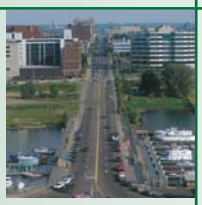
Governor's Center for Local Government Services

PLANNING SERIES #1


Local Land Use Controls in Pennsylvania

Commonwealth of Pennsylvania
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Introduction

This advisory is an inventory and a basic summary of what tools are available to guide growth. It reports on fundamental local planning and land use controls in Pennsylvania. This publication is a summary of what exists now and what can be done under the current Pennsylvania Municipalities Planning Code (MPC). Related ordinances and regulations are also discussed since many development activities usually require other non-land use regulatory approvals.

Land is one of our most valuable natural resources and the way it is used or developed creates a significant part of our physical surroundings. Any change in land use becomes a permanent part of our daily lives in the future. Yet all valuable resources must be used reasonably, economically and equitably to benefit both the property owner's best interest as well as the general public. An important power of local government is to plan for and guide the way land resources are used. This publication is intended to assist local officials in this stewardship endeavor.

Statutory Overview of Authority

In Pennsylvania, the power and responsibility to plan for land use and its regulation lies exclusively with local government including counties. This is because the General Assembly delegated to local governments a portion of the "police power" with respect to planning and land use controls to protect the public health, safety, and general welfare. Responsibility for land use planning and regulating development is exercised through the authority granted to municipal officials by the MPC. Powers to enact construction, property maintenance and fire prevention codes are derived from the individual municipal codes, i.e. township (first and second class), borough or city code or home rule charter.

No municipality is mandated by the MPC to plan or zone, although counties are required to adopt a comprehensive plan. (See MPC Section 301.4) Neither does a statewide building code exist although the Department of Labor and Industry regulates certain aspects of some types of construction activities via the Fire and Panic Act. Plumbing, electrical, fire safety or building codes are all enacted and enforced under the procedures prescribed by the individual municipal codes.

The MPC is a true "enabling" act, that is, it gives considerable leeway to a municipality in shaping its own planning and land use programs. Most provisions in the MPC are devoted to procedural matters largely guaranteeing that public notice is given. This aids in increasing citizen awareness and participation in land use matters. Detailed and compulsory public requirements heighten public awareness and visibility, which is illustrative, of how revered property rights are in the Commonwealth. If a municipality misuses any delegated power, the MPC outlines the steps landowners or persons aggrieved can follow to have their day in court.

Although the MPC is quite lengthy, there are no ancillary rules or "regulations" nor has any state agency been assigned the responsibility to administer any of the land use powers in the event a unit of local government fails to exercise a delegated power. An exception is if a particular use would violate another state or federal law, then the appropriate agency responsible for that law would be called upon to intercede. Examples of land use activities that violate other laws or regulations are unlicensed gambling or liquor sales, unapproved off-track betting, unpermitted stream discharges or brothels.

One important point to be made is that, even though the authority to adopt and administer planning control measures or regulations has been delegated to municipalities under the police powers, recent rulings by the United States Supreme Court have reinforced the importance of having a connection between the specific purpose of a regulation or ordinance provision and the police power objective. A municipality must be

prepared to document that the regulation bears a reasonable relationship to the welfare of the public and that the measure or control in fact advances a legitimate public interest. That interest must not be arbitrary, but rather supported by comprehensive analysis of community development goals and objectives.

Environmental Stewardship vs. Private Property Rights

More than 20 years ago, Pennsylvania voters ratified a measure that added Article I, Section 27 to the State Constitution of 1968. The constitutional amendment states that:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources the Commonwealth shall conserve and maintain them for the benefit of all the people.[1]

The MPC has been amended several times to encourage local governments to address valuable natural and cultural resources such as agricultural lands, wetlands, floodplains, historic and water supply resources.[2] Regarding land use and its impact on the environment, The Atlas of Pennsylvania notes that:

> Many activities—industrial, commercial, housing development, mineral extraction, farming, forestry, or waste disposal—are bound to affect the environment... Pennsylvania's environmental programs and laws, including local land development ordinances, promote the recognition and the mitigation or avoidance of environmental effects. In fact, the Commonwealth's ability to encourage environmental stewardship is quite broad, at both the state and the local levels.[3]

Comprehensive Plan

Today, land use is an important issue, both locally and nationally. In Pennsylvania, land use planning is a topic among state agencies, county and local governments, business and industry, charitable and private foundations, as well as environmental organizations. In fact, all levels of government and all branches of state government are actively dealing with planning and land use matters.

Of the more than 2,500 municipalities in Pennsylvania, more than half have prepared comprehensive plans. That means just under 50 percent lack a formally documented strategy or plan for the future. A comprehensive plan is an overall policy guide for the physical development of a municipality. In addition to other items, the MPC requires that a comprehensive plan consider location, character and timing of future development. A plan provides blueprints for housing, transportation, community facilities and utilities and for land use.

