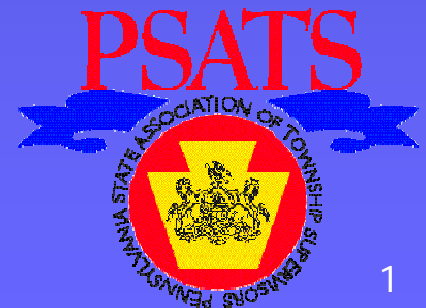


# Land Use Aspects of Multi-Municipal Planning

Prepared by:

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# Why the Interest in Multi-Municipal Planning??



- Passage of Acts 67 and 68 of 2000
- State funding programs favor cooperative planning
- DCED's Land Use Planning and Technical Assistance Program (LUPTAP)
- Publications such as *Planning Beyond Boundaries* (10,000 Friends of PA) & *Back to Prosperity* (Brookings Institution)
- PA Supreme Court Decision in Dolington Land v. Upper Makefield Township

# Course Objective

*Enhance your ability to make good, legally defensible decisions about land use planning on a multi-municipal basis.*



# Course Outline

- **Background & history of joint planning in Pennsylvania**
- Overview of multi-municipal land use planning
  - Planning for Designated Growth Areas
    - Planning for Future Growth Areas
    - Planning for Rural Resource Areas
- Planning for “Older Pennsylvania” communities
  - Special Tools

**Refer to Handout Exhibit A**

# MPC History of Joint Planning Provisions

- PA is a Dillon's Rule State – local gov'ts are creatures of the state legislature.
- Since 1968, MPC *authorized* municipalities to *plan* together. Not authorized to *zone* jointly.
- Exclusionary zoning challenges were filed and upheld.
- Legislature enacted Article XI-A which permitted joint zoning in 1978 and revised in 1988 by Article VIII-A.

# MPC History of Joint Planning Provisions - Continued

- Joint zoning requirements under Articles XI-A and VIII-A were not easy – pull-out provisions were difficult, so provisions were seldom used.
- In 1998 – 21<sup>st</sup> Century Environment Commission noted that sprawl harms the environment, increases infrastructure costs and exacerbates the abandonment of existing communities.
- 2000 – MPC amended by Acts 67 and 68 to make it easier to cooperate in planning and land regulation.

# Judicial Decisions Related to Cooperative Planning Efforts



# PA Landmark Rulings on Exclusionary Zoning

1970 – PA Supreme Court

***Girsh Appeal*** – “...as long as we allow zoning to be done community by community, it is intolerable to allow one municipality (or many municipalities) to close its doors at the expense of the surrounding communities and central city.”



# PA Landmark Rulings on Exclusionary Zoning

1970 – PA Supreme Court

***Kit-Mar Builders Appeal-*** “We fully realize that the overall solution to these problems lies with greater regional planning, but until the time comes that we have such a system we must confront the situation as it is.”

# PA Landmark Rulings on Exclusionary Zoning

- As a result of 1970 rulings, regional planning commissions were formed and regional plans adopted, and zoning ordinances amended.
- However, exclusionary zoning challenges were brought against municipalities participating in regional planning.

# PA Landmark Rulings on Exclusionary Zoning

***Nicholas, Heim & Kissinger v. Harris Township*** (PA Commonwealth Court, 1977)– Court found that regional zoning ordinances based on a regional comprehensive plan are non-binding, since the comprehensive plan is recommendatory, not regulatory. The General Assembly would need to empower municipalities to enter into binding regional zoning arrangements.

**John Friday v. Fox Chapel Borough** (PA Commonwealth Court, 1978) – Court struck down borough's ordinance by citing Harris Township Case.....It was the "Dillon's Rule" thing.

# Why is Multi-Municipal Planning Important ?

Municipalities may:

