

**FINAL REPORT OF THE  
PPA MPC TASK FORCE**

*to the*  
**PPA Legislative Committee**

**October 2002**  
*(revised June 2003)*

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# PART I

## INTRODUCTION TO THE FINAL REPORT

The MPC Task Force was established by the Board of Directors of PPA in October, 2001, as a subcommittee of the Legislative Committee. The Task Force was given a one-year charge, from October 2001 to September 2002, to look at the MPC with fresh, outside eyes and offer its thoughts as to the current adequacy of the MPC to deal with community planning in the Commonwealth. With the acceptance of this Final Report, the Task Force officially ends.

The charge to the MPC Task Force was to:

- 1) Review the MPC and develop pertinent amendments for consideration by the PPA Legislative Committee and the PPA Board; and
- 2) Review MPC legislative proposals and advise the PPA Legislative Committee on pertinent policy positions on such bills.

The call to serve on the Task Force went out to everyone in PPA. Twelve members agreed to serve, and the work began during the 2001 Annual Conference. Throughout 2002 the group has held work sessions and discussions on various aspects of the MPC. It must be noted that the Task Force is self-selected. Ten of the twelve members are professional planners; one is a land use attorney; one was previously in state government working on local government issues, including the MPC. All agree that the MPC has serious flaws that must be addressed.

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At its first, full meeting in December 2001, the Task Force reviewed its opportunities given the time frame established by PPA. The group concluded that the task of revising the MPC is a three-stage process.

**1. Current Provisions.** The MPC is being revised on a piece-by-piece basis. Too frequently, the MPC is being amended in ways that are detrimental to the goals and objectives of “sound planning” as espoused by PPA’s Planning Principles which are included in this Report. The impetus for these revisions, for the most part, are not coming from the field of planning.

In some cases, while a proposed MPC amendment’s original purpose may have been meritorious, its results may not be. In other cases, an amendment’s purpose may not have been meritorious and, instead, may have been externally driven to satisfy the goals of narrow special interests. Sound planning needs to balance the interests of all: governments; the private sector; and the public. All of these interests must be part of the legislative process when future amendments to the MPC are considered.

Everyone with an interest in the outcome of an MPC amendment should be knowledgeable about the legislative process. Additionally, they should be given ample opportunity and time to comment on, and discuss, all amendments being considered. The wide consequences amendments may have must be anticipated and evaluated. PPA should be leading the discussion of amendments to the MPC.

Moreover, PPA should be attempting to achieve its legislative agenda, including amendments and a total re-write of the MPC, in an orderly priority-driven manner based on the legislative priorities established by PPA’s Board of Directors, Legislative Committee, and general membership. Nevertheless, in the short run, there is a need to present ‘planner-driven’ revisions to the Planning Code. Criteria for such revisions are found in the introduction to Part IV of this Report.

**2. Major New Elements.** This takes the process of revising the current MPC a step further by incorporating wholly new components into the MPC. These would provide new authority

or procedures not currently found in the Code.

**3. Total Revision.** This is the comprehensive reworking of the MPC, reestablishing its function as enabling legislation, and applying planning principles to the substantive provisions of the statute. Accomplishing this involves a lengthy, intense process that involves not only PPA but others as well, including legislators, who have a stake in sound planning.

Since the Task Force began its work, two amendments to the MPC were enacted, Acts 2 and 43 of 2002. This is a continuation of “business as usual” with respect to how the MPC has recently been amended. To the extent possible, the Task Force made comments to the Legislative Committee as charged. Unfortunately, PPA is placed in a reactive position when legislative proposals are brought forward without benefit of professional planning expertise in the drafting of them. Ultimately, piecemeal changing of the MPC is destructive.

The work of the Task Force in 2002 was principally directed to suggesting revisions to the existing Code, that is, improving the MPC in its current form. In addition, the group proposes a wholly new regulatory technique, a “Unified Development Ordinance,” providing an optional form of land development regulation combining aspects of zoning and subdivision control that can be used by small and limited-resource communities. Ultimately, complete revamping of the MPC is needed, but that requires much more time than was available to the Task Force. This will be addressed in the Task Force’s recommendations to PPA.

This Final Report does not purport to represent all planners and all points of view. Each Task Force member has special expertise and particular concerns with one or more of the Code’s articles. Because of time constraints and consideration of the size of the task, not every part of the MPC was examined in detail. In that respect the work of the Task Force, and this Final Report, is not comprehensive. It is a start, a partial review with recommendations of where, and how, some improvements can be made. The Task Force’s initial investigations may lead the way to a comprehensive review and revision of the Municipalities Planning Code by PPA in the future.

The Final Report contains the following sections.

- I. The PA Planning Association and the Municipalities Planning Code
  - II. Planning Principles of the Pennsylvania Planning Association
  - III. Recommendations for PPA
  - IV. Proposed Unified Development Code
  - V. Review of Selected Sections of the MPC, with Recommendations
- Appendix 1: Detailed Statement of PPA Planning Principles and Enhancing the  
Pennsylvania Municipalities Planning Code



## **The Pennsylvania Planning Association and 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, a chapter of the American Planning Association, is the statewide organization that presents itself as the spokes-organization for planning, and for the Municipalities Planning Code. PPA and the MPC are inextricably linked.

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 Development, 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 which 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 adoption to assure the visible and viable exercise of that planning responsibility by qualified professional planners, and informed citizen members of planning commissions, assured the Gubernatorial approval of the statute.

It is now 2002, 34 years later. We have had 34 years of living 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 toward making the MPC less of an enabling statute and more of a special interest statute 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. 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.

How is the MPC being eroded? There are many examples of this. 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, 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 straightjacketing 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.

## **Who Speaks for Planning in Pennsylvania? For the MPC?**

During the time that the Pennsylvania State Planning Board was active there was a voice in state government for planning. There was an identifiable “state planner.” There were other agencies of state government that employed professional planners. Planning could command attention. Those voices have not been heard in Harrisburg for years. In the case of the State Planning Board, not for more than a decade.

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.

The MPC Task Force was established by the Board of Directors of PPA in October, 2001, as a subcommittee of the Legislative Committee, and was given a one-year charge to look at the MPC with fresh, outside eyes and offer its thoughts as to the current adequacy of the MPC to deal with planning in the Commonwealth. The deliberations of the Task Force are characterized by a vigorous expression of views, considerations and judgments about planning, its principles and practices; how the MPC provides—or fails to provide for them; and the relative possibility of attaining changes that integrate them into the Planning Code.

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 to not 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. (Concurrently, the MPC Task Force has become a Subcommittee of the PPA Legislative Committee.)

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.

## PART II

### STATEMENT OF PPA 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 and believe in. These Principles are presented in a clear, concise, and unequivocal way so that they cannot be misunderstood or misrepresented.

A Statement of Planning Principles is a way of *branding* the Association. Those with whom PPA serves, collaborates, supports, or opposes, will know where the Association stands, and what can be expected of the organization with respect to the important issues concerning community planning in the Commonwealth.

The Statement of Planning Principles should be used by PPA and its committees. When actions are to be taken, the Principles should be referred to. When amendments to the MPC are proposed, and PPA responds to them, they should be measured against its Statement of Principles. PPA must be the leader in espousing sound planning based upon its goals and beliefs.

The Task Force believes the Association's membership should have an opportunity to express its feelings regarding the Principles presented by PPA. The following Statements of Principles are intended to show where PPA stands on the vital issues of community planning in the Commonwealth. It is presented in summary and detailed form.

#### **A. Summary Statement of Planning Principles**

##### **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 these 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 are 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.

## PART III

### RECOMMENDATIONS

*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: State Planning Board and State Planning Office**

The Task Force recommends the re-creation of the State Planning Board as a highly visible means for recognizing 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.

