive plan.” It is intended to underscore that in its verb form, **planning** is an active, continuous function of all governmental units, whereas a plan is a finite product. We wish to promote planning, not just the making of a particular plan.*

Nowhere in the current MPC is “comprehensive plan” defined, nor is the purpose of a comprehensive plan identified. It should not be assumed that everyone knows what is meant by the term. A definition of comprehensive plan is prepared for inclusion in the definitions section in Article 1. Further, the new text includes a statement of the purpose of a comprehensive plan.

The role of the planning agency in the process of preparing comprehensive and other plans is explicitly stated.

Only up-to-date plans are truly useful so both “reviews” and “updates” of comprehensive plans are called for. The differences between them, and the required timing and reporting of plan reviews, are specifically noted. This will bring clarity to the current incoherent provisions.

1. Grant of Power

- a) The governing body of each municipality and county shall have the power to prepare, revise, amend, and adopt plans to guide the future development of the municipality or county.
- b) The planning agency of the municipality, county, or joint planning organization shall be responsible for directing the preparation of a comprehensive plan, and other plans, as may be requested by the governing body.
- c) In the process of preparing plans the planning agency shall encourage the participation of residents, organizations, agencies, and others both within and outside the jurisdiction who may be affected by such plans.

2. Required Comprehensive Plan

- a) Municipalities and counties shall prepare, maintain, review, and periodically update as required by this Act a comprehensive plan. In the preparation and maintenance of such plans they may confer with and solicit ideas and information from any municipalities, agencies, and organizations they choose.
- b) Joint planning organizations may jointly prepare a comprehensive plan that serves multiple governmental jurisdictions.

3. Purpose of Comprehensive Plan

A comprehensive plan is an official statement of the governing body of a municipality,

county, or cooperating group of municipalities, regarding long term future development goals and policies. The plan serves as a guide for the governing body, planning agency, other public agencies, and private citizens and organizations who make development and budgetary decisions.

4. Required Comprehensive Plan Elements

A comprehensive plan consists of textual, maps, charts, and other materials as necessary to fulfill the duty required by the Act. The following plan, implementation, and review elements shall be required and addressed in the preparation of the comprehensive plan to the extent appropriate to the jurisdictions for which the plan is being made.

A comprehensive plan that does not include all the required elements may be subject to challenge regarding its validity as the basis for land use regulations.

a) Comprehensive Plan Statement

- 1) A statement of the planning objectives of the municipality concerning its future development and sustainability (including but not limited to: the location, character, density, intensity, and timing of development).

b) Plan Elements

- 2) A plan for future land uses.
- 3) A plan to meet the housing needs of current and future residents of all ages and income levels within the areas planned for such development.
- 4) A transportation plan for the movement of people and goods in the municipality, and with other municipalities and regions.
- 5) A plan for community facilities and services benefitting current and future residents of the municipality.
- 6) A plan for economic development of the municipality within its region.
- 7) An energy conservation plan for the effective utilization of renewable energy resources.
- 8) A plan for the reliable and safe supply of water, which shall include a plan for protecting the sources of water supplies serving the population of the municipality, with consideration of surrounding regions.
- 9) A plan for protecting, improving and enhancing prime agricultural land, natural and historic resources within the municipality, as they are related to their regional context.
- 10) The Sewage Facilities Plan as required by the Act 537 of 1966, as amended, shall be adopted by reference as a required element of the comprehensive plan.

c) Implementation Elements

- 11) A capital improvements plan for the implementation of those features of the comprehensive plan that are the responsibility, or requires the financial participation, of the municipality.
- 12) A plan of short and long-term plan strategies and actions for implementing the objectives and elements of the plan.

d) Review Elements

- 13) A written review of the elements of the plan and how they contribute to and are consistent with the planning objectives of the municipality, county, or group of jurisdictions.

- 14) A written review of the objectives of the plan and plan elements as they relate to proposed development plans and trends in contiguous municipalities, the county, and region. In reviewing the relationship of the plan with the plans of other jurisdictions it shall include an assessment of how the municipality's comprehensive plan
 - a) contributes to the accomplishment the other plans;
 - b) is different from and thereby impedes or interferes with the accomplishment of the other plans; or
 - c) has no effect on the other plans.

e) Optional Elements

Municipalities, counties, and joint planning organizations may include other elements in their comprehensive plans.

5. Additional County Comprehensive Plan Elements

In addition to the required elements in 4 a-d, county planning agencies shall prepare plans including maps and textual material for:

- (1) Natural resources and minerals;
- (2) Current land uses having regional impact and significance;
- (3) Prime and other agricultural lands;
- (4) Historic resources.
 - (i) In identifying these natural and human resources the county planning agency may prepare plans for their preservation, protection, and utilization.
 - (ii) Prepare advisory guidelines that promote compatibility and general consistency among land uses, and promote uniformity with respect to planning and zoning terminology and common types of land use regulations.

6. Adoption of Comprehensive Plan.

The comprehensive plan shall be adopted pursuant to the procedures in new Article V: Procedures.

7. Review of Comprehensive Plan

a) To ensure the continuing relevance and utility of the comprehensive plan it shall be reviewed on an annual basis. The comprehensive plan review shall examine all the elements of the comprehensive to determine if any changes within and outside the municipality have a significant impact on the plan as adopted.

b) The review shall be carried out by the planning agency of the municipality. Additional resources to assist the planning agency may be provided by the governing body.

c) If the review discloses significant impacts on the comprehensive plan the planning agency may propose to the governing body that the plan should be modified, revised or updated.

d) The annual comprehensive plan review shall be included in the Annual Report of the planning agency to the governing body as required by this Act.*

** The Annual Report is the only mandated requirement imposed by the MPC on planning agencies. Should penalties be imposed for failure to perform this duty was discussed by the Subcommittee. If penalties are called for, what should they be? Two possible options were discussed, neither of which is particularly strict, or preferred. Other options are needed.*

1. Note that failure to annually review the comprehensive plan may subject the municipality to challenge regarding its validity as the basis for land use regulations.

2. Note that failure of the planning agency to annually review the comprehensive plan may subject its members to a charge of nonfeasance which may result in removal of the members as provided in Article 2.

8. Update of Comprehensive Plan

a) Comprehensive plans may be updated at any time as determined by a municipality or county. An update to a comprehensive plan may include modifications, revisions, additions, or other changes to any or all parts of the plan, including text, maps, and related materials, for the purpose of ensuring the plan will be a useful and current guide for actions by the governing body, other governmental agencies, and citizens.

b) It shall be the responsibility of the planning agency of the jurisdiction to direct the preparation of updates to the comprehensive plan.

c) The governing body shall provide resources to the planning agency to carry out the task of updating the comprehensive plan.

d) Proposed modifications, revisions, additions, or other changes to a municipal or multimunicipal comprehensive plan, whether textual or graphic (maps and diagrams), shall be forwarded to the county planning agency, superintendent of the school district, water and sewer authorities, adjacent municipalities, and others as determined by the municipality or municipalities. Each review group shall have 45 days to provide comments to the municipal governing body or multimunicipal planning agency proposing the revisions.

e) Proposed modifications, revisions, additions, or other changes to a county comprehensive plan, whether textual or graphic (maps and diagrams), shall be forwarded to the municipalities in the county, superintendent(s) of the school district(s), water and sewer authorities, and others as determined by the county. Each review group shall have 45 days to provide the county governing body with comments.

f) Following the expiration of the 45 day review period the municipality, multimunicipal agency, or county may proceed with the update of its plan and actions related to it.

9. Detailed (Other, Optional) Plans

a) In addition to a comprehensive plan a municipality, county, or joint planning organization may prepare other plans it deems necessary to carry out its governmental planning responsibilities and objectives.

b) While a comprehensive plan is a generalized plan, optional plans are detailed and specific with regard to a particular government service, function, area, or need.

c) Such plans shall be prepared under the direction of the planning agency of the municipal, county, or joint municipal organization.

d) Such plans may be adopted pursuant to the procedures in Article V. When adopted such plans become part of the comprehensive plan.

e) Such plans may be amended, revised, updated at any time, pursuant to the procedures in Article V.

e) Detailed Plans are not required to conform to municipal or county boundaries. All or parts of municipalities and counties may be included in the area for which the plan is being made. The extent of such plans may be set up based upon provision of a service or facility, development of regional significance, natural features, or function being planned.

f) Such plans shall be internally consistent with the adopted comprehensive plan.

