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# Reducing Land Use Barriers to Affordable Housing

PLANNING SERIES #10



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# **I. Reducing Land Use Barriers to Affordable Housing**

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## **Introduction**

This publication explores how to reduce or eliminate regulatory obstacles to help stem the rising tide of housing costs. Although overly restrictive land use ordinances are not the only factors that increase housing costs, many zoning provisions and subdivision ordinance requirements do add to the problem. Some of the regulatory barriers may be inadvertent and easy to rectify. Others may be more difficult because they contradict conventional wisdom and/or local tradition.

Planning Series No. 10 is an instructive guide on what to look for and how to remove local planning and zoning obstacles to create affordable homes for Pennsylvania residents. There are many factors that contribute to high housing costs. Major studies indicate that restrictive zoning regulations and unreasonable subdivision and land development requirements can contribute to the cost of housing. Reining in of regulatory excesses may not directly create affordable housing, but it will work to reduce one component of increased housing costs.

## **Housing Affordability Considerations**

The term "affordable housing" is no longer just a euphemism for low-income, subsidized projects or large mobile home parks. Many policemen, schoolteachers, shopkeepers, public works employees and other private sector employees cannot afford to live in the communities where they work. In rapidly developing areas, they frequently incur the costs of long commutes to find affordable housing. Long commutes reduce the amount of time residents can contribute to the community. Volunteerism becomes more difficult and decreases. In areas where affordable housing is available closer to employment centers, commuting hours could be converted to community hours.

There are also economic and environmental costs associated with long commutes and lack of affordable housing near the work place. High housing costs consume an ever-increasing portion of income. Greater living costs allocated to shelter decrease an individual's disposable income. Local economies can suffer because what could be disposable income is consumed by housing costs. As people seek more affordable housing the length of the commute increases. The impact on the environment of long distance commutes is uncharted. Both environmental and economics costs increase as lanes are added to roadways to reduce commuting delays.

Prospective home seekers do not complain or petition at municipal meetings for affordable housing. Realtors do not record inquiries of persons who fail to qualify for housing at current prices. Nor are statewide statistics collected on the number of people seeking affordable housing. Some people only discover the problem when their children cannot afford to live in the same community in which they were raised. Municipal government can help because local elected officials are given statutory authority to address land use and housing issues.

## **Role of Municipal Officials**

Local officials are delegated the governmental authority to balance socio-economic needs with environmental concerns. That is, local elected officials are in control of land use and the impacts land use decisions have on the people and the environment within which they live. This authority is vested solely with local government under the MPC. The primary land use or location tool and implementation technique available to local officials to accomplish this task is zoning. Zoning is one tool that can affect the nature of the housing supply. Yet, before we zone, it is best to plan. For example, local officials can give a density bonus in certain districts, rethink regulations on accessory apartments, or create new residential/commercial uses that integrate housing needs with other community development objectives. But, acted upon unilaterally and in a vacuum, such actions will have a limited impact.

Prudent municipal officials recognize that conventional planning and zoning practices need to be enhanced to address current land use and housing needs. The economic vitality of a community depends on finding solutions to its housing and family-sustaining job needs. To act, a plan of action needs to be determined. The MPC provides the guidance, but

municipal officials must take the initiative to develop a plan to implement its strategic action objectives regarding housing and related land use goals. Knowledgeable local officials can contribute significantly to promoting awareness and understanding of housing costs and land use issues. Municipal officials showing and demonstrating leadership on these crucial matters are recognized and valued for their contributions to the social and economic well being of community.

A number of county planning commissions are doing an excellent job of increasing awareness and generating suggestions to address affordability problems. Several are cited at the end of this publication for their studies and recommendations to revise local land use regulations. Building from their successes, this monograph seeks to broaden understanding of this problem and potential solutions. By recognizing and understanding the problem, local officials can act in a leadership role to mitigate regulatory barriers to affordable housing.

## **Legal Setting**

The Pennsylvania Municipalities Planning Code (MPC) requires that municipalities plan for housing needs of present residents as well as those individuals and families “anticipated” to live in the municipality. This includes a mix of housing types and accommodation of expected new housing in different dwelling types at appropriate densities for residents of all income levels.