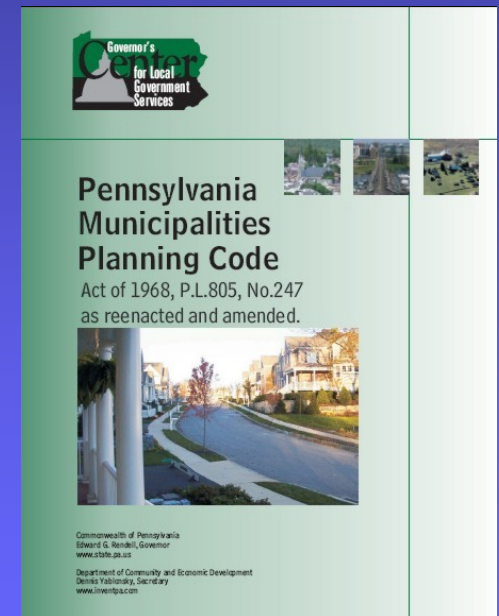
- ✓ address judicial mandates to provide for all reasonable land uses on a regional, not municipal basis,
- ✓ cooperatively provide and extend services and facilities in a more logical, efficient manner, and
- ✓ cooperatively better protect natural resources, prime farmland, scenic areas and community character.

# Course Outline

- Background & history of joint planning in Pennsylvania
  - **Overview of multi-municipal land use planning**
    - Planning for Designated Growth Areas
      - Planning for Future Growth Areas
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# Overview of MPC Multi-Municipal Planning Provisions

- Article VIII-A – Joint Municipal Zoning – Remains
- Article XI – Intergovernmental Cooperative Planning and Implementation Agreements – substantially revised in 2000.



# Article XI

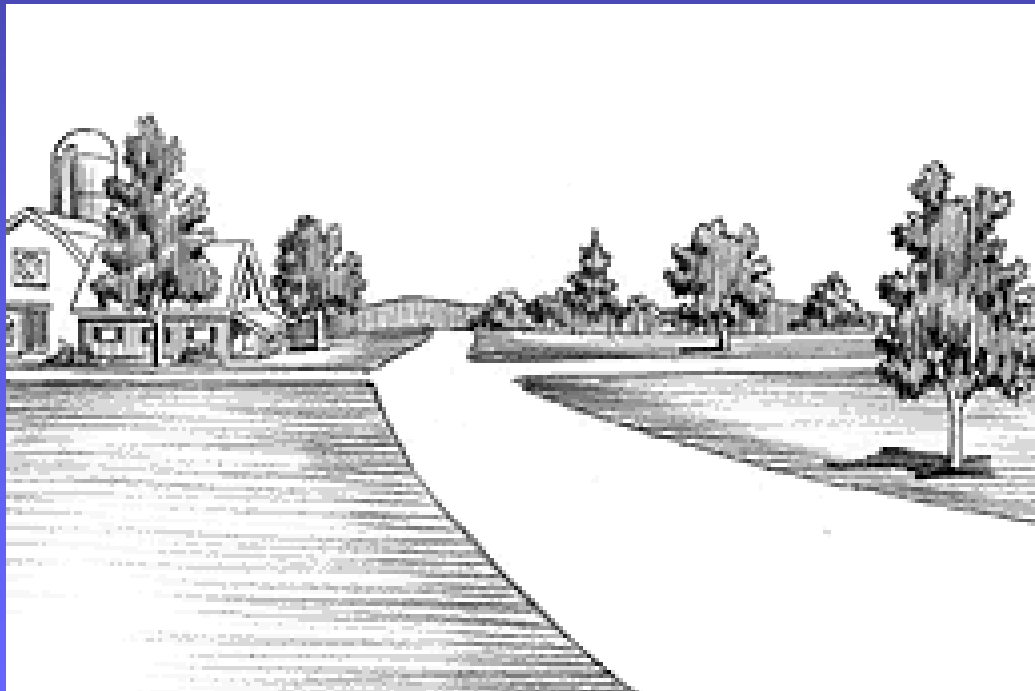
- Provides for municipalities to enter into intergovernmental agreements to prepare multi-municipal comprehensive plans
- 
- Then provides that they can individually enact zoning ordinances that are generally consistent with the plan.

Section 1101 – States Purposes

Section 1103 – Authorizes designation of certain planning areas

# Course Focus

- Land use planning in a multi-municipal plan.





# Article XI- Section 1103

- County or Multi-municipal comprehensive plans may...
  - Designate Growth Areas
  - Designate potential Future Growth Areas
  - Designate Rural Resource Areas



# What do these terms mean?

## [MPC Sections 107 and 1103]



- Designated Growth Areas
- Future Growth Areas
- Rural Resource Areas

# Designated Growth Area

## [MPC Section 107]

- A region that preferably includes and surrounds a city, borough, or village permitting residential and mixed use at densities  $\geq 1$  unit/acre
- Planned or provided public infrastructure



# Designated Growth Areas

[MPC Section 1103 (1)]

- Designated Growth Areas are planning areas where:
  - Orderly and efficient development is provided to accommodate the projected growth over a 20 year period.
  - Commercial, industrial and institutional uses are provided for the economic and employment needs of the area.
  - Services are provided or planned for the area.