**Recommendation #2: PPA should establish a continuous process for revising the MPC.**

The Task Force recommends a regular, continuing process for revising the MPC. This 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 only partially, or not addressed in this review, including the 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

Agree

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

1. What role should Comprehensive Plans and land use regulations play in the

future in assuring municipal, regional, and county-wide growth management strategies meet their objectives?

2. Given the diversity of Pennsylvania's municipalities, with respect to their problems, size, and geographic location, e.g., urban, suburban, suburbanizing, and rural, how can the MPC better meet their needs in the future?
3. How can the MPC be rewritten and better organized, in order to make using it clearer for planners and the general public?
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) insurance against the abuse of same?
5. How can the MPC be improved to address the differing needs and functional responsibilities of municipalities, multi-municipal groupings, regions, counties, and multi-county regions, in the preparation of comprehensive plans?

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, topic, 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.

### **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. They must be re-directed from continuing to make the MPC a prescriptive hammer that constrains innovative local planning. 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 their staff to PPA. Two related Task Force recommendations for accomplishing this are:

- A "Legislators' Planning Caucus." This would provide a forum for caucus members to learn about various specific planning issues important to the Commonwealth and its municipalities. Seminars conducted by professional and citizen planners, representing the various geographic areas of the Commonwealth, could be presented for caucus members on a periodic basis.

Professional Planner Interns, who may be professionals on loan, or on special

assignment, or students in planning curricula, to work with Legislators and staff, in order to provide a planning perspective on the many issues faced by the General Assembly.

The Task Force further recommends researching the experiences of other State APA chapters to learn how they educate and inform their state legislators.

**Recommendation #4: 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 for the following groups in order to address their specific and unique 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, commitment, and efforts of PPA.

**Recommendation #5: Training and Credentialing of Planners provided in the MPC**

The subject of officially sanctioned training and credentialing of planners has been a subject of debate since the MPC was originally adopted in 1968. Currently there is interest in the development of certification or credentialing of planners.

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.

## **PART IV**

### **UNIFIED DEVELOPMENT ORDINANCE**

*Part IV proposes a new article for the Municipalities Planning Code. It is intended to offer all communities, large or small, including limited resource communities, the opportunity to streamline their land use regulations and put them into one user friendly document. Cities such as Wilmington, Delaware, and hundreds of rural communities across the nation already use this approach to land use regulation. It is also a practical way of introducing small municipalities to planning in a manner they can administratively and politically support.*

*The proposed new article melds aspects of Subdivision, Land Development, Zoning and Planned Residential Development regulation. It simplifies procedures and requirements while giving more authority and responsibility to municipal officials. It also provides them greater flexibility to plan their own futures.*

*Most importantly, unified development regulation, under the proposed new article, must be done in conjunction with a Comprehensive Plan. This is a step toward ensuring better land use regulation within small communities that often have only subdivision and land development regulations, or zoning ordinances, loosely based on a plan. Giving primacy to the Comprehensive Plan, one of the proposed PPA Core Principles, is not unusual among the states. The proposed authority and language of this article is based, in significant part, on the American Law Institute's Model Land Development Code.*

*Many states allow for unified land development ordinances with far less specific enabling language than that proposed in this section. Colorado, for example, gives municipalities broad authority to plan and regulate land uses (1) taking place in hazardous areas, (2) involving resources of importance, (3) requiring roads, (4) producing changes in density or (5) causing impacts on the community and adjacent areas. There are no prescriptive requirements for local governments enacting these regulations and many have opted to go with a unified land development approach. Other states, such as Delaware, Kansas, and North Carolina, also allow for unified land development with little or no state enabling legislation. New York State, under a Municipal Home Rule Law applicable to all municipalities, also allows local governments to shape land regulations to meet their needs. Communities in New York frequently enact and employ planned residential development regulations despite the fact there is no specific enabling legislation allowing them to do so. Meanwhile, many Pennsylvania municipalities are repealing their PRD provisions because our MPC is too restrictive and the resulting regulations tend to be too complex to use.*

*The proposed new article strikes a balance and gives municipalities guidance in crafting unified land development regulations while avoiding being too restrictive. It ensures such regulations will be consistent with other aspects of the Municipalities Planning Code, without taking on its bulky, overly prescriptive, and academic characteristics.*

## **Draft Unified Development Ordinance**

### **Section 701-B. Purposes and Objectives**

A. This article grants optional powers to municipalities to create unified development ordinances encompassing aspects of zoning, subdivision, land development, planned residential development and other land use regulations provided for hereunder and pursuant to the authority of other laws of the Commonwealth granting powers to municipalities.

B. The objectives of unified development ordinance authority are:

- (1) Simplifying land use regulation for municipalities of small size or with limited development activity where multiple ordinances can become difficult to administer.
- (2) Eliminating procedural or other conflicts between land use ordinances.
- (3) Ensuring that all land use regulations work in concert to meet municipal community development objectives and serves the broader purposes of this Act.
- (4) Increasing appreciation of land use planning objectives, procedures and standards by incorporating them in a single document.
- (5) Giving municipalities increased authority to employ innovations in land use regulations to achieve the purposes of this Act.

### **Section 702-B. Grant of Power**

#### **A. Unified Development Ordinances**

(1) A municipality may adopt an ordinance (hereinafter called a "unified development ordinance") requiring that land development in its jurisdiction be undertaken in accordance with the terms of the ordinance and that it be undertaken only after grant of a land development permit as provided in subsection (b) below. Such an ordinance shall be consistent with a currently effective adopted municipal comprehensive plan.

(2) A unified development ordinance may provide for

(a) land development for which a "general land development permit" will be granted upon compliance with the "general land development provisions" of the ordinance;

(b) land development for which a "special land development permit" will be granted by a planning agency or governing body in accordance with "special land development provisions" criteria set forth in the ordinance.

(c) land development of an accessory nature that is exempt from the

requirement of obtaining a land development permit but otherwise subject to the development standards set forth in the ordinance; and

(d) land development that is exempt from the regulation of the ordinance.

(3) A unified development ordinance may divide the jurisdiction of the municipality into districts and specific provisions may be made applicable to all or part of the jurisdiction but, unless an ordinance provides otherwise, all provisions shall be applicable to the entire jurisdiction.

(4) A unified development ordinance may authorize either a planning agency or governing body to act in the other's capacity as provided hereunder.

## **B. Land Development Permits**

(1) The planning agency, the governing body or the governing body with the recommendations of the planning agency, shall act on applications for land development permits in the manner provided for subdivision and land development applications under Article V of this Act, establishing procedures for preliminary and final plat approval and completion or guarantee of improvements.

(2) Action by a planning agency or governing body granting either a general or special land development permit, or granting the permit on condition, shall be considered a "grant of a development permit." A grant of a development permit shall also be an "approval" or "plat approval" for purposes of recording land development plans or subdivision plats. A denial of a land development permit shall, likewise, be considered a disapproval of such plans or plats.

(3) A planning agency or governing body shall issue a general land development permit if it finds that the land development for which the permit is sought constitutes general development permitted by the unified land development ordinance.

(4) Prior to granting a special land development permit or granting a permit on condition, the planning agency or governing body, as the case may be, shall hold a public hearing before issuing the land development permit or approval. A land development permit shall, in all other cases, be issued without a hearing and within ninety (90) days of the filing date, unless the applicant has agreed to an extension of such deadline or the unified land development ordinance provides otherwise. The public hearing requirement shall also not apply to planning agency reviews of accessory use permits issued by the municipality's code enforcement officer.

(5) If a development approval is issued without a hearing, it may not be set aside on the grounds of failure to hold a hearing unless a request for a hearing has been filed with the planning agency or governing body, whichever is the permit granting

authority, within thirty (30) days of issuance of the development permit or approval.