In addition to a plan for housing needs, the MPC states that zoning ordinances shall be designed to provide for “all basic forms of housing,” including a reasonable range of multifamily dwellings in various arrangements, mobile homes, and mobile home parks. MPC Section 604(4) was added by the Act 170 amendments of 1988 and adheres to the “fair share” principles embodied in a line of Pennsylvania exclusionary zoning court decisions. Among the factors involved in the “fair share” analysis are the percentages of land available for a given type of housing, current population growth and pressures within the municipality and surrounding region, and the amount of undeveloped land in a community.

Today, under Act 67 of 2000 specifically, Article XI municipalities can enact Intergovernmental Cooperative Planning and Implementation Agreements and effectively share the burden to meet all types of housing needs. By agreeing to plan and zone together, municipalities are now able to spread the burden of meeting the housing requirement of the region covered by the multimunicipal planning and implementation agreements. Successful and effective intergovernmental land use agreements should go a long way in protecting municipal partners from the two “fair-share” decisions described below.

The Pennsylvania Supreme Court ruled in 1985 that when a challenged ordinance totally prohibits a basic type of housing, a fair share analysis is unnecessary. The Supreme Court reasoned that demand for housing is not necessarily related to population growth, adding that there may be many families who presently desire to live in a particular municipality “but who are effectively zoned out of the community because they cannot afford to purchase either a single-family house or a duplex.” See *Fernley v. Board of Supervisors of Schuylkill Township*, 509 Pa. 413, 502 A.2d 585 (1985).

The “fair-share” principle referenced above was instituted by the Pennsylvania Supreme Court eight years earlier and requires municipalities “to plan for and provide land use regulations which meet the legitimate needs of all categories of people who may desire to live within its boundaries.” See *Surrick v. ZHB of Upper Providence Township*, 476 Pa. 1829 382 A.2d 105 (1977).

In practice, municipalities do not always provide for all basic housing types or else fail to zone any land for medium density (4 to 8 dwelling units per acre) or high density (9 or more dwelling units per acre).<sup>1</sup> Perhaps municipal officials are not aware of the court decisions. Hopefully, more responsible zoning will evolve in the 21st Century stemming from a renewed awareness of municipal responsibilities and the ability to share the housing burden among and between more than one municipality.

## II. Regulatory Barriers

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Following is a chart summarizing problems contained in many local regulations that prevent development of affordable housing. Suggest solutions accompany each identified problem.

### A. Supply of Land, Affordable Housing Types, and Design Standards

1. **An insufficient amount of land in the commonwealth is zoned for medium density (4 to 8 units/acre) and high density (nine or more units/acre) residential development to meet housing needs. (Prior studies by a southeastern Pennsylvania county planning commission noted there was only about one-fourth of the properly zoned land to meet the expected demand for medium and high density homes over a 15 year period.**
  - Land zoned for higher density may not be suitable because central sewers are not available or treatment capacity is inadequate. Revenue sharing funds, that once funded many capital improvements, including sewerage infrastructure, are no longer available. Other federal funds are available only to upgrade current sewage treatment but not to expand service. Therefore, a large share of the burden of expanding lines has shifted to newcomers. (Another county planning commission report concluded that roughly 3,346 acres of vacant land were zoned for 4 or more units per acre in the county, but only 623 acres (0.2 percent of the total county area) had access to public water and sewer infrastructure with existing excess capacity.
  - Where properly zoned land does have sewerage available, the hookup (tap-in) fees may contribute to increasing the cost of the house beyond affordability.
  - Too much land may be zoned for industrial uses.
  - Office park districts often fail to encourage or permit mixed uses with medium and high density residential uses.
  - Some zoning does not allow different types of multifamily structures (such as apartments and townhouses) or mixed-use districts. Instead, housing types are segregated.
    - (a) Traditional high-density housing has a greater visual impact, generating resistance by nearby residents.
    - (b) A mix of housing types allows a better match to the terrain.
    - (c) Greater numbers of more affordable housing types are likely to be built in developments of mixed types. As volume increases, profit margins can be reduced to lower prices.
  - The minimum site size, such as 100 acres for planned residential developments (PRDs) and cluster subdivisions is often excessively large. Many ordinances require 100 or more acres. These large vacant tracts are increasingly scarce, and their large size is unnecessary for development of a successful PRD.
  - Minimum lot sizes often start at one-half acre or more and are, therefore, too costly to make construction of smaller single-family houses financially feasible.
  - A high percentage of total municipal land area is frequently zoned for larger lots and/or houses with minimum floor area requirements that are often excessive. The size of living area needed for public health purposes (to prevent overcrowding) is much lower than most ordinances demand. Public health minimums are linked to occupancy standards, which are absent from zoning regulations. Sizes of houses could be left for the housing market to determine.