# Future Growth Areas

## [MPC Section 107]



- An area outside of and adjacent to a designated growth area where varied uses are permitted or planned at varying densities.
- Public infrastructure services may or may not be provided.

# Future Growth Areas

## [MPC Section 1103 (2)]

- MPC says, “Designate Potential Future Growth Areas where future development is planned for densities to accompany the orderly extension and provision of services.”



# Rural Resource Area

[MPC Section 107 ]

- An area within which agriculture, timbering, mining, quarrying, forest and game lands and recreation and tourism are encouraged.
- Public infrastructure services not provided (except for villages).



# Rural Resource Areas

[MPC Section 1103 (3)]

- Rural Resource Areas are areas where:
  - Rural resource uses are planned.
  - Development at compatible densities are permitted.
  - Infrastructure improvements are not intended to be publicly financed unless municipalities agree that such services should be provided.



# Other Important Definitions

[MPC Section 107]

- **Development of Regional Significance and Impact (DRI)** - Land development which will have a substantial effect upon the health, safety or welfare of citizens in more than one municipality.
- **Consistency** – An agreement between matters being compared denoting a reasonable, rational, similar connection or relationship.
- **Generally Consistent** – That which exhibits consistency.

# Other Important Definitions

## [MPC Section 107]



- **Village** – An unincorporated settlement that is part of a township where residential & mixed-use densities  $\geq 1$  unit/acre are permitted, & commercial, industrial & institutional uses exist or are permitted.

# Other Important Definitions

## [MPC Section 107]



- **Public Infrastructure Services**
  - provided to areas with densities of  $\geq 1$  unit/acre.
    - Sanitary sewers, water lines, parks, open space, streets, sidewalks, public transportation.
    - Excludes fire protection and emergency medical services.

# Course Outline

- Background & history of joint planning in Pennsylvania
- Overview of multi-municipal land use planning
- **Planning for Designated Growth Areas**
  - Planning for Future Growth Areas
  - Planning for Rural Resource Areas
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  - Special Tools

# Planning for Designated Growth Areas



# Planning for Designated Growth Areas

- Exclusion and path of growth evaluation
  - Planning for housing, particularly where at least a portion of the region lies within the path of growth, should be undertaken with much thought and study



# What is Exclusionary Zoning?

- A zoning ordinance can not exclude a legitimate use of land from the community.
- Two types of Exclusion:
  - Total (De Jure)
  - Partial (De Facto)



# Two Types of Exclusion

- *De Jure or Total*

Ordinance specifically prohibits or fails to make any provision for a specific use.

- *De Facto or Partial*

(Fair Share Issue)

Ordinance permits a specific use but fails to provide sufficient land or negates the practical development of that use.



# Distribution of All Uses

## [MPC Section 1103 (4)]

- If a municipality approaches planning individually, it must provide for all land uses within its boundaries.



This is often inefficient, costly and causes negative impacts on residents and businesses.

# Distribution of All Uses - Intent

- Section 1103 (a)(4) of the MPC states that County or Multi-municipal comprehensive plans may...
  - Plan for the accommodation of all categories of uses within the area of the plan, provided, however that all uses need not be provided in every municipality but shall be provided for within a reasonable geographic area of the plan.

# Percentage of Land Area vs. Housing Analysis

- Court initially based exclusionary rulings on percentage of land zoned for a certain use as compared to total land area of municipality.
- Expanded into not just percentage of land devoted to a use, but its capacity and availability for development.

# Percentage of Land Area vs. Housing Analysis

- By 1977, evaluation expanded to include comparisons of the potential development of multi-family dwellings with the existing number of residents and single-family homes in a community.