In the early 20th Century, Frederick Law Olmstead, Jr., designer/planner of several communities in Pennsylvania, urged municipalities to create or acquire statistical databases on the physical, social, economic and financial environment; compile information on relevant legal and administrative matters and draw up accurate topographical maps. A comprehensive plan entails such an inventory and makes recommendations regarding policies designed to guide future development. Olmstead also noted that "prevention is cheaper than the cure." A continuing comprehensive planning process can avoid expensive cures.

A comprehensive plan can establish community development objectives for a municipality. A plan is an expression of how a community sees itself in the future and sets forth a desired pattern of development. For a plan to be a valuable tool, it must be a focal point for guiding a community through change; otherwise it is not a blueprint. An improved quality of life for the entire community is the reward for fulfilling planning responsibilities delegated to local government officials.

An adopted comprehensive plan is not the legal equivalent of a land use ordinance. It is an overall plan embracing general goals and objectives upon which a governing body uses in making day-to-day decisions.

There are three situations which require the adoption of a comprehensive plan: 1) when a governing body enacts a transportation impact fee ordinance detailed in Article V - A (Municipal Capital Improvements), 2) if municipalities collectively enact joint zoning controls, or 3) if the governing body is a county.

The planning process is a means of dealing with change. If a community is growing, change will occur more quickly than in a stable community. Nonetheless, even a stable community will experience change over time. The makeup of the population will change; the economy will fluctuate, the housing stock will age, the environment will continue to be threatened and the needs of the citizens will not necessarily be the same today as in the past or in the future.

The comprehensive planning process involves taking an inventory of the development alternatives, analyzing the data collected, projecting the future growth and development alternatives, and establishing policies to be implemented in the future. It is a blueprint for future development of the community. A comprehensive plan provides a logical basis for zoning and other land use ordinances. However, a plan is not an ordinance nor is it self-enforcing. Plans depend on local laws (ordinances) and private actions and other activities to implement the concepts and recommendations set forth in them.

References

1. Article I Section 27, of the Commonwealth's Constitution was passed by the General Assembly and ratified by the electorate in May of 1971 (May 18, 1971, P.L. 769, J.R.3). The amendment received 1,021,342 votes: more than any candidate seeking statewide office.
2. See MPC Sections 603(b)(5), 604(1) and 604(3).
3. By A. Elizabeth Watson in the Environmental Overview for the Land and Resources section in The Atlas of Pennsylvania, Temple University Press, Philadelphia, Pennsylvania (1989).

Land Use Ordinances

The MPC defines "land use ordinance" as "any ordinance or map adopted pursuant to the authority granted in Article IV, V, VI and VII." Therefore, the following are land use ordinances: 1) Official Map, 2) Subdivision and Land Development, 3) Zoning, 4) Planned Residential Development Provisions (PRD) and Traditional Neighborhood Development Provisions (TND) as part of the zoning ordinance. Land use ordinances are legislative actions exercised by the governing body of a municipality. To enact or adopt a land use ordinance requires that a simple majority of the governing body, present and participating in the voting, vote in the affirmative to adopt an ordinance. With proper notice to the public, required reviews and adherence to the procedures prescribed in the MPC, a governing body can take legislative action to adopt, amend or repeal a land use ordinance anytime.

Pennsylvania has no state constitutional provision providing for a referendum that could apply to land use and planning ordinances. On rare occasions a governing body may succumb to vocal personalities to put the matter on the ballot. It is usually discovered that the procedure is time consuming, expensive and the results have no legal effect. In addition, the referendum process often generates deep divisions and hard feelings among citizens, and with the governing body, regardless of the final action that is taken!

In Pennsylvania, the legislature gave municipalities the power of referendum for certain limited questions such as the adoption of voting machines, the sale of beer and liquor, the showing of Sunday movies, the adoption of home rule charters and the incurring of local government debt. These are the only circumstances for which a governing body is authorized to use binding legislative initiatives or referenda.

Disputes involving certain land use ordinances may now be resolved by parties deciding to utilize mediation. Mediation is defined as "a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable." Mediation is envisioned as an aid in resolving subdivision and zoning (including PRD applications) conflicts. Mediation is intended to supplement the normal appeal procedures available to parties to the controversy. (For specifics on mediation, see MPC Sections 107, 502.1, 508(7), 602.1, 609(f), 708(c) 908.1, and 1104(d))

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

Official Map

An official map is a map and ordinance that deals with future public projects. This map is a declaration by the governing body of the projected areas a community will eventually need for public purposes. It identifies specific parcels or portions of private property within a municipality where open spaces are desired or where public improvements (such as widening a road) are envisioned. It also demonstrates that it is the intent of the governing body to acquire land for these municipal purposes. The first step is to prepare a map.