### **Suggested Solutions**

- (a) Zone a greater amount of land for medium and high density residential development.
  - (1) Rezone excess land that may be currently zoned industrial for moderate and high density residential uses.
  - (2) Medium and high-density residential uses should be encouraged or permitted in office park and commercial districts.
  - (3) Downsize lots to accommodate smaller single family homes.
- (b) Land should be rezoned to allow differing types of residential structures and to allow mixed-use districts.
- (c) Reduce or eliminate the minimum site size for PRDs and cluster subdivisions.
- (d) Eliminate minimum floor area requirements.

### **2. Zoning favors conventional site design rather than less expensive cluster design techniques.**

- PRDs and cluster subdivisions are often not allowed or are allowed only at low, nonaffordable densities. Many townships in some areas repealed their PRD provisions or reduced allowable densities.
- Flexible cluster designs that can accommodate various housing types often are allowed only as special exceptions or conditional use, which entails more delay and expense. In addition, cluster developments can be designed to reduce adverse environmental impacts and can even be sited on a working farm in the less productive portions and soil types. Further, disallowing clustering and mixed types of housing also creates barriers to continuing care retirement communities—a necessity to help house the burgeoning elderly population.

### **Suggested Solutions**

- (a) Allow PRDs and cluster subdivisions at higher densities.
- (b) Allow cluster designs without special exception or conditional use requirements.
- (c) Reduce or eliminate large minimum tract sizes for cluster developments.

### **3. Lot dimensions such as frontage, front setbacks, and side yard requirements can be excessive and add unnecessary cost. These devices also operate as a redundant density control.**

- Lot frontage determines the number of linear feet of street per lot, which directly determines the quantity of pavement, curbs, storm water control, sidewalks, sewer lines, water lines, and other utility installations, all of which add to the cost of a development. (Typically, a lot frontage of 150 feet may be required for a large lot (1 acre) single family detached home compared to 100 feet of frontage for half acre lots or 50 feet of frontage for detached homes allowed on lots of 6,000 square feet.)
- Front setbacks typically require the house to be set back 40 to 60 feet from the street right-of-way line which itself is usually another 10 or 15 feet removed from the cartway/curb line.
  - (a) Front setbacks were a reaction to city blocks with buildings at the curb line and to a perceived need for protection from street noise, headlight glare, and runaway vehicles. Today, other techniques combined with minimal setbacks can provide protection from those hazards.
  - (b) Each foot of front yard setback increases costs for service lines for sewers, water, driveway paving, site clearing, and landscaping.
  - (c) A rule of thumb is each foot of setback costs five times as much as each foot added at the rear.

- Rigid side yards can result in little usable space.
  - (a) Space at the side of conventional detached homes is seldom used for outdoor activities; it is often shaded, too narrow, or devoid of privacy.
  - (b) Alternate site designs can maximize the usefulness of outdoor space on smaller lots.

**Suggested Solutions**

- (a) Reduce lot frontage and thereby reduce costs for paving, storm water control, and utility installations.
- (b) Reduce front setbacks and thereby reduce costs for paving, service lines, site clearance, and landscaping.
- (c) Allow zero lot line and patio and atrium houses on smaller lots, which can reduce costs and still provide amenity.

**4. Excessive street widths and construction standards can be required in subdivision ordinances when the standards are unrelated to expected uses.**

- The same development standards are applied to both large and small developments instead of being tailored to fit the development's use or intensity.
  - (a) A street serving a minor subdivision or cul-de-sac can be narrower than one planned for more intense use.
  - (b) Streets comprise about half of the improvement costs of the typical single-family detached house.
  - (c) Street dimensions directly affect the cost of other improvements, such as utilities, storm water control, curbs and sidewalks.
  - (d) Wider streets cost more to maintain and plow, thereby increasing municipal costs, which impact on real estate taxes and therefore housing costs.
- Wider streets are required in an attempt to solve problems related to parking and special vehicles such as fire trucks, snowplows, and garbage trucks.
  - (a) Off-street and common parking areas can cut costs by reducing street widths.
  - (b) Since paving standards for parking are less expensive than for streets, it is cost-effective not to use streets to serve as parking lots.
  - (c) Narrower streets reduce traffic speeds and increase safety.
  - (d) It is costly to design residential streets to accommodate infrequent access by special vehicles. Fire trucks need quick access to the site and can make backing and turnaround movements at leisure after the fire has been extinguished.
  - (e) Requirements for residential street widths usually range from 26 to 36 feet, averaging about 30 feet. (Some planners believe a street width of 20 feet or less is sufficient.)
  - (f) Excessive street widths discourage internal subdivision streets in favor of developing sprawl-type frontage lots. Excessive street widths engender troublesome substandard private streets.