(6) The issuance of a land development permit authorizes the developer to commence development but subject to any lawful conditions attached by the planning agency or governing body and the improvement installation and guarantee requirements of Article V hereunder pertaining to subdivisions and land developments.

(7) A unified development ordinance may authorize the planning agency or governing body to make waivers and modifications of its land development standards, without holding a public hearing, where literal compliance with mandatory provisions is demonstrated to the satisfaction of the planning agency or governing body, as the case may be, to be unreasonable, to cause undue hardship or when an alternative standard can be demonstrated to provide equal or better results. Such waivers or modifications shall not effect densities permitted under the ordinance or allow uses otherwise not permitted within a municipality or a district.

### **C. Permits Subject to Conditions**

(1) Subject to the requirements of this Act and express criteria contained in the unified land development ordinance, a planning agency or governing body may attach to a general development permit conditions relating to

- (a) compliance with the plans and specification submitted by the developer to the planning agency or governing body;
- (b) time within which the development must be commenced or completed; and
- (c) protective measures that a developer must undertake for the benefit of neighboring property, such as the establishment of buffer areas.

(2) Subject to the requirements of this Act and express review criteria contained in the unified development ordinance, a planning agency or governing body may attach to a special development permit conditions that may concern any matter subject to regulation under this Act, including means for

- (a) minimizing any adverse impact of the development upon other land, including the hours of use and operation and the type and intensity of activities that may be conducted;

- (b) controlling the sequence of development, including when it must be commenced and completed;
- (c) controlling the duration of use of development and the time within which any structures must be removed;
- (d) assuring that development is maintained to specific standards;
- (e) designating the exact location and nature of development; and
- (f) requiring submission of "as built" drawings, maps, plats or specifications.

(3) Except for the payment of reasonable filing and inspection fees associated with application processing, and as provided in this Act, no planning agency or governing body may condition a grant of a development permit on the payment or conveyance by the developer of any money, land or other property, unless the unified development ordinance authorizes the planning agency or governing body to condition a special development permit on:

- (a) provision by the developer of streets, other rights-of-way, utilities, parks and other open spaces necessary to serve the proposed development; or
- (b) payment of an equivalent amount of money into a fund for the provision of streets, other rights-of-way, utilities, parks or other open spaces pursuant to this Act if the planning agency or governing body finds that the provision thereof under paragraph (a) is not feasible.

#### **D. Special Land Development Permits**

(1) Municipalities shall be required to establish procedures, which may provide for preliminary and final plan submissions, and express review criteria for special land development permits. Such criteria may include but shall not be limited to impacts on natural and historic resources, traffic, noise, adjacent properties, municipal or emergency services and facilities, economic development, housing flood hazards, viewsheds, and similar factors.

(2) Special land development permit applications shall be processed in the same manner as provided for subdivision and land development applications pursuant to Article V of this Act excepting that a public hearing shall be required prior to planning agency or governing body action on the application.

(3) A public hearing shall be scheduled within sixty (60) days of the filing date for any special land development application. A decision shall be made and communicated in

writing to the applicant within forty-five (45) days following completion of the hearing on the application and within one-hundred-twenty (120) days of the filing date, unless the applicant has agreed to an extension of such deadline.

#### **E. Special Preservation Districts**

(1) A unified development ordinance may designate special preservation districts of agricultural, historical, archaeological, architectural, natural, scenic or other special significance, and may require that, in accordance with express review criteria specified in the ordinance, a special permit be obtained under this Section for all or specified development therein.

(2) The criteria contained in the ordinance shall be consistent with specific objectives set forth in the municipality's Comprehensive Plan and applicable specific plans adopted under Section 1106 of this Act.

(3) The planning agency or governing body shall grant approval under this Section only if it finds that the development complies with the criteria set forth in the unified development ordinance.

#### **F. Planned Commercial and Residential Development**

Special land development permits may be granted for planned residential development or planned commercial development, including combinations of land uses within the project area, and may be based on site planning criteria relating to the project as a whole rather than to individual parcels, if the planning agency or governing body finds that the development:

(1) will be generally consistent with a currently effective Comprehensive Plan and applicable specific plans adopted under Section 1106 of this Act; and

(2) is compatible with land development otherwise permitted under the unified development ordinance; and

(3) will not, based on express review criteria set forth in the unified development ordinance, adversely impact adjacent lands.

#### **Section 703-B. Appeals and Variances**

A. If a unified development ordinance provides for division of the municipality's jurisdiction into districts with different uses and densities for each, it shall establish a Board of Development Appeals of three to five members. The Board shall have the full range of responsibilities and authorities as provided for in MPC Article IX to hear appeals, challenges and requests for variances pertaining to district designations and density of development.

B. Such Board of Development Appeals may also be given authority to hear other matters

pertaining to unified development ordinance interpretation, appeals, variances and challenges. All validity challenges shall be taken to the Board of Development Appeals and acted upon accordingly.

**Section 704-B. Enactment and Amendments**

A. Unified development ordinances shall be enacted and amended in the manner provided for in Article VI of the MPC pertaining to zoning ordinances. Such enactment shall repeal protanto any subdivision and land development, any zoning ordinance any planned residential ordinance enacted by the county which is effective within the municipality.

## PART V

### REVIEW AND REVISIONS TO SELECTED MPC PROVISIONS

*Task Force members took on the assignment of reviewing several of the current articles of the MPC. This examination, with suggested revisions, is a forerunner of the work a subsequent committee of PPA may produce. It does not supplant the need for future activities. Nevertheless, it shows the detailed effort that will be needed to overhaul the current MPC.*

The Task Force was asked to prioritize recommended revisions as *First Priority* and *Second Priority*. Among the criteria used by the Task Force are 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?

In summary, listed are First Priority revisions determined by Task Force members. The full rationale and text of the these and second priority changes is found in this section of the Report.

#### Summary of First Priority Revisions

1. Reinstate provision permitting joint planning commissions (omitted in amended Article XI in 2000).
2. Require adoption of municipal comprehensive plans (making them equivalent with county and multimunicipal plans with respect to adoption).
3. Removal of Section 303(c) (relieving governing bodies from acting in accordance with comprehensive plans).
4. An alternative definition for “Land Development.”
5. Permit an optional “Sketch Plan” (with additional 30 days for review).
6. Clarify position/responsibilities of counties with regard to financial security.
7. An alternative procedure for transportation impact fees: a fixed ‘not to exceed’ impact fee amount, and simplified procedures and administration relative to same.
8. Zoning ordinance adoption procedure (avoiding procedural issues raised in recent PA court decisions).
9. Permit “Conditional Rezoning” (rezoning with predetermined applicant responsibilities).

10. Expand use of zoning hearing board alternate members.
11. Flexibility with respect to county zoning administration.

**General Provisions; Comprehensive Plan; Subdivision and Land Development; Municipal Capital Improvement; Zoning; Zoning Hearing Board and Other Administrative Procedures; Intergovernmental Cooperative Planning**

**A. Comprehensive Plan**

When the MPC is totally revised, the Comprehensive Plan should be addressed to accomplish the following:

1. *The Comprehensive Plan, as an ideal, should be defined. (As it currently is not in Articles I or III).*
2. *The purpose(s) of a comprehensive plan should be stated.*
3. *Comprehensive plans must be adopted. When plans are changed, the changes should be officially adopted, too.*
4. *Other policy/program plans should be adopted as part of the comprehensive plan, e.g., Sewage Facilities Plan, Storm Water Management Plan, etc.*
5. *Land use regulations must be based on an adopted comprehensive plan.*
6. *Internal consistency between the comprehensive plan and governmental action should be mandated, as well as planning commission review prior to governing body action.*
7. *Municipal, county, and multimunicipal (and/or regional) comprehensive planning should be differentiated.*
8. *Components of a comprehensive plan should take into account the size of municipalities.*
9. *Cooperative comprehensive planning should be the standard operating procedure.*

Work is also needed to develop a sensible structure for county planning within the Pennsylvania governmental setup. Counties, as a separate and distinct unit of government with specific tasks, should have a planning process that is related to county functions. The overarching planning components that serve all—or many—local jurisdictions within a county should be emphasized, such as major transportation facilities; environmental issues, including water quality and availability, storm water management, natural resource areas, and; quality of life and social services provided by counties.