To prepare an official map a municipality must make surveys and maps to identify the location of property sufficient for description and publication in map form. For this purpose a municipality may use property records, aerial photography, photogrammetric mapping or other suitable methods to prepare the official map. The map is the primary component of an official map ordinance.

Some caution is warranted here; an official map is a type of a land use ordinance. It must not be confused with a municipal base map, an existing or future land use map, a zoning map or any map in a comprehensive plan. A comprehensive plan, an existing or future land use map and a municipal base map are all good references to have on hand, but none is an official map nor is any of these a land use ordinance. An official map is prepared and adopted in accordance with procedures set forth by Article IV of the MPC. For matters before a zoning hearing board and appeals to court, MPC Section 107 (b) defines an official map as a "land use ordinance."

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

An official map ordinance allows a municipality to reserve private land for certain future public uses. This process has two steps or phases: regulatory and acquisition. Only that portion of the municipality for which the map is prepared needs to be mapped and need not be surveyed for identification purposes. Technologies such as aerial photography, photogrammetric mapping and other methods sufficient for identification can be used to show the area on a map. The regulatory phase notifies developers and property (land) owners that the area mapped is reserved by the municipality. This action clearly demonstrates municipal interest in acquiring the property for public purposes sometime in the future.

Acquisition by friendly negotiation or, if necessary, through eminent domain proceedings is the second phase of the official map process. To acquire property the municipality must prepare an accurate metes and bounds survey by a licensed surveyor of the properties listed on the official map. Prior to acquisition, property owners are responsible for maintaining properties on the official map. A municipality can deny a building permit for a proposed structure located within the areas identified for future purchase on the official map for a short period of time.

Following notification of a landowner's intention to build, subdivide or perform other work on his property, a municipality has one year to acquire the property or begin condemnation proceedings. Land is obtained by the municipality through negotiation and compensation. A municipality cannot withhold approval or condition approval predicated on a landowner's dedication of land for public purposes.

In summary, the official map ordinance, or official map for short, is the least known of tools to implement the comprehensive plan. Even with Act 170 amendments of 1988 making the official map and ordinance more user friendly, less than three dozen municipalities adopted official map. Currently, 33 municipalities in 16 counties have enacted an official map ordinance. By class of municipality, there are 23 townships of the second class, one township of the first class, six boroughs and three cities.

Zoning

Zoning is the second most common type of land use ordinance. More than 60 percent of all municipalities have enacted zoning regulations. Eleven counties have adopted some type of county level zoning. In total, more than 1,650 municipalities have zoning regulations in effect.

Municipalities that are not zoned comprise 50 percent of the state's total land area, but only 10 percent of the total state population. Nearly 96 percent of the municipalities lacking zoning are classified as "rural." It is very interesting that only 2.3% of Pennsylvania's land area that is classified as "rural" has zoning protection. Population-wise, 10 percent of the total live in unzoned municipalities in the Commonwealth and 90% reside in zoned communities.

Zoning is a tool a community may utilize to regulate the use of land and the location and intensity of development. It is initiated by the adoption of a zoning ordinance designed to protect the public health, safety and

welfare as well as to guide growth. A zoning ordinance consists of two parts - the text and a map of the various zoning districts. The text of the ordinance contains community development objectives and necessary technical provisions to regulate the use of land and structures. The text contains written provisions for bulk, height, area, setback, density and other standards. The zoning map delineates the boundaries of the specific districts or zones created by the ordinance.

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

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

For example, the MPC mandates that it is a municipal obligation to provide a full range of housing types. It would be unreasonable to exclude certain kinds of residential units. For instance, prohibition of townhouses or mobile homes might only serve to exacerbate or create an affordable housing problem. This type of regulation would be vulnerable to court challenges. MPC Section 604 prescribes that:

> "The provisions of zoning ordinances shall be designed: . . . (4) To provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks…"

Alternative Zoning Techniques

To accomplish a reasonable mix of housing types, the MPC also authorizes use of alternative zoning techniques. The code specifically contains provisions to encourage innovation and to promote flexibility, economy and ingenuity in development as well as provisions authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria.[1] These provisions can be utilized to encourage developers to build affordable housing.

Some examples of alternative techniques include clustering, lot averaging and flexible building setback lines. Clustering involves the arrangement of residential building lots in groups through a reduction in lot area and building setback requirements. Lot averaging is similar to clustering in that both methods allow some variation in minimum lot size regulations. Flexible building setbacks allows greater freedom in placement of the structure on a lot.

Traditional zoning establishes an array of zoning districts under which specific permitted uses are listed. Likewise, conventional zoning generally requires a rigid minimum lot size for each specific zoning district. Lot averaging or clustering adds a degree of flexibility to the design of a development by providing for variations in lot sizes.