**Suggested Solutions**

- (a) Tailor development standards for streets to expected use or size of development, thereby reducing the cost of other improvements, such as utilities, storm water control, curbs and sidewalks, and the cost of maintenance. (See Performance Streets by the Bucks County Planning Commission for guidance.)
- (b) Allow or use off-street and common parking areas to reduce need for wider streets.

**5. Some subdivision ordinances still require traditional concrete and pipe storm water systems that are costly to build and maintain. Traditional storm drainage regulations also prevent or impede recharge of the groundwater supply at or near the site and may unnecessarily increase the velocity and quantity of runoff as it concentrates at collection points.**

- Some subdivision ordinances contain outdated and unreasonable storm water management provisions that add unnecessarily to the cost of development. The provisions may require overly stringent standards in regard to peak runoff and quantities. For example, some ordinances unfairly require developers to limit storm water runoff to less than the runoff that occurred prior to development, or to correct off-site deficiencies caused by errors of the past or the cumulative impacts of past developments.

**Suggested Solution**

- (a) Unless directed otherwise by an applicable watershed storm water plan pursuant to the Storm Water Management Act (Act 1978-167), subdivision ordinances should encourage the use of natural surface drainage that reduces the need for expensive infrastructure, relying instead on existing swales wherever possible to accommodate runoff. Municipalities should make sure that the standards contained in their ordinances regarding peak flow, total runoff and other factors are not unreasonable. Cost savings of natural versus traditional storm water management can possibly be higher than 50 percent depending upon: (1) the difference between the old standards and the new; (2) the proportion of the site which can be drained naturally; and (3) the specific soil absorption characteristics.

**6. Subdivision regulations often require sidewalks on both sides of the street and inhibit the use of alternate, cost-saving pedestrian walkways.**

**Suggested Solutions**

- (a) Require sidewalks only where needed, such as on just one side of the street rather than on both sides. Sidewalks may be unnecessary on low-density cul-de-sacs.
- (b) Where feasible, use pathway systems instead of sidewalks to connect logical destinations away from roads where possible. Allow alternate lower cost materials such as bituminous paving for pathways, which do not cross-driveways.

**7. Developers may need incentives to produce affordable units and to encourage infill development of vacant tracts.**

**Suggested Solutions**

- (a) Award density bonuses for construction of affordable housing units at controlled, below-market rate prices, and for infill development of vacant tracts. Density bonuses are authorized by MPC Section 603 (C)(6).
- (b) Award density bonuses for rehabilitation of existing substandard housing provided the bonus units are available for low and moderate-income persons.

**8. Landscaping requirements, such as large minimum tree sizes, inflexible street tree requirements, and screening buffer standards, can be excessive and too costly or rigid.**

- Buffers, which are usually required in too many circumstances, may be necessary to screen residential uses from commercial or industrial uses, but not other residential uses.
- Tree sizes of 2 1/2 inch caliper or larger are common and can increase cost over a 1 or 2 inch caliper.
- Ordinances designed to promote or create a rural appearance can produce an urban-like setting through a combination of requirements for street trees at fixed intervals, sidewalks on both sides of wide streets, and curbing.

### **Suggested Solutions**

- (a) Modify large minimum caliper tree size requirements.
- (b) Only require screen buffers around certain areas of the site such as parking lots, primary streets, and the most intensely developed areas instead of requiring buffering around the entire perimeter of a residential development.
- (c) Allow existing topography, vegetation, and berms as options to achieve buffering.

### **9. Subdivision regulations sometimes demand more land for park or recreation purposes than is allowed by MPC Section 503(11).**

- Ordinance standards that govern the amount of land required to be dedicated for park or recreation purposes are sometimes arbitrary and excessive.
- Developers are often required to pay fees in lieu of dedication of land for park and recreation purposes without the option of dedicating land.
- Developers are sometimes required to provide park or recreational facilities in addition to the dedication of land.

### **Suggested Solutions**

- (a) The municipality should prepare and adopt a recreation plan as an element of the comprehensive plan to use as a guide to establish the regulatory (subdivision and land development ordinance) standards.
- (b) The regulatory standards must adhere to and be in accordance with the prerequisites mandated by MPC Section 503(11).