**First Priority Revisions**

**Section 301** (pertaining to the Comprehensive Plan):

Add to the list of required comprehensive plan elements, the following:

**New subsection 301 (8)** (pertaining to sewage facilities planning):

A plan for sewage facilities, which may be provided by reference to the adopted Sewage Facilities Plan of the municipality or county.

*The relationship of infrastructure development and sound land use decisions is evident, and critical. Although sewerage and waste treatment facilities may be included in the required community facilities plan for a comprehensive plan, the Sewage Facilities Plan is already prepared and adopted. It most likely is more detailed than would be found in the community facilities plan and, most probably, will be referenced in it. The importance and status of the Sewage Facilities Plan can be enhanced by requiring it to be a formal part of a municipality's comprehensive plan.*

**New subsection 301 (9)** (pertaining to capital improvements programs):

A capital improvements plan for the accomplishment of the public infrastructure, facilities, structures, and major equipment identified in the comprehensive plan, and a schedule of proposed expenditures on a six year basis which shall be maintained on an annual basis.

*Capital improvements planning has a unique role in that it is both a plan element and an implementation tool. Capital improvements planning is mentioned obliquely in Section 301, (4.2), which calls for a statement of interrelationships among the plan components 'which may include implications for capital improvements programming...' Section 303 notes that '(M)unicipal zoning, subdivision and land development regulations and capital improvement programs shall generally implement the municipal and multimunicipal comprehensive plan..' Capital budgeting is critical for the timing of future development that is mentioned in Section 301(a) (1) and (2). While capital planning is referenced, there is no specific call for it to be part of a comprehensive plan. This omission should be corrected. The capital improvements program should be treated as an implementation tool. Both capital improvements plans and programs should be defined in Section 107.*

**New subsection 301 (e)** (pertaining to growth areas):

Municipal comprehensive plans may identify Designated Growth Areas, Future Growth Areas, and Rural Resource Areas as defined in Article 1, Section 107.

*The MPC should clearly indicate that these planned areas are available for inclusion in municipal comprehensive plans. Currently, the authority must be presumed to come from the definitions in Section 107.*

**Section 301.4** (pertaining to compliance by counties):

Amend as follows:

(a) ~~If a county does not have a comprehensive plan, then that county shall, within three years of the effective date of this act (1988).~~ Every county which has a county planning agency shall prepare and adopt a comprehensive plan in accordance with the requirements of section 301. Municipalities and school districts within the respective county, and contiguous counties' school districts and municipalities shall be given the opportunity for timely review, comment and participation in the development of the plan. Municipal comprehensive plans ~~which are adopted~~ shall be generally consistent with the adopted county comprehensive plan. *County comprehensive plans shall be updated at least every ten years.\**

*\* This requirement is relocated from section 302 (d) to this section since it directly pertains to the content of 301.4.*

*The two mandates, that every county with a planning agency shall have a comprehensive plan, and that county comprehensive plans must be updated at least every ten years, should be clearly stated. The original three years given to accomplish the task of preparing a county comprehensive plan is now irrelevant and should be omitted. Since, in a later proposed revision, municipal comprehensive plans would be required to be adopted, the reference to 'adopted municipal comprehensive plans' is also excised as irrelevant. As currently written, it is not a useful provision since, arguably, it exempts non-adopted municipal comprehensive plans from being generally consistent with the adopted county comprehensive plan. All municipal comprehensive plans should, in general, be consistent with the county plan.*

**Section 302** *(pertaining to adoption of municipal, multimunicipal and county comprehensive plans and plan amendments):*

(a) In municipalities, multimunicipal groupings, and counties that prepare comprehensive plans pursuant to this Article, the governing body **shall** adopt and amend the comprehensive plan as a whole or in part. Before adopting or amending a comprehensive plan, or any part thereof, the planning agency shall hold at least one public meeting before forwarding the proposed comprehensive plan or amendment thereof to the governing body.

(1) In reviewing the proposed comprehensive plan, the governing body of a municipality shall consider the comments of the county, contiguous municipalities and the school district, as well as the public meeting comments and the recommendations of the municipal or multimunicipal planning agency.

(2) In reviewing the proposed comprehensive plan, the governing body of the county shall consider the comments of municipalities and school districts within the county and, when relevant, the comments of school districts serving students within the county school districts serving students within the county, adjacent counties, as well as the public meeting comments, and the

recommendations of the county planning agency.

(3) The comments of the counties, municipalities, school districts shall be made to the governing body of the jurisdiction proposing to adopt or amend the comprehensive plan within 45 days of the receipt by the governing body or the reviewing agency. The proposed plan or amendment shall not be acted upon until such comment has been received. If, however, the counties, municipalities and school districts fail to respond within 45 days, the governing body may proceed without their comments.

*Municipal comprehensive plans should be adopted, so the current 'may' is replaced by 'shall.' It makes no sense for the MPC to require adoption of county and multimunicipal plans, but not municipal comprehensive plans. With this single change it would be possible to combine the process of adoption to cover both counties and municipalities and eliminate the necessity for subsection (a.1). The procedures can be combined into new (1) and (2) subparts, thereby streamlining the MPC and making it easier to use.*

*In revising this provision care should be taken to make it clear that there is no intention to mandate comprehensive planning. The intent is to require adoption of the comprehensive plan only after a municipality has voluntarily chosen to prepare it.*

**Section 303** (pertaining to the legal status of comprehensive plan within the jurisdiction that adopted the plan):

Omit subsection (c) in its entirety.

~~(c) Notwithstanding any other provision of this act, no action by the governing body of a municipality shall be invalid nor shall the same be subject to challenge or appeal on the basis that such action is inconsistent with, or fails to comply with, the provision of the comprehensive plan.~~

*Deleting this section will have two, salutary results. First, it will eliminate the formally sanctioned dismissal of the work of planners, planning commissioners, and the comprehensive plan. It is well known that ordinances are ordinate and plans are subordinate in Pennsylvania, so it is unnecessary to bring attention to the point. Second, it will make it necessary for elected officials to, at least, consider whether their actions are consistent with the comprehensive plan. This is a barrier to the internal consistency of municipal and county plan making and plan implementation. Consistency is not the same as 'conformity.' The standards in the MPC for consistency between plans and actions should also apply to elected officials who adopted the comprehensive plan.*

(d) Municipal zoning, subdivision and land development regulations and capital improvement programs shall ~~generally~~ implement the municipal and multimunicipal comprehensive plan or, where none exists, the municipal statement of community development objectives.

*Either these regulations and programs implement comprehensive plans, or they don't.*

*Regulations and capital improvement programs may not be the only implementing actions, but they implement plans to some degree. The word 'generally' should be deleted, being both confusing and unnecessary.*

## **Second Priority Revisions**

1. The components of a comprehensive plan should be rewritten in simple English. The authorization should be like that of 503: for example, an introductory statement that: *the comprehensive plan may include but need not be limited to*. There may be some required components specified; which would be alright. However, some flexibility in elements would be helpful relative to size and complexity of municipalities preparing plans.
2. Incomprehensible items, like the four county planning elements in Section 301 (7) should be clarified and restated, e.g., *identify a plan for...*As written, it is unclear what these statements call for. Are they plan elements? The question is, what does "identify" mean in this context? If these are physical plan elements the MPC should clearly say so.
3. Provide a rational basis and distinction of county planning within the governmental structure of Pennsylvania. Counties, as a separate and distinct unit of government with specific tasks and responsibilities, should have a planning process that is related to county functions. The overarching planning components that serve all, or many, local jurisdictions within a county should be emphasized, such as major transportation facilities, environmental issues such as water, storm water management, natural resources, etc. County planning should be related to county functions such as social services. County plans may be helpful in providing some broad outlines for municipal/multimunicipal planning. But the primary focus should be on plans serving the county and its functions.