Another zoning variant known as industrial performance zoning relies on a list of specific quantifiable criteria, which must be met by any proposed use. Standards are established for such elements as particle emissions, noise, glare, and vibration. When a particular use meets these standards, it then becomes a permitted use in that district (i.e. a telephone switching station disguised as a house in a residential district).

Performance standards have also been expanded to protect a site's environmental features and may be applied to all types of uses including residential construction. These performance standards typically include the

reduction of impact on environmentally sensitive areas (i.e., floodplains, wetlands, steep slopes, and forests). Such environmental standards are instituted for the purpose of natural resource protection.

Environmental performance zoning relates the intensity of development to the site's natural carrying capacity, while industrial performance standards control various pollutant levels and conventional zoning simply lists specific uses by districts. Zoning based on environmental performance factors differs from both the industrial method and traditional zoning because physical land characteristics determine the quantity or degree of permissible development (number of lots allowable).

Performance zoning standards provide the municipality a greater degree of specific control while also affording developers increased design flexibility. Although this approach does offer several advantages, it also creates an additional burden with respect to the administration and enforcement of the zoning ordinance. It is for this reason that technically trained staff is recommended. For more information on zoning and alternative zoning techniques, refer to Planning Series #4, "Zoning."

Planned Residential Development Provisions

Planned residential development (PRD) provisions combine elements of zoning and subdivision and land development regulation. Since passage of Act 170, PRD provisions and standards are to be contained in and part of the zoning ordinance. They bring together and mix residential, nonresidential development, open space, groundwater recharge and recreational uses in the same development. PRD provisions are special and unique. PRD provisions encourage a variety of designs and types of housing arranged in an efficient manner on the land thereby conserving land to use as common open space and for recreational purposes, and typically reduce the amount of street and utility infrastructure needed to serve the development. In contrast, conventional subdivisions are inherently more costly because extra linear feet of expensive streets, curbs, sidewalks and utility lines are needed to serve equal numbers of dwelling units which usually results in higher housing prices.

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

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

Traditional Neighborhood Development (TND)

Many municipalities have searched high and low for a way to reintroduce small town character and a sense of community to their respective areas. For some, the concept of traditional neighborhood development (TND) now provides a solution through zoning. The TND attempts to recapture the village and town square flavor of a pedestrian oriented setting. By utilizing traffic calming design measures such as narrow streets, frequent intersections and on-street parking in combination with a mixed array and proximity to each other of housing, businesses and services, the TND also integrates different segments of the population otherwise separated by age or income.

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

Transferable Development Rights (TDRs)

The concept of transferable development rights is a recently authorized technique that can be used by a municipality to help make regulation of development more financially equitable to landowners. The process attempts to deal with the financial burden that zoning may place on property owners whose rights are in conflict with the public interest, for example, when farmland that could be developed is zoned to preserve valuable agricultural land. This is done by giving landowners something that they can sell in exchange for not developing their land: development rights. These rights may be sold to a builder who wishes to increase development densities in another area of the community considered more suitable for development.

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

Generally, development rights are not transferable beyond the boundaries of the municipality from which the rights originate. Act 131 of 1992 authorized transfer of rights between or among the boundaries of two or more municipalities that provide for transferable development rights in the context of a joint municipal planning and zoning program. Act 68 of 2000 authorizes the transfer of development rights across municipal boundaries by written agreement among the parties. Development rights are conveyed by a deed recorded in the county recorder of deeds office. The deed or deeds must bear the endorsement of the local municipal governing body having jurisdiction over the property involved in the conveyance of rights.

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

Subdivision and Land Development

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

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

Under its authority to regulate "land development," a municipality that has not enacted zoning can regulate any improvement of land involving two or more residential buildings or any nonresidential building even if they are located on an existing lot. Different types of development require different standards (i.e. mobile home parks, office complexes, shopping centers, multifamily residential). Therefore, standards should be established for each type of development. To be valid, standards must be reasonable, objective and whenever possible, quantifiable.

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

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

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

Mobile Home and Mobile Home Park Regulations

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

Each municipality has a responsibility to provide for a range of housing opportunities (See MPC Sections 301 (2.1) and 604 (4)). Mobile home and mobile home park regulations represent a means by which municipalities can insure their obligation to provide a full range of housing opportunities. The MPC requires and the courts have made it clear that those municipalities that try to avoid providing a "fair-share"[2] of housing types or growth that can be expected to occur naturally must provide for it.[3] Therefore, each municipality should ensure that adequate mobile home park provisions are enacted to accommodate this type of affordable housing.

According to MPC Section 501 provisions regulating mobile home parks must be set forth in separate and distinct articles of any subdivision and land development ordinance. Mobile home parks can also be accommodated by planned residential development provisions incorporated in zoning ordinances. However, most mobile home park provisions are, in fact, used in conjunction with subdivision and land development regulations. A mobile home park is actually a "land-development"; if mobile home pads are sold as lots instead of leased or rented, it would constitute a residential subdivision.