### **10. Common open space requirements associated with cluster and PRD (planned residential development) provisions are sometimes excessive.**

- Requirements for dedication of land for “park and recreational” purposes are now strictly governed by MPC Section 503(11), and any additional dedications or reservations for common open space should be commensurate with appropriate increases of density.
- Common open space dedications or reservations, according to the MPC, are for the use and enjoyment of the residents of the development.

### **Suggested Solutions**

- (a) Municipalities may obtain open space for the benefit of the general public by purchase or by condemnation pursuant to the official map device (MPC Section 401 (a)).
- (b) Density bonuses should be incorporated into ordinance provisions when increased amounts of common open space beyond some reasonable amount or percentage are desired. A reasonable base percentage of open space should take into consideration the proposed use or uses, locational factors, the zoning district or otherwise allowable density, the amount of land required to be dedicated for recreation purposes, and the presence of significant environmental features such as wetlands that need to be protected.
- (c) Open space dedications grounded upon reasonable requirements also provide protection for the municipality against potential “takings” claims.

**11. Traditional zoning frequently uses a proliferation of residential districts with rigid prescriptive lot size, lot coverage and bulk requirements for each district.**

- Performance zoning, as an alternative, recognizes that all land is not created equal. It tailors density to the natural carrying capacity of the site and protects environmental features. Care must be taken to avoid stifling construction of affordable housing by demanding excessive performance standards that reduce the net buildable area.
- Performance zoning encourages clustering on the “net buildable area” and can allow a mix of dwelling types.

**Suggested Solutions**

- (a) Allow flexible performance zoning with appropriate environmental standards.
- (b) To avoid exclusionary zoning, allow greater densities on the buildable areas of the site and smaller minimum site areas.
- (c) Promote a flexible layout of the units and reduces bulk requirements, such as large rigid side yards.

**12. Zoning and subdivision ordinances often erect barriers to the use of affordable manufactured and industrialized housing.**

- The Pennsylvania Supreme Court requires that zoning ordinances must treat mobile homes the same as other single family detached dwellings. (See Appeal of Geiger, 510 Pa. 231, 507 A.2d 361 (1986).)
- In the Pennsylvania Municipalities Planning Code (MPC) as amended by Act 1988-170, Sec. 604(4) states that zoning ordinances shall be designed... to provide for the use of land for ... mobile homes and mobile home parks. The MPC directive is supported by numerous court decisions.

**Suggested Solutions**

- (a) Revise zoning allowing placement of mobile homes and modulares on individual lots that meet the respective setbacks and lot sizes required for conventional site-built single-family detached dwellings.
- (b) Increase the amount of land zoned for mobile home parks at affordable densities of 4 to 8 units per acre.

**13. Zoning requirements for home occupations can be restrictive or even discriminatory.**

- Home occupation requirements favor selected white-collar professions, such as doctors and lawyers, whose endeavors might generate more traffic than some frequently prohibited uses such as barber or beauty shops.
- Home occupations are rarely permitted by right and instead require the expense and delay of a special exception hearing before the zoning hearing board.

**Suggested Solutions**

- (a) Liberalize restrictive or discriminatory requirements for home occupations.
- (b) Criteria for home occupations can be retained and utilized by the zoning officer to grant permits instead of utilizing the zoning hearing board; i.e., convert home occupations from special exceptions to uses permitted by right.

**14. Many zoning ordinances limit affordable housing opportunities for one- and two-person households and elderly households.**

**Suggested Solutions**

- (a) Revise zoning provisions to:
  - (1) Facilitate conversion or alteration of an existing single family dwelling into two residential units (an accessory apartment) subordinate to the primary dwelling, or into two or more residential units (residential conversions);

- (2) Allow the addition of a single, small elder cottage to a single-family lot to be used by either elderly or disabled family members related to the occupant of the principal dwelling;
  - (3) Allow shared housing which involves the occupancy of a dwelling unit by two or more unrelated individuals who live as a single housekeeping unit and share kitchen, bath, living and dining space;
  - (4) Allow group homes for foster children, the developmentally and mentally disabled, and the elderly by right in all districts where single-family dwellings are permitted.
- The Federal Fair Housing Act prohibits discrimination against the “handicapped” which includes not only the physically disabled and mentally ill or retarded, but also recovering drug or alcohol addicts. Discriminatory treatment might include restricting the number of unrelated persons allowed in a group home, requiring a special exception or conditional use approval or by establishing a dispersal or spacing requirement between group homes. Monetary damages and penalties have been awarded to victims of discrimination where violations of the Federal Fair Housing Act have been found. The court case law concerning group homes is in a state of flux and every municipality should review its group home restrictions with its solicitor.
  - A number of county planning commissions have published excellent models that illustrate how to revise zoning provisions. For example, see Bucks County's Local Zoning for Affordable Housing Opportunities and Montgomery County's Model Zoning Provisions: Expanding Housing Opportunities.