10. Legal Status of Adopted Comprehensive Plan

a) For the purpose of assuring consistency of proposed public projects with the

comprehensive plan and community planning objectives, following the adoption of the comprehensive plan the planning agency for the jurisdiction adopting the plan shall be required to review any proposed action of the governing body, its departments, agencies, and appointed authorities and make recommendations if the proposed action relates to:

- 1) The location, opening, vacation, extension, widening, narrowing or enlargement of any
 - (a) street, public parking facility, public transit facility.....
 - (b) public grounds, including parks, playgrounds, recreation centers, trails, paths, other recreational and other public areas.....
 - (c) sites for schools and other educational facilities.....
 - (d) sewage treatment, refuse disposal, storm water management facilities.....
 - (e) publicly owned or operated scenic and historic sites.....
 - (f) other publicly owned or operated facilities.....
- 2) The governing body shall forward its intention of proposed action to the planning agency which shall make its recommendation to the governing body, in writing, within 45 days of its receipt.
- 3) The governing body shall take no action until such recommendation is received.
- 4) If the planning agency fails to act within 45 days the governing body may proceed without its recommendation.
- 5) The recommendation of the planning agency shall not prevent action by the governing body.

[NOTE: 2-5 may be included in new Article V:Procedures]

b) For the purpose of assuring consistency with the county comprehensive plan, in municipalities that do not have an adopted comprehensive plan, any proposed action of the governing body of such municipality, its departments, agencies, and appointed authorities shall be required to be reviewed by the planning agency for the county which shall make recommendations if the proposed action relates to:

- 1) The location, opening, vacation, extension, widening, narrowing or enlargement of any
 - (a) street, public parking facility, public transit facility.....
 - (b) public grounds, including parks, playgrounds, recreation centers, trails, paths, other recreational and other public areas.....
 - (c) sites for schools and other educational facilities.....
 - (d) sewage treatment, refuse disposal, storm water management facilities.....
 - (e) publicly owned or operated scenic and historic sites.....

- (f) other publicly owned or operated facilities.....
- 2) The governing body shall forward its intention of proposed action to the county planning agency which shall make its recommendation to the governing body in writing within 45 days of its receipt.
- 3) The governing body shall take no action until such recommendation is received.
- 4) If the county planning agency fails to act within 45 days the governing body may proceed without its recommendation.
- 5) The recommendation of the county planning agency shall not prevent action by the governing body.

[NOTE: 2-5 may be included in Article V: Procedures.]

11. Legal Status of Comprehensive Plans and School Districts

- a) Following adoption of a comprehensive plan by a municipality or county, any proposed action of the governing body of any public school district located within such municipality or county relating to
 - a) location of new, or expansion of existing, school facilities,
 - b) demolition or removal of existing school facilities,
 - c) sale, lease, or development of school district land or structures for non-education use,
 - d)

shall be submitted to the planning agency of the municipality in which it is proposed, the joint planning organization if one exists, and the county for review and recommendation to determine the consistency of such proposed action with the comprehensive plans and planning objectives.

- 1) It shall be the responsibility of the governing body of the school district to forward its intention of proposed action to the county and municipal planning agencies in which the school district is located.
- 2) Such planning agencies shall make their recommendation to the school district governing body, in writing, within 45 days of its receipt.
- 3) The governing body of the school district shall take no action until such recommendation is received or the expiration of 45 days.
- 4) If any of the planning agencies shall fail to act within 45 days the governing body of the school district may proceed without their recommendation.
- 5) Failure of the governing body of a school district to carry out the requirement for planning agency reviews as required in this subsection is deemed a procedural error which may be challenged in a court of appropriate jurisdiction by parties affected by the proposed action.

Definitions to be included in New Article I definitions

Comprehensive Plan

A comprehensive plan is a general plan for the interrelated physical, economic, social, cultural, and natural features of a municipality for a future period of time, which serves as the framework for decisions of the elected governing body regarding the change, development, and sustainability of the municipality.

Community Facility

A service or activity, whether provided by public, private, or semi-public agencies, which is intended to contribute to the safety, health, general welfare, and pleasurable aspects of daily living of persons in a municipality, county, or region. Such services and activities may include such things as: health, recreation, public safety, education, personal care,etc.

4. New Article IV: The Implementation of the Comprehensive Plan

This new article focuses attention on the customary tools used by municipalities and counties to implement the comprehensive and other plans they make. In any planning activity the important thing is not the plans that are made, but the plans that are implemented. Planning must lead to action or it has no value.

Currently, the basic implementation tools, that is, land use regulations, are found in separate articles of the MPC. The Subcommittee proposes that all the standard regulations be found in subsections of a single article. This would help emphasize the various tools and help planners and elected officials see the interrelationship among them.

Most significantly, this new article must contain details on capital improvements plans and budgets. Municipal and county investment of financial resources is a direct and key means of plan implementation which is totally overlooked in the present MPC.

The outline shows how the implementation pieces would fit in a single article. This is followed by concept documents and work that has been done to put provisions into standard legislative form. These materials have not been completed and require further discussion and refinement. They must be reviewed for consistency with other sections of the proposed Code. Some implementation tools have not been worked on at all by the Subcommittee.

A. New Article IV

a) Outline of New Article

1. Purpose of Implementation

If they are to have value and serve the public, the plans that are adopted by municipalities must be implemented. Not to carry them out is wasteful of time, effort, and money and destroys public confidence.

2. General Powers [Include intergovernmental plans and actions, contiguous municipalities, role of county, regional planning and organizations, limitations, effects of other legislation.]

3. Definitions. [If not established elsewhere, perhaps in an appendix. Also attempt to bring consistency to zoning terminology, including the names of zoning districts.]

4. Provisions

1. Minimum elements of implementation documents and maps, plus suggested elements. Establish minimum time after adoption of comprehensive plan, e.g., two years. List minimum requirements, for e.g., Unified Development Ordinance, Zoning (including options i.e., planned residential development; traditional neighborhood development), Subdivision and Land Development, Official Map, Capital Budgeting.

5. Zoning

Section 5a. Zoning Map

1. Purpose
2. Zoning Map Procedures
 - a. Amendments
 - b. ~~Curative amendment~~ [eliminate this option]
3. Zoning Map Provisions [minimum and suggested]
4. Enactment and Implementation [including amendments]

Section 5b. Zoning Ordinance

1. Purpose. [Could include land classification and definitions, statements on preservation and community development objectives]
2. Zoning Ordinance Procedures
 - a. Amendments
 - b. ~~Curative amendments~~ [eliminate this option]
3. Zoning Ordinance Provisions [minimum and suggested optional content]
4. Enactment and Implementation [including amendments]

6. Official Map

1. Purpose
2. Official Map Procedures
 - a. Timelines
 - b. amendments
3. Official Map Provisions [minimum and suggested]
4. Enactment and Implementation [including amendments]

7. Subdivision and Land-Development Ordinance

1. Purpose
2. SLDO Procedures
 - a. Timelines
 - b. Sketch plan process; preliminary and final plans
 - c. Amendments
3. SLDO Provisions [minimum and suggested optional content; e.g., create an associated technical manual containing charts, diagrams, schematics, call-outs, and other elements of a plan detailing what and how the municipality wants to see them.]
4. Plats
 - Approval
 - Recording plats and deeds
5. Enactment and Implementation [including amendments]

8. Unified Development Ordinance

9. Capital Improvements Plans [see b) Concept Paper which follows]

10. Administration [legal context, penalties (if any)]

- Fees

- Financial guarantees;: bonding, securities, escrow
- Enforcement
- Jurisdiction
 - Zoning officer
 - District Judge
- Relief
 - Zoning Appeals
 - Waivers
- Publication, legal notices (with free options), availability (municipal building, library, Website, county)
- Enforcement remedies

Based on draft prepared by Patrick Fero, March, 2008

b) Concept Paper: Capital Improvements

The Subcommittee in its work has strongly supported capital improvements programming as both a central planning and implementation component. As a tool for implementing plans, the following recommended requirements should be included in the new article on Implementation.

The particulars for the preparation and application of the capital improvements budget and program should parallel the provisions in the MPC dealing with implementing regulations (e.g., zoning regulations, subdivision and land development regulations, among others) as these may otherwise relate to the comprehensive plan and the facilities and services provided by a municipality or county.

- a) A capital improvements budget and program for the implementation of the comprehensive plan shall be adopted by the municipality.
- b) The municipal capital improvements budget and program shall be prepared in concert with the preparation of the annual operating budget of the subject municipality.
- c) In implementing the comprehensive plan, the capital improvements budget and program shall consider the responsibilities and authority of the municipality and deal with the facilities and/or services as may be appropriate relative to those responsibilities.
- d) In the preparation of the capital improvements budget and program in concert with this operating budget of the municipality, particular consideration and attention shall be directed to the maintenance of the facilities and services and their provision in the operating budget of the municipality.
- e) This requirement for a municipal capital improvements budget and program shall apply to any special district as well (i.e., school district, water and sewer district, conservation district, among others).