## **B. Subdivision and Land Development; Municipal Capital Improvement**

*Many of the changes are simply intended to make the community planning process more effective, without changing the current balance of power between municipalities and developers.*

## **First Priority Revisions**

### **Section 107:**

In Section 107, after the definition of "Land Development," add the following:

### ***Alternate Definition of Land Development:***

A Subdivision and Land Development Ordinance may be written to incorporate the following alternative definition:

Land development" shall include one or more of the following activities:

- (1) The development of one or more non-residential principal buildings;
- (2) The development of two or more new dwelling units on a lot, unless the Subdivision and Land Development Ordinance establishes a higher number of dwelling units that requires Land Development approval;
- (3) The expansion of a non-residential building, with the Subdivision and Land Development Ordinance establishing the minimum amount of new building floor area that requires Land Development approval; or
- (4) The development of new impervious surface, with the Subdivision and Land Development Ordinance establishing the minimum amount of new impervious surface that requires Land Development approval.

*There is widespread confusion about the definition of "Land Development" as it applies to what is regulated under a Subdivision and Land Development Ordinance (SALDO). For example, confusion arises over whether a SALDO can regulate a large parking lot or a large building expansion. The terms "lease" and "improvement" in the definition create the greatest confusion. The alternate definition would provide municipalities the option of establishing a simpler and clearer definition. This alternate provision would also provide the authority to narrow the definition if appropriate, considering their circumstances. Municipalities will be required, in their SALDO, to indicate whether they are using the Standard or the Alternative definition of "Land Development."*

**Section 502** (pertaining to exemption for review of lot mergers and lot line adjustments):

Amend Section 502 to add a new *Subsection (c)* as follows:

(c) Where a municipal subdivision and land development ordinance is in effect by written resolution, a county planning commission may establish a policy that certain specified types of lot mergers and lot line adjustments are not required to be submitted to the county planning commission for review and report. A copy of the resolution, and any subsequent revisions, shall be provided to each municipality within the county, and to the county planning commission for the purpose of making that agency aware of the change. The resolution may be subsequently amended or repealed by the county planning commission.

*Municipal approval of routine lot mergers or lot line adjustments can sometimes be delayed while awaiting a review letter from the county planning commission. In many cases, county planning commissions do not provide any comments, so the delay is needed to wait for a*

*letter saying "no comment." The following provision would allow county planning commissions the option of preempting these types of applications. It would be up to each county planning commission to decide which submissions (if any) they did not want to require to be submitted.*

*Lot "mergers," " consolidations," " adjustments," etc., must be added to Section 107.*

*Renumber the current Section 502(c) to become Section 502(d).*

**Section 503** *(pertaining to definition and exclusion of certain land developments):*

Amend Subsection (1.1) of Section 503 as follows:

(1.1) Provisions for the exclusion of certain land development from the definition of land development contained in section 107 only when such land development involves:

- (i) the conversion of an existing single-family detached dwelling, ~~or~~ single-family semi-detached dwelling, or single-family attached dwelling into not more than three residential units, unless such units are intended to be a condominium;
- (ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; ~~or~~
- (iii) 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 defined 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; or
- (iv) other exclusions specifically stated in the subdivision and land development ordinance.

*Section 503(1.1) allows municipalities to exclude certain applications from being regulated as "Land Developments." In addition to single-family detached and semi-detached dwellings, there are also single-family attached dwellings that could possibly be converted and should thus be addressed. Also, municipalities should be given the option to exclude other types of minor land development at their discretion, provided that such exemptions would be clearly stated in their Ordinance.*

**Section 508** *(pertaining to pending ordinance rule):*

Replace existing Subsection (4)(i) of Section 508 with the following:

(4) (i) Subsection (4) shall not limit the ability of a governing body to apply the pending

ordinance rule for a zoning ordinance or subdivision and land development ordinance or amendment to a subdivision or land development application.

(a) The pending ordinance rule shall only apply if the governing body approves a written resolution stating that the pending ordinance rule is being used.

(b) The pending ordinance rule shall only be applied after the first legal advertisement for the governing body hearing for such ordinance or amendment has been published. The pending ordinance rule shall only continue to apply if the ordinance or amendment is adopted within 90 days after the date of the governing body hearing. During such time period, the municipality shall continue to accept and review applications, on the condition that the pending ordinance rule is being applied. If an application would no longer be allowable under the pending ordinance, a decision on the application shall be deferred until after the pending ordinance is voted upon or the 90 day time period expires. If another section of this act would require municipal action upon the application during the time period that the pending ordinance rule is being utilized, then the municipality may extend the time period for a municipal action by up to 30 days after the vote on the pending ordinance.

*Section 508(4)(i) addresses how changes to ordinances affect previously submitted plans. The pending ordinance rule is a legal concept recognized in a number of Pennsylvania court cases that seeks to avoid an applicant submitting a development plan or a permit application "just under the wire" while a municipality is about to adopt an ordinance amendment that would not allow the development. The pending ordinance rule allows a municipality to reject an application that would not be allowed by an ordinance that is about to be adopted.*

**NOTE:** *the pending ordinance rule is not written into statutory law. Several court cases (including the 1997 Commonwealth Court case of Tu-Way Tower v. ZHB of Salisbury) state that the pending ordinance rule cannot be applied to a subdivision or land development application. This is because Section 508(4) grandfathers in the provisions of existing ordinances after a subdivision or land development application is submitted. The pending ordinance rule can be applied to a building permit. Therefore, the pending ordinance rule can be applied to a storage shed, but cannot be applied to a 300 lot subdivision. The proposed change would clearly state when the pending ordinance rule could apply to a subdivision or land development application. As proposed below, the pending ordinance rule could only be used after a legal ad is published for a governing body hearing. In order for the pending ordinance rule to continue to apply, the governing body must adopt the ordinance change within 90 days after the hearing.*

**Section 107** *(pertaining to definition of the pending ordinance rule):*

To Section 107 add the following definition of Pending Ordinance Rule:

**Pending Ordinance Rule:** The authority of a municipality under Sections 508(4)(i) and 917 to require that an application for a building permit, zoning permit or approval, or subdivision or land development approval be in compliance with a zoning or subdivision and land development ordinance and amendment which has been advertised as provided in Section 508(4)(i).

*In order to properly interpret the proposed change to Section 508(4)(i), dealing with the approval of plats, it is necessary to define the phrase “pending ordinance rule.”*

**Section 508** (pertaining to sketch plan):

Add a new Subsection (8) to Section 508 as follows:

(8) A subdivision and land development ordinance may require that an applicant for a subdivision or land development submit a conceptual sketch plan not less than 30 days before the formal submittal of a preliminary plan, or a final plan where a preliminary plan is not required. The ordinance shall establish the types of applications that are required to submit a sketch plan. The sketch plan shall not be subject to approval by the municipality, shall not create any vested rights for an application, and shall not affect the time limits for action upon a plat that are established by Section 508.