**15. Parking standards can consume more land than necessary, especially in multifamily development.**

- Parking standards often do not relate to the number of cars or trips generated by a particular use. A small apartment may be required to supply the same number of parking spaces as a large single family home.
- Required parking stall dimensions are often excessive.

**Suggested Solutions**

- (a) Link the number of required parking spaces to the number of bedrooms rather than the number of units in multifamily developments.
- (b) Reduce a percentage of the stalls in size to accommodate smaller compact cars, e.g., when 25 or more stalls are required, up to 25 percent could have reduced dimensions. Alternatively, conventional parking stall dimensions of up to 10' x 20' could be downsized to 8' x 16', saving one-third the space.

**16. Local building codes often prohibit use of new materials and methods of constructing buildings that are less costly.**

**Suggested Solution**

- (a) Enact a standardized national code such as BOCA (Building Officials & Code Administrators) or encourage local building codes to permit use of new materials and methods of construction.

## B. Application Processing

### 1. **Lack of uniformity among land use ordinances adds time and, therefore, increases costs to developers. The absence of professionally drafted ordinances has a similar impact in many communities.**

- Land use ordinances vary tremendously from one community to the next. This lack of uniformity in format and substance adds time to the process of understanding the requirements. This confusion also adds unnecessary costs because small builders must hire a consulting planner or engineer. When counties complete the required guidelines for uniform zoning terms confusion will be reduced.
- Land use ordinances can be poorly drafted. Poorly drafted ordinances consist of a collection of amendments tagged onto an outdated base, lack an index or only contain an out-of-date table of contents, and are devoid of illustrative material. Definitions of key terms are usually absent or unclear. Confusing and vague ordinances are difficult to understand and administer, and engender appeals resulting in more expense and delay.

#### **Suggested Solutions**

- (a) Act 68 of 2000 directs county planning commissions to publish advisory guidelines to promote general consistency with the adopted county comprehensive plan. These guidelines are to promote uniformity with respect to municipal planning and zoning terminology. Once prepared these suggested common standards help to solve some of the problems.
  - (b) County-wide zoning and subdivision ordinances help to promote uniformity of standards and create cost effective, professional administration of the ordinances.
  - (c) The Municipalities Planning Code encourages joint municipal planning and zoning which can accomplish a high degree of uniformity and professionalization that is uncommon in the current fragmented system. The “joint municipal” approach can work anywhere, but “county-wide” ordinances may be better suited to the more rural counties. However, experience in Lebanon County shows that county-administered zoning can also work in urbanizing areas.
2. **Medium and higher density housing developments that are more likely to be affordable usually encounter more red tape in the form of needed rezonings, hearings for special exceptions or conditional uses, or the need to have additional technical reports prepared such as traffic impact studies prepared.**

- Developers in southeast Pennsylvania find that it takes longer to rezone for most types of residential dwellings than it does for single family dwellings. A protracted review process adds to housing costs.

#### **Suggested Solutions**

- (a) By right, zoning ordinances should allow more land for higher density uses. Consider converting selected special exceptions and conditional uses to uses permitted by right.
- (b) By right, zoning ordinances should allow various types of multifamily structures.
- (c) An expensive traffic impact study should not be required because the study cannot be used to compel financial contributions from the developer for off-site transportation improvements, except in strict conformity with the new “impact fee” requirements of MPC Article V-A (Act 1990-209).

**3. Land development plans are reviewed by unpaid lay planning commissions, causes delays and increased costs.**

- Lay planners pass judgment on technical matters about which they have only limited expertise. Often, consultants are hired to review the same plans and report to the lay planning commission. This cost is passed on to the developer.
- Lay planners generally meet on a monthly basis, notwithstanding the need for more frequent meetings.
- Lay planners, who epitomize the Jeffersonian ideal of citizen participation, are usually too busy reviewing plans to deal with value-laden policy issues inherent in developing comprehensive plans, zoning amendments, or capital improvement programs.
- Lay planners usually lack training in the planning field.
- The Municipalities Planning Code, which evolved from the Standard State Zoning Enabling Act of 1924, was not designed to take full advantage of professional planning or to give trained planners an important role in decision-making.