A single mobile home (now called a manufactured home) that is to be erected on a privately owned lot deserves to be treated as a single-family detached residence subject only to those standards that otherwise apply to conventionally built homes. Of course, mobile home park provisions can be incorporated under a county ordinance to apply in all municipalities without subdivision and land development regulations.

References

1. See MPC Sections 603(c)(5) and (6) as well as 605(3).
2. The court established "fair-share" doctrine in Pennsylvania which can be found in *Township of Willistown v. Chesterfield Farms, Inc.,* 462 Pa. 445, 341 A.2d 466 (1975) and *Surrick v. Zoning Hearing Board of Upper Providence Township,* 476 Pa. 182, 382 A.2d 105 (1977) and is cited frequently in other "fair-share" and exclusionary zoning cases.
3. The need for municipalities to accommodate future growth is illustrated in *National Land & Investment Co. v. Township Board of Appeals*, 419 Pa. 504, 215 A.2d 579 (1965) and later summarized in *Concord Township Appeal*, 439 Pa. 466, 268 A.2d 756 (1970).

Related Ordinances and Implementation Techniques

Floodplain Regulations

Local land use regulations are an important part of an overall floodplain management program. Most municipalities have patterned their regulations after federal and state minimum requirements. However, many local governments have regulations that are more stringent than the established state and federal minimums.

Floodplain regulations are commonly found in zoning, subdivision and land development, or special purpose ordinances, as well as building codes. Regardless of the nature and type of local laws or ordinances, it is necessary for municipal officials and citizens to have a basic understanding of how, where and what regulations apply. The National Flood Insurance Program (NFIP) and later the Pennsylvania Flood Plain Management Act (Act 166 of 1978) provided the impetus for all flood-prone communities to enact various regulations pertaining to development undertaken in identified floodplain areas.

It should be stressed that the authority to regulate floodplain development, for the most part, rests in the hands of local government. Act 166 of 1978, the Pennsylvania Flood Plain Management Act (FPM), was designed to promote and enhance the local regulatory role while minimizing that of the Commonwealth. In this regulatory role, municipalities can utilize land use ordinances, building codes and single purpose ordinances to regulate activity in the floodplain. For example, zoning can control the type, density and location of uses within floodplains. Subdivision and land development regulations can be used to insure that known flood-prone areas are clearly described on plans for effective management and provide adequate notification to potential lot purchasers. Building Codes set forth design and construction standards to lessen the vulnerability of new buildings to flood damage. Each type of regulation achieves a somewhat different objective and all are important in reducing future flood losses.

Codes

The adoption of various construction, property maintenance and fire prevention codes is critical for quality construction and safety reasons and, therefore, is increasingly recognized as an indispensable tool to promote the public health, safety and welfare. In reports submitted to the DCED in 1995, municipalities provided information about local building codes. Based on these reports the most common code is the "BOCA" code (published by the Building Officials and Code Administrators International, Inc. succeeded by the International Building Code (IBC)) because more than 60 percent of the municipalities that indicated they had a code identified that code as BOCA. These various codes continue to provide the necessary regulatory function for new and old construction and safeguards from fire and other life safety hazards. Soon the Commonwealth will have a uniform construction code and implementing regulations per the PA Uniform Construction Code (UCC) under Act 45 of 1999.

Codes establish minimum standards for safety to life, health and property. To be effective, the administration of building construction or maintenance codes must be coordinated with zoning regulations or other municipally related programs such as sewage facilities under Act 537. In many communities, the zoning officer is expected to insure that coordination is accomplished between and among the various construction codes (building, plumbing and electrical) and development activities. This is logical, since applicants for zoning approvals will usually need to apply for a building, plumbing or electrical permit under the various construction codes or to obtain some other type of municipal approval.

- **Building Code**—The Building Code is the basic regulation for new construction in the community. It also regulates the expansion, alteration and repair of existing structures. It includes requirements for the various special facilities and equipment which must be placed in buildings, such as air-conditioning, electrical, plumbing, heating, and other facilities, signs and outdoor displays and elevators.
- **Plumbing and Electrical Codes**—Plumbing and Electrical Codes are used to supplement the building code requirements described above. They control more detailed requirements relative to the installation of plumbing, drainage, water supply, gas pipe and electrical systems of all types.
- **Fire Protection Code**—The Fire Protection Code is concerned with those uses and conditions which present special hazards from fire. The code provides for the inspection of existing structures for the purpose of identifying hazardous conditions and it also provides for the issuance of permits for certain specific hazardous uses which are to be located in a building or structure.
- **Property Maintenance Code**—The importance of the Property Maintenance Code (formerly referred to at various times as an "existing structures" code or "housing" code) has been increasingly recognized in recent years. The property maintenance code sets responsibilities for cleanliness of structures, for the disposal of garbage and rubbish and for other activities needed to keep the structure and surrounding area in livable condition. Since this code applies to existing structures, no permits are required and it is the responsibility of the Code Enforcement Officer to originate a systematic inspection of all dwellings in the community.