*It is highly desirable for developers and municipalities to discuss conceptual plans for a major development. This allows municipal concerns to be addressed before the detailed engineering for a development has been completed. Two court cases have ruled that if a municipality requires a sketch plan, that the 90 day time limit for approval of a preliminary plan begins at the time of sketch plan approval. Municipalities should be allowed the option of requiring a sketch plan, without limiting the time they have available for preliminary plan review. This provision would not delay a submission by more than 30 days.*

## **Second Priority Revisions**

**Section 502** (pertaining to copy of county ordinance):

Amend the first sentence of Section 502(a) as follows:

(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~~ those municipalities wholly or partly within the county which have no subdivision and land development ordinance in effect at the time the ordinance is adopted.

*There seems to be no apparent need for a county to provide a certified copy of its subdivision*

*and land development ordinance to municipalities that have adopted their own ordinance. It should only be necessary that municipalities that are under a county's jurisdiction for subdivision/land development approval receive a certified copy of the ordinance. This should not be interpreted as a rejection of the idea that it is necessary and appropriate for counties and municipalities to share information and strengthen efforts to gain consistency among ordinances.*

**Section 502** (pertaining to county review):

Amend the second sentence of Section 502(b) as follows:

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, recommendations and report together with a fee sufficient to cover the costs of the review and report thereof 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.

*Section 502(b) discusses County review of review of municipal subdivision and land development plans, but does not specifically state that counties can make recommendations*

**Section 503** (pertaining to preparers of plans; fees):

Amend Subsection (1) of Section 503 as follows:

The subdivision and land development ordinance may include, but need not be limited to:

(1) Provisions for the submittal and processing of plats, including the charging of review fees, and specifications for such plats, including certification as to the accuracy of plats and provisions for preliminary and final approval and for processing of final approval by stages or sections of development. Such plats and surveys shall be prepared by a registered Professional Engineer or Land Surveyor 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 plat by a registered Professional Landscape Architect 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 plat 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 or engineer 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 by the municipal engineer

or consultant for similar service 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. **The fee shall be in writing and shall be delivered to the applicant personally or by mail at his last known address.**

*The MPC currently references regarding the types of professionals allowed to prepare different types of plans. However, there continues to be misunderstandings regarding the types of persons who are permitted to prepare a plan. Specifying who can prepare a plan should eliminate the current problems. The same section also addresses fees. Questions often arise as to how the fee should be communicated to the applicant especially since the applicant has a limited amount of time to appeal the fee. Stating how the fee shall be communicated would provide a standard to be followed.*

**Section 503** (pertaining to timing of dispute of fees):

Amend Subsection (1)(i) of Section 503 as follows:

(1)(i) In the event the applicant disputes the amount of any such review fees, the applicant shall, within fourteen days ~~of the applicant's receipt of the bill~~ of the date of delivery notify the municipality that such fees are disputed, in which case the municipality shall not delay or disapprove a subdivision or land development application due to the applicant's request over disputed fees.

*Section 503(1)(i) addresses dispute of fees. It is presently unclear as to how the date of the applicant's receipt of the bill would be documented. For consistency and to add clarity, it is recommended that the requirements be the same as those presently stated in the MPC for dispute of fees related to inspection of improvements.*

**New Section 503** (pertaining to minor subdivisions and land developments):

Add a new Subsection (1.2) to Section 503 as follows:

(1.2) Provisions defining minor subdivision and/or land development and establishing a simplified review procedure applicable to a minor subdivision and/or land development.

**Section 503** (Pertaining to dedication of recreation land):

Amend Subsections (v) and (vi) of Section 503(11) as follows:

(v) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and/or recreational facilities by future inhabitants of the development or subdivision.

(vi) A fee authorized under this subsection shall, upon its receipt by a municipality,

be deposited in an interest-bearing account, clearly identifying the specific park and/or recreational facilities for which the fee was received. Interest earned on such accounts shall become funds of that account. Funds from such accounts shall be expended only in properly allocable portions of the cost incurred to construct or acquire the specific park and/or recreational facilities for which the funds were collected.

*Currently Section 503(11) of the MPC sometimes refers to “park and recreational facilities” and sometimes only to “recreational facilities.” Consistency of terminology should be used throughout to eliminate confusion. Also, municipalities should be able to use recreation fees that are paid in lieu of the dedication of land for the acquisition of land or recreational facilities provided that such is identified in the Recreation Plan and will be accessible to the development. Limiting fees to only being used for construction activities creates problems for some municipalities. Other minor changes noted are for consistency purposes.*

**Section 508** (pertaining to consistency of terms):

Amend subsections (3), (4)(ii), (4)(vii), and (5) of Section 508 as follows:

(3) Failure of the governing body or planning agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect.

(4) Changes in the ordinance shall affect plats as follows:

(ii) When an application for approval of a plat, 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 and land development 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.

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

(5) Before acting on any subdivision or land development plat, the governing body or the planning agency, as the case may be, may hold a public hearing thereon after public notice.

*The revisions to Section 508 regarding approval of plats are for purposes of clarity and consistency of terminology.*

**Section 509** *(pertaining to administration of financial security):*

Add a new Subsection (n.1) to Section 509 as follows:

(n.1) Where a county has jurisdiction for subdivision and land development approval, the county may require that the financial security be deposited with the municipality or authority as the case may be and that said municipality or authority be responsible for the completion of improvements in accordance with the provisions set forth in Sections 509 (b) through (m), 510, and 511 of this Article.

*Section 509 of the MPC addresses requirements to provide financial security to make sure that improvements are constructed. Many counties that have jurisdiction for the approval of subdivision and land development plans currently do not accept the financial security or conduct the inspection of the improvements. Instead, they pass this responsibility on to the municipality in which the subdivision or land development is located. This proposed amendment would specifically provide this option for counties.*

**Section 510** *(pertaining to fees):*

Amend subsections (b), (g), (g)(1), (g)(2), (g)(3), and (g)(4) of Section 510 as follows:

(b) The municipal governing body shall notify the developer, within 15 days of receipt of the municipal engineer's report, in writing by certified or registered mail, of the action of said municipal governing body with relation 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 municipal engineer ~~or consultant~~ to the municipality when fees are not reimbursed or otherwise imposed on applicants. The fee for inspection of improvements shall be in writing and shall be delivered to the applicant personally or by mail at his last known address.

(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~~ delivery, 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 municipal engineer expenses.

(2) If, within 20 days from the date of ~~billing~~ delivery, 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~~ delivery 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~~ delivery 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.

*In Section 510 questions often arise as to how the fee should be communicated to the applicant especially since the applicant has a limited amount of time to appeal the fee. Stating how the fee is to be communicated would provide a standard to be followed. This proposal would be consistent with the proposed change to Section 503(1). With regard to the time limit for appeals, it is suggested that the "date of delivery" be used to start the clock rather than the "date of billing." Other revisions to this section are for purposes of clarity and consistency of terminology.*

**Section 513** (pertaining to recording plats and deeds):

Amend subsection (a) of Section 513 as follows:

(a) Upon the approval of a final plat, the developer shall within 90 days of such final approval, or within 90 days ~~after the date of delivery of an approved plat signed by the governing body,~~ following completion of conditions imposed for such approval, whichever is later, record such plat in the office of the recorder of deeds of the county in which the municipality is located. Whenever such plat approval is required by a municipality, the recorder of deeds of the county shall not accept any plat for recording, unless such plat officially notes the approval of the governing body or

planning agency and review, or exemption of review, by the county planning agency, if one exists.