Prepared by Irving Hand, FAICP

B. Zoning

a) Concept Paper: Considerations for Changes to Zoning Provisions

Following are suggestions for the zoning subsection of new Article IV: Implementation. Some of these were discussed by the Subcommittee but have not all have been fully endorsed.

1. The basic approach to zoning should be that
zoning ordinances shall be in accordance with an adopted comprehensive plan.
Note: the Subcommittee concurs that zoning must be based on an adopted plan.

Rationale:

- Pennsylvania is one of the few states that does not call for this basic standard. We should join with the others. There is nothing to be gained from the current authorization statement in §601, and a lot that is negative about it. It is unnecessarily confusing and ambiguous when it should be straightforward. Specifically, the statement “*to implement comprehensive plans and to accomplish any of the purposes of the act.*”
- In the adopted Statement of PPA Planning Principles, **Land Use Regulations**, it states that “Land use regulations must be based on an adopted comprehensive plan. This standard serves to protect the public interest.” We should incorporate this principle in the MPC revision.
- By tying zoning to a comprehensive plan it eliminates the “consistency merry-go-round” currently in the MPC. A comprehensive plan and zoning either is, or it is not, in accord with each other.
- Such a requirement probably will affect a relatively small number of the approximately 1,500-1,600 municipalities with zoning ordinances.
- Consideration should be given to a phasing in of this requirement. Municipalities without a comprehensive plan should be given time to develop one.
- Consideration should also be given to those municipalities with a zoning ordinance (perhaps revised) and an old comprehensive plan that no longer serves as the basis for the zoning program. These, too, should be allowed time to bring them into compliance.
- A feasible, low cost option is for municipalities without a comprehensive plan to adopt the county comprehensive plan. This substitution would allow small and resource challenged municipalities to have zoning, and also promotes consistency. It would quell concerns regarding mandatory planning and “unfunded mandates.”

2. The Curative Amendment procedure should be eliminated. (both Landowner and Municipal)

Rationale:

- There is an established procedure in the MPC for deciding substantive challenges to zoning ordinance validity. The procedure is conducted through the ZHB. This should be sufficient.
- Landowners have the right to request an amendment of the zoning of their property. The landowner curative amendment is another amendment procedure, presumably based on a need to overcome a validity issue. Experience shows that the relationship to invalidity is often a tenuous one.
- Procedurally, a governing body should not be called upon to determine whether its own zoning

ordinance is valid. This flies in the face of the important principle of the separation of powers. With curative amendments governing body must defend its ordinance, decide on its validity, and grant or deny the corrective amendment, at the same time. This often means additional legal costs for the municipality. This is another extra cost on municipalities imposed by this cumbersome procedure.

- From experience we know that landowners use the curative amendment procedure to intimidate or pressure municipal officials. The fear of extended, financially draining curative amendment hearings is real, and works against municipalities. By eliminating the landowner curative amendment this can be reduced. (Landowners can still use these tactics in a regular zoning amendment request.)
- The curative amendment results in piecemeal zoning that is not necessarily in accordance with the comprehensive plan. If, after a fair hearing, an ordinance provision is found to be invalid, both the comprehensive plan and the implementing zoning should be revised based on rational planning.
- This Subcommittee has suggested a form of “contract zoning” involving a zoning map change for more intense development. This might be a practical alternative to the landowner curative amendment, especially when the validity issue is tenuous or tangential to the owner’s desired use of the property.
- The curative amendment procedure should not be available as a way to circumvent the zoning ordinance.
- Likewise, the municipal curative amendment procedure should be eliminated. It is nothing more than a form of moratorium which either should or should not be authorized by the MPC. **It is important to deal directly with the moratorium issue.**
- As currently set up, municipalities are penalized if they use the municipal curative amendment procedure by being limited to one use every 36 months. Landowners are not similarly limited in their use of the landowner curative amendment. If nothing else, fairness should dictate that the two procedures be treated in the same way. The principle should be, if it’s alright for the private sector it is alright for the public sector.
- This principle is expressed in the adopted PPA Statement of Principles, **Equal Treatment of Private and Public Actions.**

3. The “Conditional Use” should be eliminated.

Rationale:

- Some of the same problems with the curative amendment procedure are also true of the Conditional Use application procedure. The most obvious flaw is that it is a duplicative administrative procedure. This type of planned-for use is provided for in the Special Exception process that is administered by a zoning hearing board. The MPC does not indicate any particular reason for having both procedures.
- The governing body should not serve in both a legislative and administrative capacity, that is, creating the zoning designation for properties in districts, and then deciding whether an applicant property should receive a use permit. Again, there is a separation of powers principle at issue.
- The conditional use procedure politicizes the application process. The governing body may be affected by the political, rather than the land use, implications of its decision. Applicants are aware of such pressure and use it to their advantage.

- Some argue that the conditional use procedure allows the governing body to deal with particularly sensitive land uses. That is precisely why they should not be involved in the decision on such uses. The governing body, in its legislative capacity, has the responsibility to establish “express standards and criteria” and the zone location of such uses. The planning considerations must be established in advance, not made up in the hearing process. The danger is that a system of “special permitting” is promoted by the conditional use process.
- Whether or not the standards and criteria have been met should be the responsibility of an independent, impartial, hearing board. If the result of a decision on a special use application is not to its liking the governing body has options for rectifying the result by(1) appealing the decision, or (2) ordinance amendment.
- To distinguish, as some do, that the governing body should deal with the important and sensitive special land uses, and the zoning hearing board should deal with the others, trivializes the significance of the zoning hearing board. Why would public spirited individuals want to serve on board that is responsible only for insignificant applications? (On the other hand, it is true that the zhb has jurisdiction for variances, which is significant.)
- The argument is sometimes put forward that some zoning hearing boards are not trained to deal with complex land use and legal issues, so they should go to the governing body. While this may be an accurate criticism, it doesn’t speak to overcoming the underlying issue. Besides, there is no assurance that the members of the governing body are any better prepared and knowledgeable than the zoning hearing board. The answer is not to supplant the zhb with the governing body, but to make sure that members of the hearing board receive training so they can carry out their functions effectively and fairly.
- Elected officials should receive training to prepare them to do an adequate job of governing including, as it now is authorized, conditional uses. However, the forces arrayed against mandatory training for elected officials probably makes this highly unlikely. On balance, a better bet is for mandated zhb training.
- The bottom line must be **fairness**. The conditional use procedure had defects that have the potential to decrease, not increase, fairness.

4. Moratorium Opportunity to Update Comprehensive Plans and Zoning Ordinances

Rationale:

- A fair and responsible procedure should be permitted for municipalities to prepare, or substantially revise, their comprehensive plans and zoning ordinances so they can meet the standard of “in accordance with.”
- A time limit on such a procedure should be set so that property owners are not unduly restricted in the use of their property for a long period of time.

5. Pending Ordinance

Rationale:

- It would be appropriate to establish at what point an ordinance, is “pending,” during which time use applications would not be received. Like the moratorium, strict time limits must be set to protect property owners from capricious governmental action. (A new definition would also be needed.)

6. Effective Date of Ordinance

Rationale:

- While this was dealt with recently by the state legislature to specify when a zoning ordinance goes into effect, the statute did not change the MPC. Incorporation of the new standard into the MPC is needed.

7. Preemptive State Statutes- Airport Zoning Act

Rationale:

- The MPC enumerates several state statutes that preempt the MPC authority for zoning. Notably, the Airport Zoning Act is not listed. If other statutes are listed (and there may be no reason to do so other than harass planners), then this act should be incorporated into the MPC authority for zoning.

8. Eliminate Prescriptive Treatment of Certain Land Uses

Rationale:

- Currently the MPC exerts control over certain groups of land uses, e.g., forestry, mining, agricultural land. In addition to limiting municipal control of these uses, in some instances the form of the regulation is also prescribed. This is particularly true of forestry, where not only is forestry use a protected category, but the zoning must be by “permitted use” in every zoning district in every municipality.
- The principle involved here is that the way land uses are to be regulated is best determined by the regulator, namely, the municipality. The adoption process is lengthy and subject to public hearing, which protects landowners and the general welfare. The state legislature should not preclude public access and involvement in the ordinance adoption process.
- It is patently foolish to establish at the state level how a particular land use should be regulated without regard to the specific circumstances in a municipality. Special treatment for preferred land uses or situations sometimes result in zoning authorization that is unclear, vague, or unworkable. For example, the protection and promotion of “prime agricultural land.”
- In many other instances the “one size fits all” approach is repudiated by state officials (especially when they are running for office). It should be also be repudiated with regard to zoning.