Even though many of these types of codes may appear to be complex, their adoption, implementation and enforcement further enhance solid community development. It should be noted that the MPC empowers local planning agencies to prepare and present building and housing codes to the governing body (See MPC Section 209.1).

The code enforcement officer enforces the various construction codes and other ordinances that are enacted under authority of the local government codes, such as the Borough Code or Second Class Township Code, by means of a non-traffic citation. This citation procedure, unlike the civil procedure for MPC ordinance violations, is a summary (criminal) offense.

When properly adopted, administered and enforced, these codes can increase the quality of housing and can also promote the improvement and rehabilitation of older sections of the community. Codes can therefore be a vital step in the achievement of the goals in the community's comprehensive plan.

Municipal Capital Improvement (Transportation Impact Fee) Ordinance

Act 209 of 1990 amended the MPC by adding Article V-A governing "impact fees" for off-site transportation improvements. This new article is the exclusive authority to enact and collect impact fees. Act 209 mandates very specific and complex procedures that a municipality must follow in order to enact an impact fee ordinance. A recent survey indicates that only 34 municipalities have enacted Transportation Impact Fee Ordinances authorized by Act 209. Counties are prohibited from adopting this type of ordinance, but there are 1,044 municipalities that satisfy the prerequisites of having a comprehensive plan, subdivision and land development regulations and zoning ordinance in place in order to enact a transportation impact fee ordinance.

The municipality must establish an impact fee advisory committee, designate transportation service areas and conduct a series of studies. These studies, consisting of a land use assumption report, a roadway sufficiency analysis and transportation capital improvements plan, must be approved in order to enact an impact fee ordinance.

Act 68 of 2000 granted the authority for two or more municipalities, other than counties, to adopt transportation impact fees as originally provided for by Act 209 of 1990. Municipalities participating and having adopted a joint municipal (multimunicipal) comprehensive plan consistent with new Article XI can implement the requirements of Article V-A cooperatively through a joint authority.

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

Impact fees cannot be used to pay for costs associated with operation and maintenance expenses, repairs, pass through trips, or trips attributable to existing development. Growth, and the pace of growth, is among the factors to be weighed when deliberating whether to enact an impact fee ordinance. Such an ordinance represents just one more tool available to a municipality to promote orderly development. However, each municipality will have to make a cost-benefit determination to see if enacting an impact fee ordinance will likely be a net revenue producer over a given period of years. Professional assistance with pre-enactment studies and analysis is required. Once adopted, a responsible official must track the difficult administrative details.

Capital Improvements Program

A capital improvement is a major public facility involving a non-recurring cost that usually requires a large outlay of capital and brings returns or benefits to the public over a long period of time. A capital improvement may be a physical facility such as land acquisition, construction of municipal buildings, sewage treatment plants and collection lines or other public structures, road construction, large fixed equipment, and other similar expenditures.

Each municipality should consider instituting a capital improvements program to provide an orderly means of acquiring public facilities or accomplishing capital projects based on a priority schedule and the ability of the municipality to finance them. Much of the information on future projects and purchases is readily available in the minds of municipal officials, but is rarely written down in a future capital budget format. Capital improvements programming simply means writing it down after deciding what a community needs most in coming years and then calculating or devising a schedule to pay for the public improvements within bounds of the municipality's ability to finance them.

An inventory is needed prior to the formulation of a capital improvements program. A governing body or planning agency could begin to inventory physical equipment, public lands and municipal structures. This inventory should include, as appropriate, the following data: description, location, age, condition, maintenance costs and probable replacement data and anticipated cost. A capital improvements program is a means of implementing certain aspects of the comprehensive plan, but it is not necessary to have a comprehensive plan to embark on this type of planning for public improvements. Municipalities that already have a comprehensive plan will have a head start in the capital improvements programming process.

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

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

Clearly, a capital improvements program and related capital budget are primary elements of sound long-range financial planning and an integral component of a comprehensive plan for a community. A municipality should update its capital improvements plan each year by omitting the first year and adding on a new ending year. A 1995 survey, compiled by the former staff of DCA, indicates that 9 counties and 143 municipalities have developed a capital improvements program.

Constitutional and Statutory Constraints on Controls

Regulations, whether imposed by a free standing single purpose ordinance or provisions of a land use ordinance, often restrict or limit private property rights for the benefit of a public good. Single or special purpose ordinances generally regulate a particular nuisance. The nuisance being restricted must in some way represent imminent harm. For example, development in the floodplain areas of the state is controlled by a single purpose ordinance in most rural areas. The general police powers allow this to be done without the government acquiring or purchasing the right or use of land for a public benefit.