*[Warwick Land Development v. Warwick Township. 376 A.2d 679 (Pa. Commonwealth. 1977)]*

# Percentage of Land Area vs. Housing Analysis

- *Surrick v. Upper Providence ZHB – (PA Supreme Court) 1977.*

*Court adopted an “analytical matrix” for the evaluation of fair share compliance.*

*1. Is Township a logical area for development? - (Path of Growth)*

- ✓ *Proximity to large metropolis*
- ✓ *Community's and region's projected population growth figures*

**Refer to Handout Exhibit B**

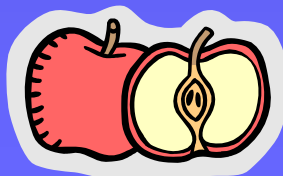
# Percentage of Land Area vs. Housing Analysis

- *Surrick v. Upper Providence ZHB – 1977*
  2. *If the township is in the path of growth, then need to look at:*
    - ✓ *whether or not community is fully developed*
    - ✓ *population density*
    - ✓ *percentage of totally developed land*
    - ✓ *percentage of land available for multi-family*

# Percentage of Land Area vs. Housing Analysis

- *Surrick v. Upper Providence ZHB – 1977*
  3. Is the total percentage of land zoned for multi-family disproportionately small in relation to the population growth pressures and present level of development?

Basically, courts were determining adequacy of meeting future housing need on % of land available – (i.e. did not consider capacity of land for the housing or regional housing needs).



to



# Percentage of Land Area vs. Housing Analysis

However...post-*Surrick* cases focused not only on the % of land zoned for a particular use, but whether the ordinance meets a fair share obligation for that use.





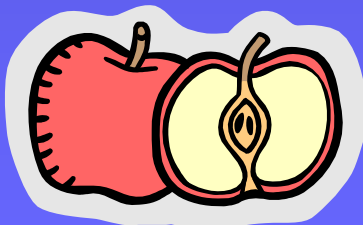
# Percentage of Land Area vs. Housing Analysis

## Examples:

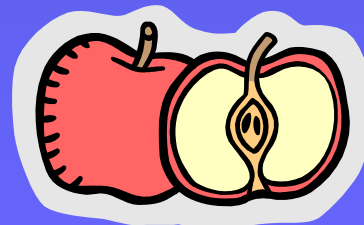
- *Appeal of Abcon* – Horsham Twp., Montgomery Co., Pa Commonwealth Court. 1978
- *Appeal of Silver* – Upper Southampton Twp., Bucks Co., Pa Commonwealth Court. 1978
- *Kravitz v. Wrightstown Township* – Bucks Co. Pa Supreme Court. 1978
- *Hostetter v. North Londonderry Township* – Lebanon Co. Pa Commonwealth Court. 1981

# What do all of these cases show?

- Courts progressed from decisions based on simple and arbitrary “% of land zoned for multi-family housing” to comparing “land needed for anticipated housing growth.”



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# Guidelines from the Court – *Dolington Land*

- *Petition of Dolington Land Group and Toll Bros. Inc. from the decision of the ZHB of Upper Makefield Township – Bucks Co. Pa Supreme Court, 2003.*
  - The court accepted the township's method of comparing the need for multi-family housing with housing capacity of available land to determine if the joint municipal plan met *Surrick's* fair share test.

# Guidelines from the Court – *Dolington Land*

Facts: A group of property owners and Toll Bros. Inc. challenged the validity of a joint municipal zoning ordinance covering Newtown, Upper Makefield and Wrightstown Townships, Bucks County on two grounds:

1. Ordinance violated *Surrick's* Fair Share principle.
2. Joint Zoning Ordinance's Conservation Management zone's regulations imposed unreasonable limits on property owners' rights to use land.

# Guidelines from the Court

## *Dolington Land*

Held:

- Ordinance did not have an exclusionary effect by allocating a small amount of land for multi-family dwellings, and
- Conservation Management district did not unreasonably restrict landowners' right to develop.

# Methods of Fair Share Analysis

## *Dolington Land – Seven Step Solution*

- 1) Choose a time horizon.
- 2) Determine total number of projected housing units for selected time period.
- 3) Determine the portion allocated for multi-family housing growth.
- 4) Convert the multi-family housing projections into acres.

**Refer to Handout Exhibit C**

# Methods of Fair Share Analysis

## *Dolington Land – Seven Step Solution*

- 5) Add a safety factor.
- 6) Determine the number of undeveloped acres in the appropriate zoning district.
- 7) Compare the acreage needed for multi-family housing with the acreage available.

# An Alternative Approach

(for areas where several municipalities had several zoning districts which provided for multi-family housing at different densities.)