9. Section 608.1- Municipal Authorities and Water Companies.

Rationale:

- The relationship between municipal authorities, etc, and municipalities in the community planning and development process is extremely important. While the inclusion of Section 608.1 in 2000 was significant, it is inadequate and misplaced.
- Basically, the information from such agencies is most beneficial in the comprehensive planning process. It is information that is useful in land use planning and for designing the implementing ordinances, such as zoning and SALD.
- There is no timeline to operationalize the requirements in the section.

- *It is totally misguided in that it puts autonomous or semi-autonomous agencies in a position superior to the land use decision-making authority-- the governing body.* The burden should be on the authorities to demonstrate the compatibility of their proposed projects with the land use planning of the municipality, not the other way around as presently exists. This is just wrong-headed planning.
- This is too important a planning idea to be treated in so cavalier a fashion as it is now found in 608.1

10. Section 619.2-Effect of Comprehensive Plans and Zoning Ordinances

Rationale:

- The only part of this section that in any way deals with zoning is (c)(2). It doesn't create new zoning authority but refers to municipalities with a Joint Municipal Zoning Ordinance as permitted by Article 8-A.
- Since 619.2 (c)(2) specifically relates to municipalities with a "joint municipal zoning ordinance," it should be relocated to Article 8-A.
- However, the "benefits" in the form of consideration by state agencies for funding, and the ability to share tax revenues and fees with the "joint municipal zone" (sic) are of no practical significance.
- Parts a) and b) of this provision are directions to DCED/CLGS and really have no place in an enabling statute.
- This is basically a useless provision which it is unnecessary to continue.

Prepared by Stanford M. Lembeck, AICP

C. Subdivision and Land Development

a) S&LD Ordinance Provisions

Draft provisions prepared by Gilbert Malone, Esq.

[Note: section numerical designations are illustrative only]

Section 451. Grant of Power. The governing body of each municipality may regulate subdivision and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance shall require that all subdivision and land development plans of land situated within the municipality shall be submitted for approval to the governing body or, in lieu thereof, to a planning agency designated in the ordinance for this purpose, in which case any planning agency action shall be considered as action of the governing body. All powers granted herein to the governing body or the planning agency shall be exercised in accordance with the provisions of the subdivision and land development ordinance.

Section 452. Jurisdiction of County Planning Agencies; Adoption by Reference of County Subdivision and Land Development Ordinances.

A. When any county has adopted a subdivision and land development ordinance in accordance with the terms of this article, a certified copy of the ordinance shall be sent to every municipality within the county. All amendments shall also be sent to the aforementioned municipalities. The powers of governing bodies of counties to enact, amend and repeal subdivision and land development ordinances shall be limited to land in those municipalities wholly or partly within the county which have no subdivision and land development ordinance in effect at the time a subdivision and land development ordinance is introduced before the governing body of the county, and until the municipal subdivision and land development ordinance is in effect and a certified copy of such ordinance is filed with the county planning agency, if one exists.

B. The enactment of a subdivision and land development ordinance by any municipality, other than a county, whose land is subject to a county subdivision and land development ordinance shall act as a repeal pro tanto of the county subdivision and land development ordinance within the municipality adopting such ordinance. However, applications for subdivision and land development located within a municipality having adopted a subdivision and land development ordinance as set forth in this article shall be forwarded upon receipt by the municipality to the county planning agency for review and report together with a fee sufficient to cover the costs of the review and report which fee shall be paid by the applicant: Provided, that such municipalities shall not approve such applications until the county report is received or until the expiration of 30 days from the date the application was forwarded to the county.

C. Further, any municipality other than a county may adopt by reference the subdivision and land development ordinance of the county, and may by separate ordinance designate the county planning agency, with the county planning agency's concurrence, as its official administrative agency for review and approval of plans.

Section 453. Contiguous Municipalities.

A. The county planning commission shall offer a mediation option to any municipality which believes that its citizens will experience harm as the result of an applicant's proposed subdivision or development of land in a contiguous municipality, if the municipalities agree. In exercising such an

option, the municipalities shall comply with the procedures set forth in Article IX. The cost of the mediation shall be shared equally by the municipalities unless otherwise agreed. The applicant shall have the right to participate in the mediation.

B. The governing body of the municipality may appear and comment before the governing body of a contiguous municipality and the various boards and commissions of the contiguous municipality considering a proposed subdivision, change of land use or land development.

Section 454. Contents of Subdivision and Land Development Ordinance. The subdivision and land development ordinance may include, but need not be limited to:

A. Provisions for the submittal and processing of plans, including the charging of review fees, and specifications for such plans, including certification as to the accuracy of plans and provisions for preliminary and final approval and for processing of final approval by stages or sections of development. Such plans and surveys shall be prepared in accordance with the act of May 23, 1945 (P.L.913, No.367), known as the "Engineer, Land Surveyor and Geologist Registration Law," except that this requirement shall not preclude the preparation of a plan in accordance with the act of January 24, 1966 (1965 P.L.1527, No.535), known as the "Landscape Architects' Registration Law," when it is appropriate to prepare the plan using professional services as set forth in the definition of the "practice of landscape architecture" under section 2 of that act. Review fees may include reasonable and necessary charges by the municipality's professional consultants for review and report thereon to the municipality. Such review fees shall be based upon a schedule established by ordinance or resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the professional to the municipalities for similar services when fees are not reimbursed or otherwise imposed on applicants. Fees charged to the municipality relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.

- (1) The governing body shall submit to the applicant an itemized bill showing work performed, identifying the person performing the services and the time and date spent for each task. Nothing in this subparagraph shall prohibit interim itemized billing or municipal escrow or other security requirement. In the event the applicant disputes the amount of any such review fees, the applicant shall, no later than 45 days after the date of transmittal of the bill to the applicant, notify the municipality and the municipality's professional consultant that such fees are disputed and shall explain the basis of their objections to the fees charges, in which case the municipality shall not delay or disapprove a subdivision or land development application due to the applicant's dispute over fees. Failure of the applicant to dispute a bill within 45 days shall be a waiver of the applicant's right to arbitration of that bill under section ____.
- (2) In the event that the municipality's professional consultant and the applicant cannot agree on the on the amount of review fees which are reasonable and necessary, then the applicant and the municipality shall follow the procedure for dispute resolution

set forth in section _____, provided that the arbitrator resolving such dispute shall be of the same profession or discipline as the professional consultant whose fees are being disputed.

- (3) Subsequent to a decision on an application, the governing body shall submit to the applicant an itemized bill for review fees, specifically designated as a final bill. The final bill shall include all review fees incurred at least through the date of the decision on the application. If for any reason additional review is required subsequent to the decision, including inspections and other work to satisfy the conditions of the approval, the review fees shall be charged to the applicant as a supplement to the final bill.

B. Provisions for the exclusion of certain land development from the definition of land development contained in section _____ only when such land development involves:

1. the conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
2. the addition of accessory buildings, including farm buildings, which cumulatively have a footprint of less than _____ on a lot or lots subordinate to an existing principal building; or
3. the addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this subclause, an amusement park is define as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by proper authorities.

C. Provisions for insuring that:

1. streets in and bordering a subdivision or land development are coordinated, and of such widths and grades and in such locations as necessary to accommodate prospective traffic, and facilitate fire protection, and that any street or driveway which will intersect with a road or street under the jurisdiction of the Department of Transportation is approved by the Department;
2. adequate easements or rights-of-way are provided for drainage and utilities;
3. reservations if any by the developer of any area designed for use as public grounds are suitable size and location for their designated uses; and
4. land which is subject to flooding, subsidence or underground fires either is made safe for the purpose for which such land is proposed to be used, or that such land is set

aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.