*The current language in Section 513 is very confusing as to when to begin counting the 90 day period and needs to be clarified to permit ease of interpretation. Also, if the amendment to Section 502 is approved, which would permit counties to exempt specified types of plans from their review, a signature to indicate that exemption should appear on the plan. This would be beneficial to the Recorder of Deeds' office since most follow the rule that they will not record a plan unless it bears the signature of the county planning commission.*

### **C. Municipal Capital Improvement**

**New Section 509-A** (pertaining to optional traffic impact fees):

Add the following as a new Section 509-A:

Optional Provisions for Transportation Impact Fees. The optional provisions of this Section 509-A shall apply only if a municipality is limited to charging a transportation impact fee of \$600 or less per designated afternoon peak hour trip. This maximum fee may be increased annually by a municipality based upon a standard national measurement of inflation. A municipality may adopt and administer transportation impact fees under this Section 509-A if all of the provisions of 501-A through 506-A, except for the following modifications under this Section 509-A, are met:

- (a) the following provisions shall not be mandatory under this Section 509-A: Sections 503-A(d)(3), 503-A(d)(5), 504-A(e)(1)(iv) parts (A) through (C), 504-A(e)(2), 505-A(a)(1) and (2), 505-A(d)(1) and (3); and
- (b) the timing of the preparation and approval of the land use assumptions and roadway sufficiency reports may overlap."

*Article V-A allows municipalities to charge impact fees to developments which generate demands for transportation improvements. The current provisions of Article V-A are so complex and burdensome, with numerous limitations placed on the uses of the fees, that most municipalities have not adopted impact fees provisions. Current requirements are especially difficult for rural townships.*

*The following suggestion would make it easier for municipalities to use traffic impact fees to mitigate traffic problems, provided the fees would be limited in amount. (A municipality that wished to charge a higher fee could still follow all of the detailed provisions of Article V-A.) In other words, a simpler process could be imposed with a modest fee of \$600 or less per*

afternoon peak hour trip were used. For example, the funds could be used to solve an existing safety problem, instead of being narrowly restricted to problems "attributable to new development." Furthermore, the funding would not be limited to less than 50% of the costs of improving a State road. It would not be necessary to do complex calculations for each project to divide costs among existing development and "pass-through" traffic vs. new development. A different fee would not need to be calculated for each "service area." Also, funds could be shifted from one project to another project as needed without written approval of the developer.

## **D. Zoning**

### **Section 603** (pertaining to zoning of minerals):

Add the following to Section 603.i:

However, municipalities may meet this requirement without necessarily providing for development of minerals in every municipality by administering zoning ordinances that are ~~generally~~ consistent with a multi-municipal comprehensive plan, pursuant to Section 916.1(h).

*In 2000, a section was added to the MPC requiring provisions for the "reasonable development of mineral resources within each municipality." A new section should be added to be consistent with other MPC provisions allowing land uses to be addressed in a regional manner. The word "generally" should be omitted from the phrase, "generally consistent."*

### **New Section 609 i** (pertaining to conditioned rezoning):

Add the following as a new Section 609(h):

#### (h) Conditions Placed Upon a Zoning Map Amendment.

- (1) If a landowner requests consideration of a zoning map amendment, the landowner may voluntarily submit a written offer of reasonable conditions that would apply to the land if the proposed zoning ordinance amendment is adopted. If the landowner's zoning map amendment is adopted, and the conditions are approved by the governing body as provided in this Section 609(h), then such conditions shall be applied to the rezoned area. All other ordinance requirements shall be met.
- (2) Such conditions shall only apply to the land that was owned or equitably owned by the landowner at the time of the zoning map amendment application. The conditions shall be in the form of a legally binding agreement between the landowner and the municipality that is recorded with the deed and that is enforceable by the governing body, and which shall be enforceable against all subsequent owners of the affected land. The agreement shall specify whether the conditions apply to certain uses or to any development of the affected

land.

(3) The substance of the draft agreement shall be presented to the public at the public hearing on the proposed zoning map amendment. The final proposed language of the agreement shall be fully disclosed to the public, and made part of the public record, prior to the governing body vote on the proposed zoning map amendment. The final language of the agreement shall be mutually acceptable to the landowner and the governing body prior to a vote on the zoning map amendment that is proposed to be subject to the agreement.

(4) The legally binding agreement may provide that such conditions shall no longer be in effect upon the landowner if the zoning ordinance is subsequently amended to reduce the type or intensity of development that is allowed on the landowner's property. The agreement shall establish the timing or phasing of dedications, payments or improvements. The agreement shall establish the exact land areas that are affected by the agreement and shall include a map delineating the affected areas in relation to adjacent streets.

(5) The agreement may be subsequently modified by mutual agreement of all of the current landowners who would be bound to comply with the conditions and the governing body, provided a public hearing is first held, with the required public notice that includes a summary of the proposed modification.

(6) This section 609(h) shall not apply to a curative amendment filed by a landowner.

(7) Conditions under this section 609(h) shall be limited to the following:

(i) setbacks, earth berming, buffering or landscaping that exceeds what would otherwise be required, to minimize conflicts between differing uses,

(ii) placement of a permanent conservation easement upon a portion of the land to preserve important natural resources,

(iii) dedication of right-of-way or easements for transportation improvements or other physical improvements beyond what would otherwise be required for the development of the property,

(iv) construction, or funding, of transportation improvements or other physical improvements beyond what would otherwise be required for the development of the property, and/or

(v) restrictions on the types of non-residential uses which are more limiting than the applicable zoning requirements.

(8) The conditions shall be consistent with the requirements of the Federal Fair Housing Act.

(9) The need for the conditions shall be directly related to the change in the zoning map. The conditions shall not involve a payment of a cash contribution, except towards payment for a specified street improvement or street right-of-way purchase. The conditions shall not require the dedication of land in fee simple to the municipality, except for street improvements.

(10) A violation of a condition established under this section 609(h) shall be a violation of the Zoning Ordinance, and to ensure compliance with the conditions, the municipality shall then have available all penalties and remedies established under this Act for a zoning ordinance violation.

*Many municipalities are faced with situations where a zoning map change is being requested that would allow more intense development. In many cases, the zoning map change would only make sense if the developer agrees to complete road improvements or provide additional buffering for homes. However, Commonwealth Court decisions prohibit connecting a zoning map change to any conditions. The following provision would allow an applicant for a zoning map change to **voluntarily** offer to complete road improvements or certain other conditions. A developer would have the option of proposing or not proposing any conditions. If the zoning map was approved, the conditions would be enforceable by the municipality. Consideration should be given to whether the conditions agreed upon run with the land, or, does the situation revert to the original zoning if there is a change in ownership. This concept was inspired by a system that has been successfully in effect in Virginia for over 15 years under their State law. As proposed, the conditions could not be used to exclude different types or prices of housing.*

**New Section 619.3** (pertaining to zoning under multi-municipal plans):

When a multi-municipal plan, as defined by this act, has been adopted by participating municipalities, and where the participating municipalities have enacted zoning ordinances consistent with the multi-municipal plan, including the specific recognition of that plan in the zoning ordinance, then the participating municipalities may consider the entire area of the multi-municipal plan in the land use provisions and the zoning map of the municipality. However, this section may only be used upon the adoption of an Implementation Agreement as provided for in Article XI of this act by all participating municipalities.

*This consolidates in a single statement in Article VI the authority found in other articles of the MPC.*

**Section 621** (pertaining to limitations on the zoning power):

This section is modified by changing the title from “Prohibiting the Location of Methodone Treatment Facilities in Certain Locations” to “Limitations on the Zoning Power.”

The existing provisions (a) 1-2; (b), (c), and (d), should be renumbered, following which are added these new subsections:

(b) Zoning ordinances, except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superseded and preempted by the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, and the act of December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act, and to the extent that the subsidence impacts of coal extraction are regulated by the act of April 27, 1966 (1<sup>ST</sup> Sp. Sess., P.L.31, No.1), known as the Bituminous Mine Subsidence and Land Conservation Act, and that regulation of activities related to commercial agricultural production would exceed the requirements imposed under the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the Nutrient Management Act, the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, or the act of June 10, 1982 (P.L.454, No.133), entitled An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances, or that regulation of other activities are preempted by other federal or state laws may permit, prohibit, regulate, restrict and determine zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, or the act of June 10, 1982 (P.L.454, No.133), entitled An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances.