Steps 1-3 are the same

- 4) Add a safety factor to the projected number of multi-family dwellings.
- 5) Determine the d.u. capacity of the undeveloped properties in the R-2 district.
- 6) Compare the projected number of multi-family dwelling units with the number that could be built in the R-2 district.

**Refer to Handout Exhibit D**



# Other Methodologies

- Pottstown Metropolitan Region Comprehensive Plan
  - Incorporates two tests to address fair share:
    1. Evaluation of land area zoned for “fair share housing types”.
    2. Evaluation of the probable ratio of “fair share housing types” at buildout of the communities.

# Other Methodologies

- Kennett Township Comprehensive Plan
  - Undertook Analysis of both housing units and land area to address multifamily fair share obligation at local level
    1. Percent of projected housing units.
    2. Undeveloped land designated for Multi-Family.

# Related Suggestions Or Hints

from Dolington Land Case

- Path of growth may not be applicable to all municipalities within multi-municipal plan.
- Farmland should not be considered undeveloped land.
- Prime Ag. Soils may be protected as a resource.
- Municipalities should employ a periodic analytic process.
- *Surrick* analysis and other relevant factors
- Fair Share Evaluation by courts should be more than a "Snapshot in Time."

**Refer to Handout Exhibit E**

# Non-Residential Fair Share

- Multi-municipal programs must make provisions for commercial & industrial uses.
- Courts have treated these uses differently than residential uses.
- Residential uses granted greater protection.
- % of land analysis generally will not work.
- Must incorporate analysis of present and projected needs of the municipality.

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# Planning for Future Growth Areas



# Future Growth Areas

## [MPC Section 1103 (2)]

“Designate Potential Future Growth Areas where future development is planned for densities to accompany the orderly extension and provision of services.”

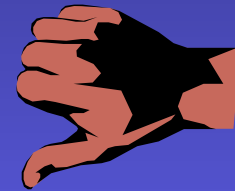


Idea of coordinating public services with more intensive development is key when changing from future growth area to designated growth area.  
Planning jargon = “**Concurrency**”

# Deciding on a Future Growth Area

Factors to consider when deciding where to locate a future growth area.

- Extensive natural features
- Important scenic, historic or cultural resources
- Adjacent to a designated growth area
- Future service area specified in Act 537 Sewage Facilities Plan
- Proximity of public water supplies
- Improvements on Penn DOT 12-yr Plan
- Existing capacity of local transportation infrastructure
- Available capacity in school district
- Availability of parks, playgrounds, recreation
- Beneficial economic impacts





# Future Growth Areas – Why is it important to plan together?

Newtown-Upper Makefield-Wrightstown Twps.

- Joint plan and zoning since 1983.
- Newtown – Designated Growth area due to available services and infrastructure.
- U. Makefield & Wrightstown – Future Growth or Rural Reserve Areas due to limited services and facilities.
- Estimated that communities saved \$34.8 million in road and storm sewer costs.

# Future Growth Areas – Why is it important to plan together?

Newtown-Upper Makefield-Wrightstown Twps.



1998 – Townships received Governor's Award for Environmental Excellence in recognition of:

- cooperation,
- avoidance of sprawl and
- reduction of premature public infrastructure costs.

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# Planning for Rural Resource Areas



# Planning For Rural Resource Areas

Task for drafters of multi-municipal comprehensive plans is to develop the implementing zoning regulations that protect agricultural, natural areas, groundwater resources, critical habitats and rural character ...while permitting reasonable use of property.



# Rural Resource Areas

- Density question
  - “densities compatible with rural resource uses”?
  - Historically, larger lot requirements were difficult to justify in PA courts, but are resolved on a case by case basis.

# Rural Resource Areas

- Example Judicial Decisions on “Takings”
  - *Hopewell Township Board of Supervisors v. Golla* (1981)
  - *Boundary Drive Associates v. Shrewsbury Township* (1984)
  - *Codorus Township v. Rogers* (1985)
  - *Mill Valley Associates v. Tredyffrin Township ZHB* (1989)

# Rural Resource Areas

- Example Judicial Decisions on “Takings”
  - *Berman v. Lower Merion Township* (1992)
  - *Reimer v. Upper Mt. Bethel Township* (1992)
  - *Hock v. Mt. Pleasant Township* (1993)
  - *C&M Developers, Inc. v. Bedminster Township ZHB* (2002)
  - *Appeal of Dolington Land Group and Toll Bros. Inc, from the Decision of the ZHB of Upper Makefield Township* (2003)



# Comparison of:

C&M vs. Bedminster Township ZHB and  
Dolington vs. Upper Makefield

- **Bedminster**
  - Affected intensity (dwelling unit yield)
  - Permitted one (1) development type.
  - Added “one clear acre” and building envelope requirements
- **Upper Makefield**
  - Affected layout & design.
  - Permitted three (3) development options with density incentives.
  - No. of dwelling units calculated without deducting natural constraints or agricultural land.