- D. Provisions governing the standards by which streets shall be designed, graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plans. The standards shall insure that the streets be improved to such a condition that the streets are passable for vehicles which are intended to use that street, and that of such streets are intended for adoption as public streets, they are designed and improved consistent with standards set forth in the ordinance.
- E. Provisions which apply uniformly throughout the municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and sewage, in the event the municipality has not enacted a zoning ordinance.
- F. Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with section _____, when the literal compliance with mandatory provisions is shown to the satisfaction of the governing body or planning agency, where applicable, to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.
- G. Provisions and standards for insuring that new developments incorporate adequate provisions for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources.
- H. Provisions requiring the public dedication of land suitable for the use intended; and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees in lieu thereof, the private reservation of land, or a combination, for park or recreation purposes as a condition precedent to final plan approval, provided that:
 - 1. The provisions of this paragraph shall not apply to any plan application, whether preliminary or final, pending at the time of enactment of such provisions.
 - 2. The ordinance includes definite standards for determining the proportion of a development to be dedicated and/or the amount of any fee to be paid in lieu thereof.
 - 3. The land or fees, or combination thereof, are to be used only for the purpose of providing additional park or recreational facilities. Fees may not be used for maintenance or replacement of existing facilities.
 - 4. No municipality shall have the power to require the construction of recreational facilities or the dedication of land, or fees in lieu thereof, or private reservation except as may be provided by its subdivision and land development ordinance.

Section 455. Water Supply. Every ordinance adopted pursuant to this article shall include a

provision that, if water is to be provided by means other than by private wells owned and maintained by the individual owners of lots within the subdivision or development, applicants shall present evidence to the governing body or planning agency, as the case may be, that the subdivision or development is to be supplied by a certificated public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement or a commitment or agreement to serve the area in question, whichever is appropriate, shall be acceptable evidence.

Section 456. Import of Ordinance Changes. Changes in the ordinance shall affect plans as follows:

A. Except as set forth in Section 504, from the time an application for approval of a plan, whether preliminary or final, is duly filed as provided in the subdivision and land development ordinance, and while such application is pending approval or disapproval, no change or amendment of the zoning, subdivision or other governing ordinance or plan shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed, excepting that any uniform increase in recreation fees, sewer or water connection fees, filing or review fees, traffic impact fees and other impact fees, may be applied to the proposed subdivision or land development. In addition, when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided, except that if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in governing regulations.

B. When an application for approval of a plan, whether preliminary or final, has been approved without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval, excepting that any uniform increase in recreation fees, sewer or water connection fees, filing or review fees, traffic impact fees and other impact fees, may be applied to the proposed subdivision or land development. The five-year period shall be extended for the duration of any litigation, other than litigation initiated by the applicant, including appeals, which prevent the commencement or completion of the development, and for the duration of any sewer or utility moratorium or prohibition which was imposed subsequent to the filing of an application for preliminary approval of a plan. In the event of an appeal filed by any party other than the applicant, from the approval or disapproval of a plan, the five-year period shall be extended by the total time from the date the appeal was filed until a final order in such matter has been entered and all appeals have been concluded and any period for filing appeals or requests for reconsideration have expired. Provided, however, no extension shall be based upon any water or sewer moratorium which was in effect as of the date of the filing of a preliminary application.

C. Where final approval is preceded by preliminary approval, the aforesaid five-year period shall be counted from the date of the preliminary approval. In the case of any doubt as to the terms of a

preliminary approval, the terms shall be construed in the light of the provisions of the governing ordinances or plans as they stood at the time when the application for such approval was duly filed.

D. Where the landowner has substantially completed the required improvements as depicted upon the final plan within the aforesaid five-year limit, or any extension thereof as may be granted by the governing body, no change of municipal ordinance or plan enacted subsequent to the date of filing of the preliminary plat shall modify or revoke any aspect of the approved final plan pertaining to zoning classification or density, lot, building, street or utility location.

E. In the case of a preliminary plan calling for the installation of improvements beyond the five-year period, a schedule shall be filed by the landowner with the preliminary plan delineating all proposed sections as well as deadlines within which applications for final plan approval of each section are intended to be filed. Such schedule shall be updated annually by the applicant on or before the anniversary of the preliminary plan approval, until final plan approval of the final section has been granted and any modification in the aforesaid schedule shall be subject to approval of the governing body in its discretion.

F. Each section in any residential subdivision or land development, except for the last section, shall contain a minimum of 25% of the total number of dwelling units as depicted on the preliminary plan, unless a lesser percentage is approved by the governing body in its discretion. Provided the landowner has not defaulted with regard to or violated any of the conditions of the preliminary plan approval, including compliance with landowner's aforesaid schedule of submission of final plans for the various sections, then the aforesaid protections afforded by substantially completing the improvements depicted upon the final plan within five years shall apply and for any section or sections, beyond the initial section, in which the required improvements have not been substantially completed within said five-year period the aforesaid protections shall apply for an additional term or terms of three years from the date of final plan approval for each section.

G. Failure of landowner to adhere to the aforesaid schedule of submission of final plans for the various sections shall subject any such section to any and all changes in zoning, subdivision and other governing ordinance enacted by the municipality subsequent to the date of the initial preliminary plan submission.

Section 457. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plan Approval.

A. No plan shall be finally approved unless the streets shown on such plan have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by the subdivision and land development ordinance and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers and other improvements as may be required by the subdivision and land development ordinance have been installed in accordance with such ordinance. In lieu of the completion of any improvements required as a condition for the final approval of a plat, including improvements or fees required pursuant to section _____, the subdivision and land development ordinance shall provide for the deposit with the municipality of financial security in an amount sufficient to cover the costs of such improvements or common

amenities including, but not limited to, roads, storm water detention and/or retention basins and other or related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required. The applicant shall not be required to provide financial security for the costs of any improvements for which financial security is required by and provided to the Department of Transportation in connection with the issuance of a highway occupancy permit pursuant to section 420 of the act of June 1, 1945 (P.L.1242, No. 428) known as the "State Highway Law."

B. When requested by the developer, in order to facilitate financing, the governing body or the planning agency, if designated, shall furnish the developer with a signed copy of a resolution indicating approval of the final plan contingent upon the developer obtaining a satisfactory financial security. The final plan or record plan shall not be signed nor recorded until the financial improvements agreement is executed and the required security provided. The resolution letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within and the required security provided within 90 days unless a written extension is granted by the governing body, which extension shall not be unreasonably withheld.

C. Without limitation as to other types of financial security which the municipality may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.

D. Such security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.

E. The amount of financial security to be posted for the completion of the required improvements shall be equal to 110% of the cost of completion estimated as of 90 days following the date scheduled for completion by the developer. Annually, the municipality may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the municipality may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accordance with this subsection.

F. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The municipality, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the municipality and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event

that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the municipality and the applicant or developer.

G. If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of financial security.

H. In the case where development is projected over a period of years, the governing body or the planning agency may authorize submission of final plans by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.

I. As the work of installing the required improvements proceeds, the party posting the financial security may request the governing body to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the governing body, and the governing body shall have 45 days from receipt of such request within which to allow the municipal engineer to certify, in writing, to the governing body that such portion of the work upon the improvements has been completed in accordance with the approved plan. Upon such certification the governing body shall authorize release by the lending institution of an amount as estimated by the municipal engineer fairly representing the value of the improvements completed or, if the governing body fails to act within said 45-day period, the governing body shall be deemed to have approved the release of funds as requested. The governing body may, prior to final release at the time of completion and certification by its engineer, require retention of 10% of the estimated cost of the aforesaid improvements.

J. Where the governing body accepts dedication of all or some of the required improvements following completion, the governing body may require the posting of financial security to secure structural integrity of said improvements as well as the functioning of said improvements in accordance with the design and specifications as depicted on the final plan for a term not to exceed 18 months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this section with regard to installation of such improvements, and the amount of the financial security shall not exceed 15% of the actual cost of installation of said improvements.

K. If water mains or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the municipality, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.

L. If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plan, the municipality shall not condition the issuance of

building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land depicted upon the final plan upon actual completion of the improvements proposed by the approved final plan. However, the municipality may prohibit conveyance of a lot and the issuance of occupancy permits for any building or buildings unless the streets providing access to and from existing public roads to such lot or lots have been improved to a mud-free or otherwise permanently passable condition, and all of the other improvements as proposed by the approved plan, either upon the lot or lots or beyond the lot or lots in question which are reasonably necessary for the reasonable use of or occupancy of the lot or lots, for the management of storm water flowing from such lot or lots have been completed. Any ordinance or statute inconsistent herewith is hereby expressly repealed.

Section 458. Release from Improvement Bond.

- A. When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the municipal governing body, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the municipal engineer. The municipal governing body shall, within ten days after receipt of such notice, direct and authorize the municipal engineer to inspect all of the aforesaid improvements. The municipal engineer shall, thereupon, file a report, in writing, with the municipal governing body, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within 30 days after receipt by the municipal engineer of the aforesaid authorization from the governing body; said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the municipal engineer, said report shall contain a statement of reasons for such nonapproval or rejection.
- B. The municipal governing body shall notify the developer, within 15 days of receipt of the engineer's report, in writing, by certified or registered mail, of the action of said municipal governing body with relation thereto.
- C. If the municipal governing body or the municipal engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.
- D. If any portion of the said improvements shall not be approved or shall be rejected by the municipal governing body, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.
- E. Nothing herein, however, shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise, any determination of the municipal governing body or the municipal engineer.
- F. Where herein reference is made to the municipal engineer, he shall be a duly registered professional engineer employed by the municipality or engaged as a consultant thereto.