**Suggested Solutions**

- (a) Professionalization of planning and zoning administration improves efficiency and cuts delays.
- (b) Under the Municipalities Planning Code, plan approval power may be delegated to a planning department director in lieu of, or in conjunction with, a planning commission.
- (c) Municipalities interested in expediting approvals should appoint a professional planning department director or a planning consultant to approve plans or, where economies dictate, engage a circuit-riding planning director.
- (d) Efficiency could be enhanced by administering land use ordinances through a county planning department or a joint municipal planning department.
- (e) Professional planning departments are also more likely to utilize new technology to enhance administrative efficiencies.
- (f) Some municipalities could make better use of county planning agency expertise by utilizing their subdivision and zoning reviews.

**4. Good community design should be actively promoted.**

- A landowner who desires to create building lots will usually draw a rough sketch and hire a surveyor to prepare the subdivision plan.
- Surveyors are generally the first point of contact. If surveyors prepare poorly designed plans, the battle is lost. The plans may technically meet the ordinance standards but still be deficient in design concept. Most landowners are reluctant to pay twice for approvable plans.

**Suggested Solutions**

- (a) The county planning agency could sponsor and invite all surveyors to a seminar on subdivision design, as well as seek the help of surveyors to educate landowners in good design techniques.
- (b) The county planning agency should actively promote improved community design by making the services of an experienced planner who has a knack for good design available for free to assist landowners or surveyors at the sketch plan stage.



**5. Delays in receiving approvals for land development add to the cost of projects.**

- The Municipalities Planning Code plan approval provisions are fairly reasonable. The MPC envisions a two-step land development approval process (preliminary and final), each taking up to 90 days. The MPC also provides safeguards in the form of deemed approvals if the time limit is exceeded or if a denial is not properly justified in writing.
- In addition, the county planning commission review period was reduced by Act 1988-170, from 45 to 30 days. Given inherent delays with lay planning commission reviews and delays attributable to other factors, the MPC approval process is still fairly reasonable.

**Suggested Solutions**

- (a) Developers should ensure that their development plans are complete and include all required supplemental materials. (Most delays are due to incomplete plan submissions, the need for zoning amendments or prior zoning approvals and hearings related to special exceptions and conditional uses.)
- (b) Municipal planning commissions do not need to wait for the county planning agency review to begin their review of subdivision and land development plans. The two reviews can proceed simultaneously. If the county report has not been received prior to the municipal planning commission's advisory report, the municipal governing body should be reminded of the requirement to consider county comments prior to their action.
- (c) Where professional staffing exists, the planning director could be delegated approval power for final plans in order to reduce delays.
- (d) Convert appropriate special exceptions or conditional uses to uses permitted by right.

**6. Delays in receiving approval for minor subdivision plans can add to the cost of projects.**

- Minor plans that are not defined in the Municipalities Planning Code are processed in an expedited manner by a majority of municipalities. Minor subdivision plans are usually defined as the creation of less than a specified number of lots (often 10 or less) which require no new street or easement of access. Processing time for minor plans is shortened by the waiver of the preliminary plan requirement.

**Suggested Solutions**

- (a) Minor subdivision plans could possibly be approved in a week or less if authority is delegated to a planning director or circuitriding planning director.
- (b) County planning directors can also be delegated similar authority for minor plans where the county ordinance has jurisdiction.

**7. Plat (i.e., plan) review fees and fees for engineering inspection of improvements can be excessive.**

Processing time for minor plans is shortened by the waiver of the preliminary plan requirement.

**Suggested Solutions**

- (a) Municipalities should abide by the new Act 1988-170 amendments to the Municipalities Planning Code concerning plat review fees and fees for engineering inspection of improvements. Fees shall be based upon a schedule established by ordinance or resolution and be reasonable. Fees may not exceed the rate or cost charged by the municipal engineer or consultant to the municipality.
- (b) Act 1988-170 provides a new dispute resolution process for disagreements on review fees and fees for inspection of improvements. See MPC Sections 503(l) and 510(g).