**Refer to Handout Exhibit F**

# Services and Facilities



What is MPC's "publicly financed by the municipality" part in Section 1103(3)?

Who provides financing for extending public services? Developer, Authority, County, School District? (public \$...but not by municipality)

Does the MPC suggest that the extension of services financed by an entity other than the municipality is ok, even if it fosters premature growth in a rural resource area?

Another issue for the courts to resolve....

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    - Special Tools

# Planning for “Older Pennsylvania” Communities



# Planning for Older Communities

- Advantages to participating in multi-municipal plan:
  - May assist in directing growth to areas in need of redevelopment.
  - May add (or avoid loss of) tax revenue and residents.
  - May help avoid conversion of farmland or premature extension of services in adjacent, less developed communities.

# Why “Older Communities” should partner with “Newer Communities” in a multi-municipal plan

- Serves interest of newer municipalities to aid revitalization of older communities.
- Strengthens ability of all to plan for and understand whole regional market.
- Increases political clout for attracting priority projects and investments.

# Local Government Actions to Help Revitalize Older Communities

(Brookings Institution Report)

- Develop inventory of “brownfields”.
- Adopt new/revised building codes to assist redevelopment.
- Use Main and Elm Street programs.
- Support manufacturing in “older” areas.
- Make reinvestment a priority for public facilities.

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# Planning for Developments of Area-Wide Significance and Impact

- Sections 1103 (a)(5) & 1104 (b)(2) state that multi-municipal comprehensive plans may plan for and cooperative agreements must provide for developments of “area-wide significance and impact” (a.k.a. DRI) – such as:



Highways

Airfields

Public transit routes

Land fills

Quarries

Recreation

Rail facilities

Sewage Treatment

# Planning for Conservation and Enhancement

- Section 1103(a)(6) authorizes municipalities to...
  - Plan for the conservation & enhancement of natural, scenic, historic & aesthetic resources within the planning area.