G. The municipality may prescribe that the applicant shall reimburse the municipality for the reasonable and necessary expense incurred for the inspection of improvements. Such reimbursement shall be based upon a schedule established by ordinance or resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the municipal engineer or consultant for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the municipalities when fees are not reimbursed or otherwise imposed on applicants.

1. In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, within ten working days of the date of billing, notify the municipality that such expenses are disputed as unreasonable or unnecessary, in which case the municipality shall not delay or disapprove a subdivision or land development application or any approval or permit related to development due to the applicant's request over disputed engineer expenses.
2. If, within 20 days from the date of billing, 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, appoint another professional engineer licensed as such in the Commonwealth of Pennsylvania to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.
3. The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer in his or her sole opinion deems necessary and render a decision within 50 days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.
4. In the event that the municipality and applicant cannot agree upon the professional engineer to be appointed within 20 days of the billing date, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the municipality is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such engineer, who, in that case, shall be neither the municipal engineer nor any professional engineer who has been retained by, or performed services for, the municipality or the applicant within the preceding five years.
5. The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by \$1,000 or more, the municipality shall pay the fee of the professional engineer, but otherwise the municipality and the applicant shall each pay one-half of the fee of the appointed professional engineer.

Section 459. Remedies to Effect Completion of Improvements. In the event that any improvements which may be required have not been installed as provided in the subdivision and land development ordinance or in accord with the approved final plan the governing body of the municipality is hereby granted the power to enforce any security by appropriate legal and equitable remedies. If proceeds of such security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the governing body shall complete improvements and may institute appropriate legal or equitable action to recover moneys necessary to complete of the improvements in excess of the security. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer, or both, in excess of the costs of recovering such proceeds, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

Section 460. Modifications.

- A. The governing body or the planning agency, if authorized to approve applications within the subdivision and land development ordinance, may grant a modification of the requirements of one or more provisions if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.
- B. All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the ordinance involved and the minimum modification necessary.
- C. If approval power is reserved by the governing body, the request for modification may be referred to the planning agency for advisory comments.
- D. The governing body or the planning agency, as the case may be, shall keep a written record of all action all requests for modifications.

Section 461. Recording Plans and Deeds.

- A. Upon the approval of a final plan, the developer shall within 90 days of such final approval or 90 days after the date of delivery of an approved plan signed by the governing body, following completion of conditions imposed for such approval, whichever is later, record such plan in the Office of the Recorder of Deeds of the county in which the municipality is located. Whenever such plan approval is required by a municipality, the recorder of deeds of the county shall not accept any plan for recording, unless such plan officially notes the approval of the governing body and review by the county planning agency, if one exists.
- B. The recording of the plan shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.

Section 462. Effect of Plan Approval on Official Map. After a plan has been approved and

recorded as provided in this article, all streets and public grounds on such plan shall be, and become a part of the official map of the municipality without public hearing.

Section 463. Preventive Remedies.

A. In addition to other remedies, the municipality may institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

B. A municipality may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of any ordinance adopted pursuant to this article. This authority to deny such a permit or approval shall apply to any of the following applicants:

1. The owner of record at the time of such violation.
2. The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
3. The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
4. The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation. As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the municipality may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

Section 463.1. Jurisdiction. District justices shall have initial jurisdiction in proceedings brought under section 463.2.

Section 463.2. Enforcement Remedies.

A. Any person, partnership or corporation who or which has violated the provisions of any subdivision or land development ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment in an amount set forth in the ordinance in an amount not exceeding \$500 plus all court

costs, including reasonable attorney fees incurred by the municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

B. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

C. Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

5. New Article V: Procedures

There are common procedures in the MPC that should be standardized in a single place. That is the goal of the new Article V: Procedures.

For example, since all land use regulations must be adopted, and may be amended, it makes sense that there be a single, standard procedure for all of them. (If there is something that is particular to any of them it may be treated separately.) For all of the regulations there is an external—and occasionally an internal—review called for, and these, too, can be standardized.

Currently, each type of land use regulation contains provisions for enactment, amendment, and review. The Task Force/Subcommittee found examples where similar types of procedural provisions were inconsistent. Having them in one place would overcome the inconsistency problem and make it much easier to use the MPC for those who need to know the procedural requirements for their actions.

Additionally, the whole issue of adoption and reviews of plans and ordinances needs to be clarified and explicated. For example, what is the purpose of external reviews? How much time is needed—and required—for reviews? When reviews are received what happens to them, what “status” do they have with respect to the final resolution of the action to be taken by the initiating municipality or county? How many times does the same proposal have to be reviewed if there are suggested changes? These are difficult questions but none of these and similar procedural issues are currently addressed, and they should be. Right now, the MPC is both silent and ambiguous with respect to them.

The Subcommittee started to address these issues but did not complete the task. There are some preliminary items regarding a new Procedural Article, but much more remains to be done. A basic conceptual piece that outlines the procedural issues, and some provisions in legislative language format, is included.

a) Concept Paper: Considerations for a New Procedural Article

It is desirable for all common procedures to be contained in a single article of the new MPC? The advantages of this would be (1) uniformity of procedures; (2) consolidation in a single place within the Code; (3) elimination of redundancy; (4) reduction in size of MPC.

PROCEDURAL ARTICLE

General Considerations

Who makes the decision?

Who comments before decisions are made?

How much time is required for notice and review?

What are the Principles that would guide a single, procedural article to ensure uniformity and due process?

- *Notice: how (forms); when, and how much time*
- *Review period*
- *Who receives notification; how identified*
- *How much time for review*
- *Who is responsible for notice, distribution, and receipt of reviews*
- *When does the clock start*
- *Citizen participation: where in the process; what contribution*
- *Decision-making: who, timing of decision*
- *Notice of decision*
- *Appeals from decision*
- *Sunshine Act*

Principles

Uniformity and consistency of provisions

Fairness and due process

to ensure that all who should be heard will be heard

and all who want to be heard has a forum to express their views

in this way good planning will be served

Procedures to be covered

development proposals

amendments, ordinance adoption

administrative actions: special exceptions, conditional use

judicial: variance

adoption of plans and agreements

others

Based on a statement prepared by Charles Courtney, Esq., September 2006

b) Procedural Provisions

Draft provisions prepared by Gilbert Malone, Esq.

(Note: section numerical designations are illustrative only)

SECTION 501 - PURPOSE

The purpose of this Article is to establish the procedures

- a. for the preparation, review and adoption of a comprehensive plan and amendments thereto;
- b. for the preparation, review, and adoption of land use ordinances and amendments thereto;
- c. for the review of subdivision and land development applications
- d. for the review by the Zoning Hearing Board of
 - (i) variance applications
 - (ii) special exception applications
 - (iii) challenges to the validity of any land use ordinance
 - (iv) challenges to the interpretation of any zoning ordinance provision by the Zoning Officer.

SECTION 502 - REVIEW AND ADOPTION OF A COMPREHENSIVE PLAN AND AMENDMENTS THERETO

A. A proposed comprehensive plan may be accepted by the governing body at any time as a "draft plan". Formal acceptance as a "draft plan" shall be accomplished pursuant to motion at a regular meeting of the governing body and noted in the minutes of the governing body.

B. Following acceptance as a "draft plan" the governing body shall:

1. Forward a copy of same to the local planning commission for review, comment and recommendation unless the "draft plan" is identical to a proposed plan submitted by the planning commission to the governing body, for review, comment and recommendation.
2. Forward a copy to the county planning commission for review, comment and recommendation.
3. Inform the school district wherein the municipality is located and each adjacent municipality that a "draft plan" has been accepted by the governing body and will, upon request, be forwarded for review, comment and recommendation.
4. Make copies of the "draft plan" available to the public at the municipal office for review without charge and for purchase at a charge not greater than the cost of making such copies.

C. The county planning commission shall complete and forward to the local planning commission and governing body its comments and recommendations within 45 days following the date the "draft plan" was mailed to it. If the county planning commission finds that the "draft plan"

is not consistent with the county comprehensive plan, it shall so state in its report and state the grounds supporting its claim of inconsistency.