Regulations can create a basic tension between the rights of individuals to make free choices about the use of their property and citizen concern not to adversely affect the public good or cause environmental harm. Balancing these rights can present difficulties. Recent U. S. Supreme Court decisions regarding the "taking issue" underscore the importance of quality planning when government places limitations or restrictions on use of private property. A taking occurs when a regulation denies a landowner all use of his or her property without just compensation. Governing bodies must be careful that land use ordinances do not place too many constraints upon private property that they become so severe that they constitute a taking requiring compensation.

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

Planning Coordination

State enabling legislation, litigation, economies of scale, and scope of impact can all become forces that foster municipal coordination, cooperation and collective action. Local government officials, individually and collectively, must continually look beyond municipal boundaries. The MPC mandates intermunicipal planning and coordination in regard to some matters. For instance, during the comprehensive plan process a planning commission must prepare "[A] statement indicating the relationship of the existing and proposed development of the municipality to the existing and proposed development and plans in *contiguous municipalities* to the objectives and plans for development in the *county*, of which it is a part, and to *regional trends*." When a governing body adopts or amends a comprehensive plan it must ". . . consider the *review comments of the county, contiguous municipalities and the school district* . . ." A joint municipal zoning ordinance must be preceded by a joint municipal comprehensive plan. (MPC Article III, Sections 301 and 302, and Article VIII-A, respectively, emphasis in italics above.)

Landmark planning litigation involving the "standing" issue instructs municipalities to consider interests of other municipalities and to look beyond municipal boundaries. In Miller v. Upper Allen Township Zoning Hearing Board, 112 Pa. Commonwealth 274, 535 A.2d 1195 (1987), the Commonwealth Court overturned longstanding opinions holding that nonresidents of a municipality could not take part, that is have standing, in an appeal of a land use decision in another municipality even if they were directly affected. Nothing in the MPC suggests that the protection and advantages gained from successful planning commission efforts are to be limited to residents or property owners of that municipality. After all, both good and bad impacts cross municipal boundaries. In fact, the MPC strongly advocates coordination of the planning function between and among adjacent municipalities. MPC Section 503 (7) suggests that municipalities include provisions in their subdivision and land development ordinances to obtain reviews and reports from adjacent municipalities when a particular development plan affects that neighboring municipality.

A perfect example of this coordination is the sewage facilities planning process under Act 537. Municipal officials must review their official sewage facilities plan to insure that sewage facilities planning is consistent with comprehensive planning efforts under the MPC. Act 537 requires that official sewage plans provide for the orderly extension of community interceptor sewers in a manner consistent with the comprehensive plan and the sewerage needs of the entire area. Official sewage facilities plans are to take into consideration aspects of planning, zoning, population estimates, engineering and economics to project sewer service areas 10 years into the future. It is critical that these official sewage plans consider and are consistent with the municipal comprehensive plan and land use regulations.

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

Examples of other planning coordination needs include:

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

Land Use Ordinance Administration

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

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

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

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

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

Local Planning Assistance

Expert planning advice is available from the professional staffs of many county planning agencies. For years, the state government has provided many counties and municipalities with financial grants to continue or expand planning programs including local technical assistance. The Governor's Center for Local Government Services is the principal state entity responsible for land use assistance and monitoring in Pennsylvania. A community or an individual desiring any information on planning or on planning assistance (either financial or technical) should contact the appropriate regional office for their area. Some of the topics in which the Center's staff can be of assistance are as follows: community planning and comprehensive plans; zoning; subdivision and land development; National Flood Insurance and floodplain management; other planning related areas such as PRD, nonconformances, mobile home parks, sign controls, and; procedural questions involving the Municipalities Planning Code.

Interested individuals have several other sources of planning information on planning commissions, zoning hearing boards and other land use planning matters. One is the "Planning Series" of pamphlets dealing with most aspects of the planning process written in a basic, non-technical manner. The planning courses managed by the Governor's Center for Local Government Services are another source. Sessions on planning and zoning are also available through introductory training courses for newly elected local officials. The Pennsylvania Planning Association (PPA) and the Penn State University Cooperative Extension co-sponsor basic community planning programs through the Pennsylvania Municipal Planning Education Institute. Many colleges and universities offer planning and planning related courses at campuses across the Commonwealth. Community colleges are also a good place to check for instruction and information on land use planning matters.

The Pennsylvania Municipal Planning Education Institute (PMPEI) was created by the PPA and the Penn State Cooperative Extension in 1992. The purpose of the Institute is to bring basic instruction to Pennsylvania's citizens and local officials who serve on over 1,600 local and county planning agencies, and on more than 1400 zoning hearing boards in Pennsylvania. These courses are offered on site in community colleges, county and municipal building or any facility that the sponsoring agency provides.