(c) Interpretation of Ordinance Provisions. In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

(d) Zoning ordinances may not unduly restrict the display of religious symbols on property being used for religious purposes.

(e) Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the

conduct of forestry as a sound and economically viable use of forested land throughout this commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.

- (f) This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

*A number of limitations placed on the power to zone are found in the MPC. This section consolidates these limitations into a single existing provision, Section 621. (An alternative approach would be to delete all limitations on local zoning authority, since zoning provisions would have to be consistent with a comprehensive plan.)*

## **E. Zoning Hearing Board and Other Administrative Procedures**

**Section 904** *(pertaining to zoning hearing boards under county zoning):*

Revise the title of Section 904 to add the words "County Zoning Hearing Boards"

Add a new Section 904(e) as follows:

If a County adopts a zoning ordinance, that County zoning ordinance shall specify the number of zoning hearing board members and alternates, the qualifications for appointment and terms of office. A County zoning ordinance may also establish more than one zoning hearing board to address different specified geographic areas of a County. Such a zoning hearing board may consist of more than 5 persons. In all other respects, a county zoning hearing board shall be governed by provisions of this act not inconsistent with the provisions of this Section 904(e)."

*Sections 901 to 904 currently address the membership of zoning hearing boards, but do not specifically address a situation where a county has adopted a zoning ordinance covering multiple municipalities.*

**Section 906** *(pertaining to zoning hearing board alternate members):*

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.

*The MPC allows municipalities to appoint alternate members to the Zoning Hearing Board. However, these alternates can only serve when needed to make a quorum. This can create a problem, particularly with a 3 member board. If one board member is not able to serve, there are still two board members who make a quorum - so no alternates can serve. This can result in a 1-1 vote, which creates many complications in zoning decisions. An alternate should be able to serve whenever a regular member cannot.*

**Section 909** (pertaining to ordinance adoption procedures):

An existing provision of the MPC (909.1(a)(2)) states that any challenge on procedural grounds must be made within 30 days. The following additions would strengthen this existing provision to prevent long-delayed nuisances challenges of ordinances.

In Section 909.1(a)(2):

In the existing provision, change "*the effective date*" to "*the intended effective date as stated in the ordinance.*"

Add the following new subsections:

(i) Past or present failure to record a zoning or subdivision and land development ordinance or amendment in the municipal ordinance book or to number the ordinance or amendment shall not make the ordinance or amendment invalid, provided that all amendments were and are included in the published version of the ordinance.

(ii) A landowner or applicant for development approval shall not be permitted to file a challenge of a zoning ordinance amendment alleging that the legal advertisement was inadequate if the municipality mailed a notice to the owner of the subject property that the property was affected by a proposed amendment, as provided by Section 609(b)(2)(i).

(iii) In any appeal, a person shall be bound by any notice or knowledge by their predecessor in interest concerning the adoption of an ordinance.

(iv) In no case shall an appeal be made alleging that a procedural error was made regarding the adoption of a land use ordinance or amendment more than one year after the vote occurred upon such ordinance or amendment, provided such provisions were included in the published version of the ordinance.

*The 2000 State Supreme Court case of Cranberry Park Associates v. Cranberry Township*

*ZHB overturned an ordinance on the grounds that some of the procedural requirements were not met - in a challenge filed 15 years after the adoption. In that case, the ordinance was overturned because it was not entered into the township's ordinance book until a few years after it was adopted - but still 10 years before the appeal. The Supreme Court ruled that because this procedural requirement was not met promptly, the ordinance never was effective, and therefore there was absolutely no time limit on a procedural appeal. This court case overturned a Commonwealth Court decision.*

*It is very difficult for a municipality to prove several years after the fact that every procedural requirement was met. For example, a person may claim that a property affected by a zoning amendment was not properly posted. If the challenge occurs years later, the person who did the posting may have died. Moreover, one ordinance was overturned because the copy provided to the Law Library was not "attested." If this type of challenge occurs years after the adoption, it may not be able to be disproved because the Law Library may have disposed of the copy.*

**Section 107** (pertaining to non-contiguous municipalities and multi-municipal comprehensive plans):

To the definition of "Multi-Municipal Plan" in Section 107(a), add the following:

All of the municipalities participating 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.

*Section 916.1(h) of the current MPC provides a strong incentive for joint municipal comprehensive plans by allowing all land areas of all of the municipalities to be considered in the event of an exclusionary zoning challenge. However, the definition of "multi-municipal plans" limits the term to "contiguous municipalities." There are cases in which multi-municipal comprehensive plans are not entirely contiguous.*

*For example, a comprehensive plan is currently being prepared for the municipalities in the Lower Dauphin School District. In this case, one township separates some of the municipalities from each other, but would not participate in the Plan. Therefore, the current definition could make it impossible for these municipalities to gain the legal protection in an exclusionary zoning challenge. Therefore, we recommend this change to the definition.*

## **F. Intergovernmental Cooperative Planning**

### **Second Priority Revisions**

**New Section 1108** (pertaining to joint planning commissions):

The following new section shall be added:

Section 1108. Joint Planning Commissions:

(a) The governing bodies of two or more municipalities or counties may by ordinance or resolution establish a Joint Planning Commission. The ordinance or resolution shall establish the numbers of members, duties, and terms of office of the Commission, and should establish procedures for any method of funding, for withdrawal of a municipality from the joint planning commission, and for any dissolution of the Joint Planning Commission. The members of the joint planning commission may also hold other offices within the participating municipalities, other than zoning hearing board members. A municipality by resolution or ordinance may authorize a joint planning commission to serve certain or all of the same functions as are provided by this Act for a municipal planning commission. A county by resolution or ordinance may authorize a joint county planning commission to serve certain or all of the same functions as are provided by this Act for a county planning commission.

(b) The members shall not receive a salary for service on the joint planning commission, but there may be process for reimbursement for expenses. A joint planning commission shall maintain public records of its actions.

(c) A Joint Planning Commission may:

(1) prepare a draft Joint Comprehensive Plan, draft ordinances, or amendments for consideration by the member municipalities or counties,

(2) prepare other plans, studies or reports as it deems appropriate;

(3) adopt bylaws; and

(4) utilize funds provided by municipalities, other levels of government, fees for services, and contributions, and may expend such funds for authorized purposes."

*When the new Article XI was added to the MPC in 2000, the existing Article XI was repealed in its entirety. As a result, all of the existing provisions regarding Joint Planning Commissions were deleted. This apparently was an oversight. Another section requires a Joint Municipal Planning Commission in order to prepare a Joint Municipal Zoning Ordinance - but there are no provisions in the MPC that address their establishment. This section would re-adopt the substance of the provisions that were deleted. This section would also specifically authorize joint county planning commissions.*

**NOTE:** A thorough technical review of Article V, Subdivision and Land Development, was made to correct errors and inconsistencies. Also, a re-formatting of Article VI, without substantive changes, was also carried out. Neither of these is included in this report, but is available for inspection.



## **APPENDIX 1: Detailed Statement of PPA Planning Principles and Enhancing the Pennsylvania Municipal Planning Code**

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.

1. 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.
  2. 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. 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. 2. MPC amendments that are aimed at balancing individual property rights with the interests of the public-at-large.
  3. 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.
- D. 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.

**E.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. 1. We support MPC amendments that recognize that professional and citizen planners alike must be well trained to effectively serve our communities.
2. 2. We support MPC amendments that recognize that professional planners should be certified under accepted standards of PPA.
3. 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. 4. We support MPC amendments that recognize that both professional and citizen planners should maintain their training through continuing education programs.