D. The school district and each adjacent municipality may submit comments and recommendations to the local planning commission and governing body within 45 days following the date the notice letter referred to in paragraph B(3) was mailed to it.

E. The local planning commission shall review the comments and recommendations from the county planning commission and make revisions to the "draft plan" which it deems appropriate and forward the same to the governing body within 30 days following receipt of the comments from the County Planning Commission. The governing body may make further revisions to the "draft plan" and by motion at a meeting of the governing body accept such revised "draft plan" as the substituted "draft plan". Following acceptance of such substituted "draft plan", the governing body shall:

1. Make copies of same available to the public at the municipal office for review without charge and for purchase at a charge not greater than the cost of making such copies.
2. Forward copies to the county planning commission and local planning commission for review, comment and recommendation if the revised "draft plan" contains matters not contained within the "draft plan" reviewed by the county planning commission or contains substantial revisions unless those revisions are to incorporate recommendations made by the county planning commission in its review of the "draft plan".
3. The county planning commission and local planning commission shall review the revised "draft plan" in the manner set forth for the review of the "original draft plan".

F. The governing body may at any time following acceptance of a "draft plan" or a revised "draft plan" and its review by the county planning commission and local planning commission propose such plan for enactment provided such "draft plan" or revised "draft plan" has not following acceptance as same been substantially revised except to incorporate comments or recommendations made by the county planning commission and reviewed by the local planning commission and such plan or amendment is in conformance with any county comprehensive plan.

G. Prior to enactment the governing body shall hold a public hearing.

1. If a new plan or a textual amendment to an existing plan, the advertisement shall take the form of a legal notice and need only state that the hearing is for the consideration of a comprehensive plan or amendments thereto, the date, time and place of the public hearing and the place where copies of the proposed plan may be reviewed by members of the public. The advertisement shall be one time and shall be in a newspaper with general circulation in the municipality, either paid or unpaid. No other form of advertisement shall be required prior to enactment. The advertisement shall be published at least seven days but not more than thirty days prior to the public hearing.

H. Following adoption of the comprehensive plan or amendment thereto by resolution, the governing body shall:

1. Make copies available at the township building for interested citizens to examine without charge or obtain for a charge not substantially greater than the cost thereof. If the plan constitutes an amendment to an existing plan, such copies shall be placed with each copy of the plan which was amended so that it will be included within any copy of such plan unless and until the same is incorporated into a reprinted version of such plan.
2. Send a copy thereof to the county planning agency which shall retain such copy until such time as the municipality forwards to the county planning commission a reprinted version of such plan which incorporates the amendment in question, following which time the amendment may be discarded by the county planning commission.

SECTION 503 - PREPARATION, REVIEW, AND ADOPTION OF LAND USE ORDINANCES AND AMENDMENTS THERETO

A Except in the case of an amendment which may be prepared by either the planning commission or the governing body, the planning commission shall with such professional assistance as it deems necessary propose a "draft ordinance". The "draft ordinance" and all revisions thereto shall be consistent with any municipal or county comprehensive plan. Upon completion of a "draft ordinance" the planning commission shall forward the same to the governing body.

B. The governing body may reject the document forwarded to it as a "draft ordinance" or it may accept the same in whole or in part or it may cause the same to be revised prior to accepting the same or, in the case of an amendment prepared by the governing body, the governing body may accept such amendment as a "draft ordinance". Formal acceptance as a "draft ordinance" shall be accomplished pursuant to motion at a regular meeting of the governing body and noted in the minutes of the governing body.

C. Following acceptance as a "draft ordinance" the governing body shall:

1. Forward a copy of same to the local planning commission for review, comment and recommendation unless the "draft ordinance" is identical to the proposed ordinance submitted by the planning commission to the governing body, for review, comment and recommendation.
2. Forward a copy to the county planning commission for review, comment and recommendation.
3. Inform the school district wherein the municipality is located and each adjacent municipality that a "draft ordinance" has been accepted by the governing body and will, upon request be forwarded for review, comment and recommendation.
4. Make copies of the "draft ordinance" available to the public at the municipal office for review without charge and for purchase at a charge not greater than the cost of making such copies.

D. The county planning commission shall complete and forward to the local planning commission and governing body its comments and recommendations within 45 days following the date the "draft ordinance" was mailed to it. If the county planning commission finds that the "draft ordinance" is not consistent with the county comprehensive plan or the local comprehensive plan,

it shall so state in its report and state the grounds supporting its claim of inconsistency.

E. The school district and each adjacent municipality may submit comments and recommendations to the local planning commission and governing body within 45 days following the date the notice referred to in paragraph C(3) was mailed to it.

F. The local planning commission shall review the comments and recommendations from the county planning commission and make revisions to the "draft ordinance" which it deems appropriate and forward the same to the governing body within 30 days following receipt of the comments from the County Planning Commission. The governing body may make further revisions to the "draft ordinance" and by motion at a meeting of the governing body accept such revised "draft ordinance" as the substituted "draft ordinance". Following acceptance of such substituted "draft ordinance", the governing body shall:

1. Make copies of same available to the public at the municipal office for review without charge and for purchase at a charge not greater than the cost of making such copies.
2. Forward copies to the county planning commission and local planning commission for review, comment and recommendation if the revised "draft ordinance" contains matters not contained within the "draft ordinance" reviewed by the county planning commission or contains substantial revisions unless those revisions are to incorporate recommendations made by the county planning commission in its review of the "draft ordinance".
3. The county planning commission and local planning commission shall review the revised "draft ordinance" in the manner set forth for the review of the "original draft ordinance".

G. The governing body may at any time following acceptance of a "draft ordinance" or a revised "draft ordinance" and its review by the county planning commission and local planning commission propose such ordinance for enactment provided such "draft ordinance" or revised "draft ordinance" has not following acceptance as same been substantially revised except to incorporate comments or recommendations made by the county planning commission and reviewed by the local planning commission and such ordinance or amendment is in conformance with any county or local comprehensive plan.

H. Prior to enactment the governing body shall hold a public hearing.

1. If a new ordinance or a textual amendment to an existing ordinance, the advertisement shall take the form of a legal notice and need only state the name of the land use ordinance or amendment thereto proposed for enactment (zoning ordinance, zoning ordinance amendment, etc.), the date, time and place of the public hearing and the place where copies of the proposed ordinance may be reviewed by members of the public. The advertisement shall be one time and shall be in a newspaper with general circulation in the municipality, either paid or unpaid. No other form of advertisement shall be required prior to enactment. The advertisement shall be published at least seven days but not more than thirty days prior to the public hearing.
2. In addition, notice of the public hearing shall be mailed by the municipality

at least 13 days prior to the date of the hearing by first class mail to the owners of all parcels of real estate whose zoning classification is proposed to be changed by the proposed amendment as well as to the owners of parcels immediately adjacent to such real estate with such mail to be sent first class to such owners at the addresses to which real estate tax bills are sent as evidenced by tax records within the possession of the municipality.

- I. Following enactment of the land use ordinance the governing body shall:
1. Place the ordinance or amendment into the township ordinance book or incorporate the same by reference.
 2. Make copies available at the township building for interested citizens to examine without charge or obtain for a charge not substantially greater than the cost thereof. If the ordinance constitutes an amendment to an ordinance, such copies shall be placed with each copy of the ordinance which was amended so that it will be included within any copy of such ordinance unless and until the same is incorporated into a reprinted version of such ordinance.
 3. Send a copy thereof to the county planning agency which shall retain such copy until such time as the municipality forwards to the county planning commission a reprinted version of such ordinance which incorporates the amendment in question, following which time the amendment may be discarded by the county planning commission.
 4. Send a copy thereof to the county law library or other county office designated by the county commissioners which shall retain such copy until such time as the municipality forwards to the county law library a reprinted version of such ordinance which incorporates the amendment in question, following which time the amendment may be discarded by the county law library.

SECTION 504 - EFFECT OF ACCEPTANCE OF A "DRAFT ORDINANCE"

Following formal acceptance of a proposed zoning ordinance or subdivision and land development ordinance or amendment thereto as a "draft ordinance", the governing body may reject any subdivision or land development plan filed after the date of acceptance of the "draft ordinance" which is not in conformance with such "draft ordinance", deny any permit applied for after the date of acceptance of such "draft ordinance" for a use not in conformance with such "draft ordinance" and the zoning hearing board may reject any special exception application filed after the date of acceptance of such "draft ordinance" which is not in conformance with such "draft ordinance" provided, however, such "draft ordinance" or revision thereto is enacted not later than one year following date of acceptance as a "draft ordinance".