**8. Time delays in scheduling or rescheduling zoning hearing board (ZHB) hearings can add costs to developments.**

**Suggested Solutions**

- (a) To reduce time delays in scheduling or rescheduling ZHB hearings due to illness, absences, or possible conflicts of interest of members, municipalities could appoint alternate ZHB members as authorized by the Act 1988-170 amendments to the MPC. See MPC Section 903(b).
- (b) Consider using a hearing officer as authorized by MPC Section 908(2).

**9. Land use disputes ending up in court add costs to development.**

**Suggested Solutions**

- (a) When land use disputes occur, either the municipality or the developer may initiate a voluntary mediation option process that was recently authorized in the Municipalities Planning Code by Act 1988-170. Potential benefits of mediation include:
  - (1) Assistance in relieving an overburdened court system and support for encouraging out-of-court settlement;
  - (2) Providing a potentially less costly mechanism for resolving land use disputes; and
  - (3) Providing a less polarized process than that which an adversarial administrative hearing or legal proceedings create.

Note: The zoning hearing board may not initiate mediation nor participate as a mediating party.

## II. Conclusion

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Except for taxing authority, the most important power that local governments possess is land use regulation. Unfortunately, zoning and subdivision practices can contribute in one or more ways to unnecessarily increase the cost of housing. The best framework for exercising local land use powers is a well-conceived comprehensive plan. The MPC requires the comprehensive plan to accommodate expected new housing in different dwelling types and at appropriate densities for households of all income levels. This burden can be met within the boundary of a single municipality or on a multimunicipal basis. Either way, the suggested solutions listed in this publication should be used by local planners and elected officials to assist in preparing revisions to the pertinent ordinances.

# Appendix I

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## Appendix II

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### Planning Assistance from the Governor's Center for Local Government Services

The Governor's Center for Local Government Services is available to assist municipalities. Assistance is offered to assist municipalities in assessing the impact of state agency decisions on local planning and zoning activities. Municipalities with an adopted comprehensive plan and zoning ordinance located within a county with an adopted comprehensive plan have the benefit of Commonwealth agencies considering the documents when reviewing applications for the funding or permitting of municipal infrastructure or other facilities. In addition, the Center offers grant assistance to prepare and/or update these important land use documents.

The Land Use Planning and Technical Assistance Program (LUPTAP) is an important component of the Growing Smarter Action Plan of the Governor's Center for Local Government Services. The LUPTAP provides matching grants for municipalities preparing to develop and strengthen community planning and land use management practices.

Guidelines for LUPTAP incorporate the principles of the Land Use Planning Executive Order and the recent changes to the MPC. The guidelines make clear that priority consideration for funding is given to municipalities that incorporate multimunicipal approaches into their planning efforts. Similarly, those municipalities that strive for general consistency between their comprehensive plan, the county comprehensive plan and local zoning ordinances also receive priority consideration.

LUPTAP funding is one of the Center's most significant support programs. It allows municipalities to use funds to develop new or update existing comprehensive plans and land use implementation ordinances. It also allows municipalities to prepare strategies or special studies that will support the comprehensive planning process. LUPTAP funds can also be used to develop or update zoning or subdivision and land development ordinances, or to utilize advanced technology, such as a Geographic Information System. Municipalities are permitted and encouraged to use up to \$1,000 of the funding received toward educational programs on planning issues for local officials. The training and education program offered by the Center's training partners represent an excellent use of the funds.

The goal of the Center is to enhance the existing planning curriculum by offering new courses to local government officials through established partnerships with the Pennsylvania State Association of Boroughs (PSAB) and the Pennsylvania State Association of Township Supervisors (PSATS). The Center is proud to partner with PSAB and PSATS and draw on their understanding and experience in planning and growth issues to develop, promote and conduct new courses.

The courses offered by PSAB are directed primarily at economic development and downtown revitalization efforts as alternatives to sprawl. The courses PSATS offers focus on best practices and conservation. The primary audience for education and training programs is local government officials, however, other groups such as professional planners, municipal solicitors, elected officials and citizens, in general, can benefit from these enhanced planning programs.

A community or individual desiring information on planning or planning assistance, either financial or technical, should contact the appropriate Department of Community and Economic Development Regional Office in their area. Some of the issues that the Department's staff can provide assistance in are:

- Community planning and comprehensive plans;
- Zoning;
- Subdivision and land development;
- National Flood Insurance and Floodplain Management;
- Other planning related areas such as Planned Residential Development provisions, historic districts, mobile home parks, sign control, etc.; and
- Procedural questions involving the Municipalities Planning Code.

**Pennsylvania Department of Community & Economic Development  
Governor's Center for Local Government Services**

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