# Special Tools Authorized by MPC\*

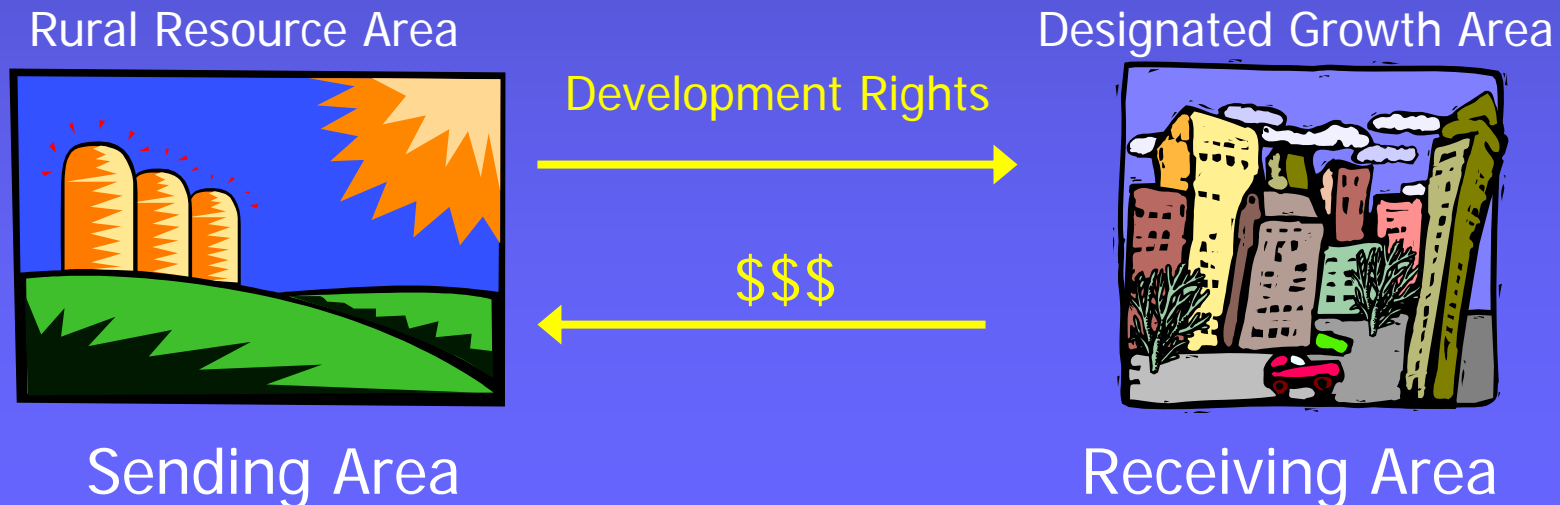


- Transferable Development Rights or TDR.
- Sharing of Tax Revenues and Fees
- Specific Plans

\*Used through cooperative agreements among municipalities.

# Transferable Development Rights

- Provides mechanism for property owner in Rural Resource Area to sell development rights to someone who wants to increase the development yield of property in a Designated Growth Area, among municipalities participating in a multi-municipal plan.





# Tax Revenue and Fee Sharing

- Alleviates fiscal disparities that lead to worsening conditions in some parts of the community or region.
- No municipality loses taxes. Taxes will grow for all.
- May help municipalities attract high quality nonresidential development in the most suitable locations.

# Tax Revenue Sharing National Models

- Minnesota's Fiscal Disparities Program – Twin Cities Metropolitan Area

A portion of the commercial & industrial property tax base of 7-county region is pooled and distributed to municipalities with below average market value per capita.

- Pittsburgh Area - One percent county sales tax.
  - 50% to county recreation and library facilities.
  - 50% divided evenly between county and local governments.

# Specific Plans (Section 1106)

- A detailed plan for non-residential development for an area covered by a municipal or multi-municipal comprehensive plan.
- Once approved and adopted by the participating municipalities, it supersedes all other applicable ordinances.
- Must be consistent with the multi-municipal comprehensive plan.



# Rationale for Specific Plans

- Proactive way to achieve a specific type of desired non-residential development.
- Process permits developer to jump to final plan stage, therefore quicker for developer than conventional review process. (a.k.a. fast track)
- Multiple financing options are available to prepare specific plan (tax revenue, grants or landowner contributions)

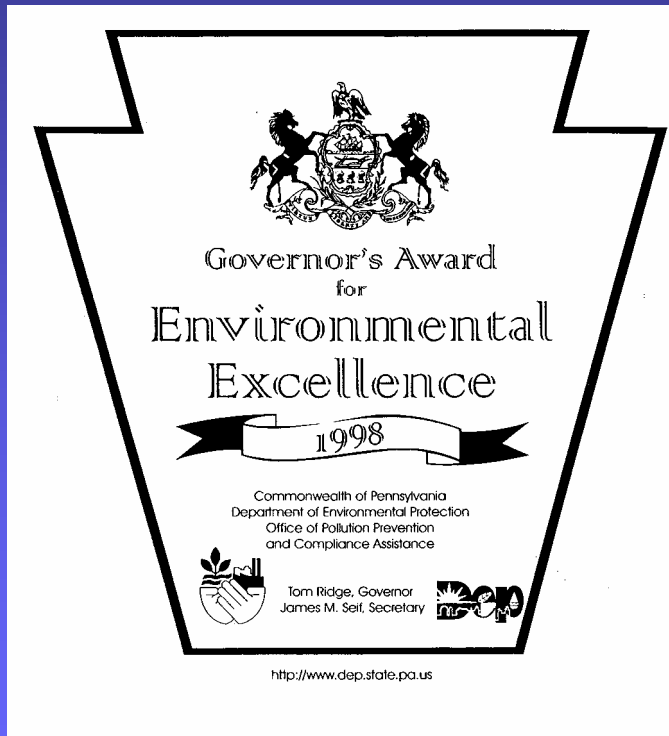


# Wrap-Up



# So Why Do This...?

- Opportunity for more effective land use planning
- Priority funding consideration by state agencies (Section 1105)
- Legislation in place
- Supportive Courts
- Varied implementation techniques



# Multi-municipal Land Use Planning

QUESTIONS ??