SECTION 505 - STANDING TO CHALLENGE ENACTMENT PROCEDURE

No person shall have standing to challenge the procedure pursuant to which any land use ordinance or amendment thereto or comprehensive plan or amendment thereto was enacted more than two years following the municipality's compliance with the requirements of Section 503(I) hereof, except that any resident of the municipality shall have standing to, at any time, challenge the land use ordinance or amendment thereto on the grounds that it is not in conformity with any county

or local comprehensive plan and the county planning commission shall have standing to challenge a land use ordinance or amendment thereto on the grounds that it is not in conformity with the county comprehensive plan.

SECTION 506 - REVIEW OF APPLICATIONS BY ZONING HEARING BOARD

A. The municipality shall accept applications to the Zoning Hearing Board for

1. A variance from any provision of the zoning ordinance;
2. A special exception in accordance with the provisions of the zoning ordinance;
3. A challenge to the validity of any provision of the zoning ordinance;
4. A challenge to the interpretation of any provision of the zoning ordinance by the zoning officer.

B. Such application need not be accepted unless such application

1. Is accompanied by the initial filing fee as established by resolution of the governing body; and
2. Is signed by the owner or owners of the property on account of which a special exception or variance is sought or which is asserted to be adversely affected by the challenged ordinance provision or by the challenged ruling of the zoning officer and sets forth the address of such property (If the property does not have an address, sets forth the location in relation to the nearest public road) and the map and parcel number of the property.

C. Initial filing fees may be established by the governing body sufficient to defray the average cost of a zoning hearing board hearing which lasts no more than three (3) hours. The fee resolution may require additional fees to be paid if the hearing extends for more than three (3) hours in an amount sufficient to defray the cost of such extended hearing. An application may be dismissed if the applicant fails to pay such additional fees within ten (10) days of being billed for the same. In the absence of payment of all required fees, any ruling by the zoning hearing board in favor of the applicant shall be void and without effect.

D. The first hearing shall be scheduled within sixty (60) days of the filing of the application unless the applicant has agreed in writing to an extension of time. At least one week prior to the commencement of the first hearing, public notice shall be given by advertisement one time in a newspaper with general circulation in the municipality, either paid or unpaid. The advertisement shall set forth the name of the applicant, the address and map and parcel number of the property on account of which a variance or special exception is sought on account of which a challenge is being made to the validity of the ordinance or to the interpretation of a provision of the ordinance, and a description of the relief sought by the applicant. In addition, mailed notice shall be given to the applicant, the zoning officer, and the owners of all property immediately adjacent to the property which is the subject of the application. Further, notice of the public hearing describing the nature of the application and the relief sought, and the date, time and place of the public hearing shall be conspicuously posted on the tract which is the subject matter of the application at least one week prior to the hearing.

E. If the hearing lasts for more than one day, each subsequent hearing shall be held within thirty (30) days of the prior hearing unless otherwise agreed to by the applicant. Any party aggrieved by the schedule or progress of the hearings may apply to the Court of Common Pleas for

judicial relief. If the date and time of a subsequent hearing is scheduled by the Board at a public hearing, no further notice or advertisement of the hearing is required.

F. The hearing shall be conducted by the Zoning Hearing Board or the Board may appoint any member or independent attorney as a hearing officer. The Board may appoint an attorney to assist it in the conduct of the hearing, in its deliberations, and in developing its decision including findings of fact and conclusions of law. Such attorney may not hold any other position with the municipality.

G. The parties to a hearing shall be the municipality, any person affected by the application who has made timely appearance or record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose. The Chairman or Acting Chairman of the Board or the Hearing Officer presiding shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers including witnesses and documents requested by the parties. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply but irrelevant, immaterial, or unduly repetitious evidence may be excluded. Where there are multiple parties, either in support of the application or in opposition to the application, the Board shall have the right to limit direct examination of witnesses called by the applicant to the applicant and to limit cross-examination of such witnesses to a single opponent of the application except in the event different parties oppose the application for different reasons or are differently affected by the application and to limit direct examination of witnesses called by parties opposing the application to the party calling such witness and to limit cross-examination of such witness to the applicant.

H. The Board or Hearing Officer, as the case may be, shall keep a stenographic record of the proceedings.

I. The Board or Hearing Officer shall not communicate directly or indirectly with any party or his representatives in connection with any issue involved except upon notice and an opportunity for all parties to participate, shall not take notes of any communication, reports, staff memoranda, or other materials except advise from their solicitor, unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surroundings after the commencement of the hearing with any party or his representatives unless all parties are given an opportunity to be present. This shall not preclude any member of the Board or Hearing Officer from inspecting the site unaccompanied by the applicant or any other party.

J. The Board or Hearing Officer, as the case may be, may at the conclusion of testimony request that parties submit to the Board of Hearing Office request for findings of fact, conclusions of law, and a memorandum in support of their position, and direct the date when such shall be submitted, which shall be not longer than sixty (60) days following the completion of testimony.

K. The Board or Hearing Officer, as the case may be, shall render its written decision which shall include findings of fact and conclusions of law within sixty (60) days following the conclusion of testimony if proposed findings of fact and conclusions of laws and memorandum are not requested from the parties. In the event such proposed findings of fact, conclusions of law and memorandum are requested of the parties, the decision by the Board shall be rendered within sixty (60) days following the final date established for the submission to the Board of such proposed findings of fact, conclusions of law and memorandum.

L. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions of law together with the reasons therefor. Conclusions based on any provision of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of facts found.

M. If the Zoning Hearing Board fails to commence or hold hearings in accordance with the requirements hereinabove set forth, or render a decision in the manner hereinabove required, the applicant or any other party may file an appeal to the Court of Common Pleas which shall itself hold or complete hearings in connection with the application, appoint a hearing officer to hold or complete hearings in accordance with the application, and render a decision in connection therewith, or in the event hearings have been completed but a decision not rendered by the Board, review the completed record and enter a decision.

N. All appeals from the decision of the Zoning Hearing Board shall be filed as a land use appeal with the Court of Common Pleas in accordance with the provisions of Section __ et seq.

Appendix

In 2009 the MPC Subcommittee drafted a Policy Statement on Land Use and the Municipalities Planning Code. The group felt the PA Chapter-APA should have a position statement to present to its members and the larger planning, municipal, and legislative communities in the Commonwealth. It would establish where the PA Chapter stood on these issues.

A draft policy statement was prepared by Subcommittee member Patrick Fero, and after internal review and revisions it was forwarded to Richard Bickel, Chairman of the Chapter Legislative Committee, for further review. It was suggested by the Subcommittee that if the Legislative Committee supported the Policy Statement it should then forward it to the Chapter Board of Directors for adoption.

The Legislative Committee made modest changes and did forward it for action. The Chapter Board approved it and this policy statement is an official statement of the Chapter with respect to Land Use and the Municipalities Planning Code.

Appendix I

Pennsylvania Chapter of the American Planning Association

A Policy Statement on Land Use and the Municipalities Planning Code (MPC)

POLICY ISSUE

Pennsylvania's municipalities need a new MPC, one that is an enabling statute, a streamlined, user-friendly document that gives broad authority to municipalities and counties so they can be innovative and bold in their planning.

POLICY VISION

Planning by Pennsylvania's municipalities that is technically sound, sensitive to the community and environment, forward looking, focused on clearly defined issues, realistic in its reach relative to resources, concerned with its implementation, adaptable to changing circumstances, and respected by officials and citizens requires a new Municipalities Planning Code that:

- 1. Provides the legal justification for planning and, especially, land use regulation.*
- 2. Indicates that the legislation is enabling; it may be used by municipalities if they choose to.*
- 3. Notes that planning and land use regulations are permissive, not mandatory.*
- 4. Identifies the scope of planning and its role in government.*
- 5. Creates a conceptual framework for the conduct of planning.*
- 6. Places primary responsibility for planning in the elected governing body.*
- 7. Supplies a concise statement that grants planning authority, but omits the methods and limitations imposed in carrying out the authority granted in the act.*
- 8. Integrates into the planning process aspects of governance emphasizing the relationship of the many pieces of a community that contribute to the highest possible quality of life.*

SUPPORTIVE ACTIONS

1. Support the Municipalities Planning Code Subcommittee as it develops a new MPC in cooperation with other interested entities.
2. Partner with the State Planning Board in creating a constituency for a new MPC.
3. Regularly inform members and constituents of progress on the draft of the new MPC and seek feedback during the process.
4. As the draft takes meaningful shape, create a forum by which to work with the General Assembly and the Governor to form the legislative framework for successful implementation of the new MPC.
5. Ensure that adequate municipal and county funding for improved planning practices is specified.