The U.S. Soil Conservation Service has compiled a wealth of data that is crucial to sound land use planning. The competent staff of the Soil Conservation Service can provide municipalities with soil surveys and their interpretation to aid in land use decisions such as identifying prime agricultural lands, delineating floodplains, or rendering advice to protect against erosion, sedimentation and storm water problems.

In order for local governments to consider other land use controls that can be applied to sensitive environmental resources, the Pennsylvania Department of Environmental Protection's Regional Office should be consulted. DEP prepared, or has available, maps and studies concerned with such features as variable groundwater supplies, the capability of soils for on-site sewage disposal, geological areas likely to cause differential foundation settlement and coastal erosion problems. The DEP has also published a handbook series on environmental planning that is useful to all local government officials. The availability of these publications can be determined by contacting the DEP, Public Liaison Office in Harrisburg or by calling 717-787-9580.

Conclusion

If your community has not yet begun a program of land use planning and controls or started necessary revisions and updates to grapple with growth challenges, the time to do so is now! Don't be caught short five years from now when the damage has occurred and the taxpayers demand to know why nothing was done to prepare for growth and change. Much state and county effort and money is being marshaled to help, but only the local elected officials can enact and enforce land use controls.

Appendix I

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 in an attempt to assess 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 a significant 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 clearly state that priority consideration for funding is given to municipalities that incorporate multimunicipal approaches into their planning efforts. Similarly, 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 GIS. 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 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.

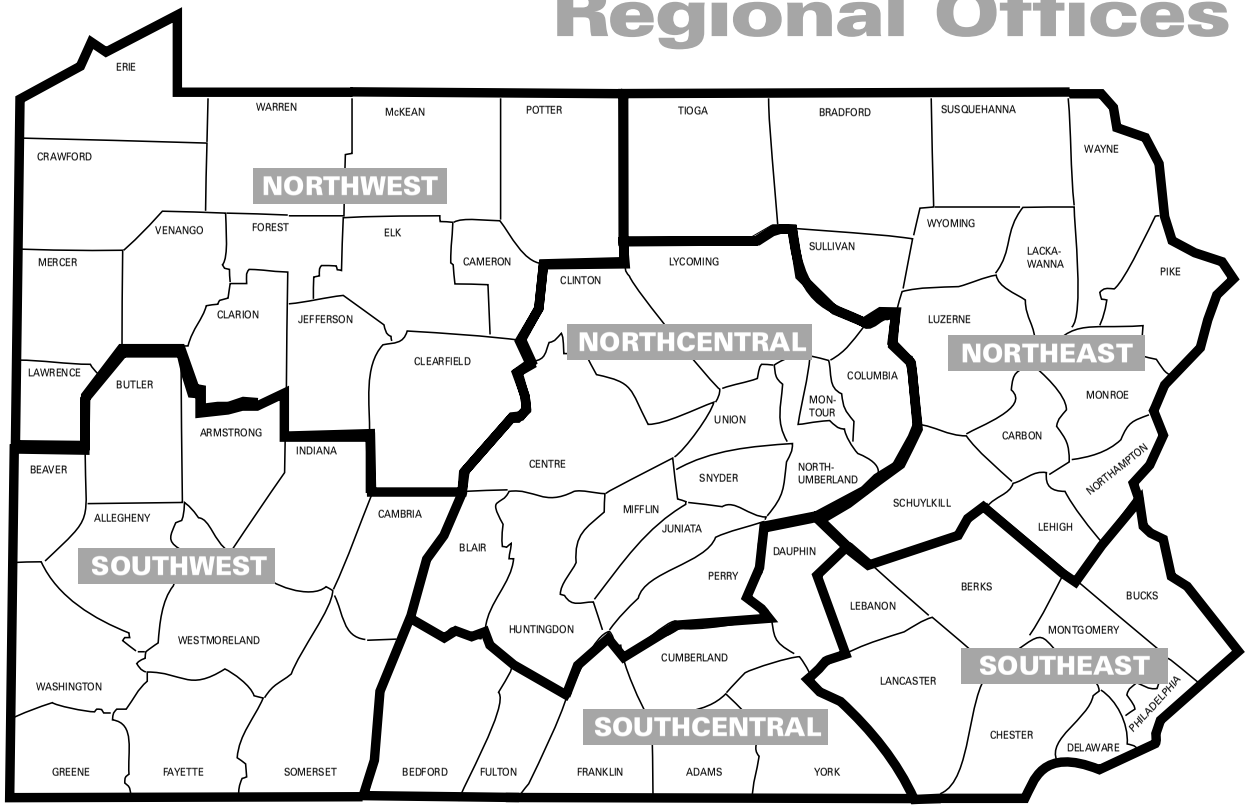
The courses offered by PSAB are directed primarily at economic development and downtown revitalization efforts as alternatives to sprawl. The courses PSATS offers focus on best practices and conservation. The primary audience for education and training programs is local government officials. However, 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 are:

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

Governor's Center for Local Government Services

Regional Offices



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